

New York State Department of Taxation and Finance
Taxpayer Services Division
Technical Services Bureau

TSB-A-82(4)S
Sales Tax
February 22, 1982

STATE OF NEW YORK
STATE TAX COMMISSION

ADVISORY OPINION

PETITION NO. S811009A

On October 9, 1981 a Petition for Advisory Opinion was received from Lancaster Country Club, Inc., 6061 Broadway, Lancaster, New York 14086.

The issue raised is whether the sales tax on dues paid to a social or athletic club is applicable to charges constituting security deposits collected in order to secure such club against loss, damage or other injury.

The tax referred to above is imposed under section 1105(f)(2) of the Tax Law. The term "dues" is defined, in section 1101(d)(6) of the Tax Law, as "Any dues or membership fee including any assessment, irrespective of the purpose for which made . . ." (emphasis added). Accordingly, where payment of a security deposit is required as a condition precedent to membership in a social or athletic club, such charge is subject to the tax imposed under section 1105(f)(2) of the Tax Law. See Advisory Opinion to Lawrence Wittlin, December 15, 1980 (Technical Services Bureau Memorandum TSB-H-80(259)S).

The State Tax Commission Determination cited by Petitioner, Matter of Olin Rent-A-Car of New York, Inc. and Morris C. Moad, April 30, 1976 (Technical Services Bureau Memorandum TSB-H-78(38)S), compels no conclusion contrary to that expressed herein. In that Determination the State Tax Commission merely held that a lessee's payments representing indemnification for damage to property of the lessor did not constitute "rent" of a type subject to tax under section 1105(a) of the Tax Law.

DATED: January 7, 1982

s/LOUIS ETLINGER
Deputy Director
Technical Services Bureau