

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

TSB-A-84(19)S
Sales Tax
June 4, 1984

STATE OF NEW YORK
STATE TAX COMMISSION

ADVISORY OPINION

PETITION NO. S840229A

On February 29, 1984 a Petition for Advisory Opinion was received from Tan Tara Country Club, Inc., 4391 Tonawanda Creek Road North, North Tonawanda, New York 14120.

The issue raised is whether Petitioner is a club or organization as defined under Section 1105(f)(2) of the Tax Law and Section 527.11(b)(5) of the Sales and Use Tax Regulations.

Petitioner, a corporation, is the sole owner and operator of the Tan Tara Country Club. Membership in the club entitles a member to the use of an eighteen hole golf course, tennis courts, clubhouse and restaurant and bar facilities. All members are eligible to participate in golf tournaments and attend social gatherings, dances and other social functions sponsored and controlled by Petitioner. New members are admitted on a first come, first served basis. The size of the membership is limited only because of the size of the facilities. All members enjoy identical membership privileges and use of the facilities.

Petitioner retains sole control and authority over the use of the golf course and facilities. The membership does not have control over social functions or golf tournaments. Leagues and certain tournaments may be established by members. These leagues and tournaments are operated at the sole discretion of the club management.

Club members do not have a proprietary interest in the Tan Tara Country Club, Inc. and are not permitted to participate in either the selection of new members or management of the club. Management is not obligated to accept opinions or suggestions from members regarding club policies and/or rules.

In addition, members are charged a daily green fee for any guests.

A separate charge is made to members for lockers, club storage and riding golf cart storage when such are available.

Members are required to charge a minimum of \$30.00 per month for restaurant food for the period May 1 thru October 31. In the event a member charges less than the required amount for a month, the difference between the required amount and the actual amount will be billed to the member.

Section 1105(f)(2) of the Tax Law imposes a tax on "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" The term "club" is defined 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 . . . 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 . . . 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;
 - (d) offers tournaments, leagues and social activities which are controlled solely by the management

Example 18: A club owned by an individual which attempts to restrict its membership by geographic area, income, race, religion or any other means, is a club However, a "club" owned by an individual which restricts its membership only because of the physical capacity of its facilities is not a club or organization. 20 NYCRR 527.11(b)(5)

Accordingly, inasmuch as (1) the membership of Petitioner's club possess no proprietary rights therein and have no control over its activities or management, and (2) membership in the club is not exclusive, with memberships available on a first-come, first-served basis, the subject club is not a "social or athletic club" within the meaning of section 1105(f)(2) of the Tax Law. Annual membership "fees" or "dues" are thus not subject to tax imposed under such statutory provision.

Section 1105(c)(4) of the Tax Law imposes a sales tax on the service of storing all tangible personal property not held for sale in the regular course of business. Accordingly, Petitioner's charges to members for lockers, club storage and/or riding golf cart storage are subject to State and local sales taxes.

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Section 1105(d)(i) of the Tax Law imposes a sales tax on the receipts from "every sale of beer, wine or other alcoholic beverages or any other drink of any nature, or from the sale of food and drink of any nature or of food alone, when sold in or by restaurants, taverns or other establishments in this state, or by caterers, including in the amount of such receipts any cover, minimum, entertainment or other charge made to patrons or customers." (Emphasis added) Therefore, Petitioner's charges to its members for sales of food and drink, including any assessments made against a member for failure to meet the monthly minimum, are also subject to State and local sales taxes.

DATED: May 14, 1984

s/FRANK J. PUCCIA
Director
Technical Services Bureau

NOTE: The opinions expressed in Advisory Opinions
are limited to the facts set forth therein.