

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

TSB-A-83(42)S
Sales Tax
October 27, 1983

STATE OF NEW YORK
STATE TAX COMMISSION

ADVISORY OPINION

PETITION NO. S830628A

On June 28, 1983 a Petition for Advisory Opinion was received from Flatbush Sun and Swim Club, 1755 Utica Avenue, Brooklyn, New York 11234.

The issue raised is whether an operator of a swimming pool for recreational and athletic purposes on a membership basis is required to collect sales tax on fees charged to members for the use of the facilities for the season.

Petitioner operates a swimming pool facility. Members are permitted, for a seasonal fee, the use of the pool and recreation areas. In addition, chaise lounges and lockers are available on a rental basis. Petitioner states that there are no restrictions regarding membership, memberships being sold on a first-come, first-served basis. Members do not control social or athletic activities, tournaments, dances, elections or committees, nor do they participate in the selection of members or the management of the club, nor do they have any proprietary interest in the club.

Section 1105(f)(2) of the Tax Law imposes a sales tax on the dues paid to any social or athletic club in this state.

Section 527.11(b)(5) of the Sales and Use Tax Regulations defines the term "club or organization" as "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-served 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;

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(d) offers tournaments, leagues and social activities which are controlled solely by the management." 20 N.Y.C.R.R. 527.11(b)(5).

Section 1105(a) of the Tax Law imposes a sales tax on the receipts from every retail sale of tangible personal property unless otherwise excluded or exempted. Section 1101(b)(5) of the Tax Law defines the term "sale" to include the leasing or rental of property.

Section 1105(c)(4) of the Tax Law imposes a sales tax on the storage of tangible personal property not held for sale in the regular course of business, and the rental of safe deposit boxes or similar space.

Accordingly, inasmuch as Petitioner has exclusive ownership of and control over all the activities of the club, the Flatbush Sun and Swim Club is not a club or organization within the meaning and intent of the Tax Law. Therefore, membership fees paid thereto are not subject to the tax imposed under section 1105(f)(2) of the Tax Law. However, where there are separate charges for the rental of chaise lounges and for lockers, such charges would be subject to tax pursuant to sections 1105(a) and 1105(c)(4) of the Tax Law, respectively.

DATED: September 28, 1983

s/FRANK J. PUCCIA
Director
Technical Services Bureau