

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

TSB-A-83(34)S
Sales Tax
September 16, 1983

STATE OF NEW YORK
STATE TAX COMMISSION

ADVISORY OPINION

PETITION NO. S830518A

On May 18, 1983 a Petition for Advisory Opinion was received from Manhattan Plaza Associates, 484 West 43rd Street, New York, New York 10036.

The issue raised is whether the amounts charged for the use of certain facilities of a health club are subject to either of the taxes imposed under Section 1105(f)(1) and (2) of the Tax Law.

Petitioner, a partnership, owns and operates facilities under the name of Manhattan Plaza Health Club, consisting of a swimming pool, sundeck, gym, sauna, steam rooms and lockers. The facilities are available to members and their guests at any time during normal operating hours without limitation. Memberships are sold on a first come, first serve basis. Petitioner does not provide any other services such as social or athletic events, tournaments or dances. Lockers are available to members and their guests on a daily basis at no charge. However, small rental lockers are available for an additional fee on a yearly basis. The club members possess no proprietary interest in the club, and have no control over either club membership or club activities.

Section 1105(f) of the Tax Law imposes taxes on:

"(1) Any admission charge where such admission charge is in excess of ten cents to or for the use of any place of amusement in the state . . . except charges to a patron for admission to, or use of, facilities for sporting activities in which such patron is to be a participant, such as swimming pools.

(2) The dues paid to any social or athletic club in this state if the dues of an active annual member, exclusive of the initiation fee, are in excess of ten dollars per year "

Section 1101(d)(13) of the Tax Law defines the term "social or athletic club" to mean "Any club or organization of which a material purpose or activity is social or athletic."

Section 527.11(b)(5) of the Sales and Use Tax Regulations provides, in part, as follows:

(i) The phrase club or organization means any entity which is composed of persons associated for a common objective or common activities. Whether the organization is a membership corporation or association or business corporation or other legal type of organization is not relevant. Significant factors, any one of which may indicate that an entity is a club or organization are: an organizational structure under which the membership controls social or athletic activities, tournaments, dances, elections, committees, participation in the selection of members and management of the club or organization, or possession by the members of a

proprietary interest in the organization. The organizational structure may be formal or informal.

(ii) A club or organization does not exist merely because a business entity:

(a) charges for the use of facilities on an annual or seasonal basis, even if an annual or season pass is the only method of sale and provided such passes are sold on a first come, first serve basis;

(b) restricts the size of the membership solely because of the physical size of the facility. Any other type of restriction may be viewed as an attempt at exclusivity;

(c) uses the word club or member as a marketing device;

(d) offers tournaments, leagues and social activities which are controlled solely by the management.

Based on the facts set forth hereinabove, it is clear that the Manhattan Plaza Health Club is not a "club or organization," within the meaning of section 527.11(b)(5) of the Sales and Use Tax Regulations. The "members" are in reality mere customers of a business entity, such members having neither a proprietary interest in the club nor the right to control club membership or club activities.

Accordingly, payments made to the club do not constitute "dues" subject to tax under section 1105(f)(2) of the Tax Law. Neither are they subject to sales tax under section 1105(f)(1) of the Tax Law. However, the following two points should be noted:

(1) Section 1105(c)(4) of the Tax Law imposes a tax on charges for the storage of tangible personal property not held for sale in the regular course of business, as well as the rental of safe deposit boxes or similar space. Petitioner's charges for annual rentals of small lockers are thus subject to tax, under such provision of law.

(2) Section 1212-A of the Tax Law authorizes New York City to impose a 4% tax on the sale of services by weight control salons, health salons, gymnasiums, turkish baths, sauna baths and similar establishments located within the City of New York. Such tax has been imposed under section A46-2.0(h) of the Administrative Code of the City of New York. Accordingly, the amounts charged for the use of Petitioner's facilities are subject to such 4% New York City Tax.

DATED: August 31, 1983

s/FRANK J. PUCCIA
Director
Technical Services Bureau