

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

TSB-A-84(3)S
Sales Tax
February 20, 1984

STATE OF NEW YORK
STATE TAX COMMISSION

ADVISORY OPINION

PETITION NO. S830715B

On July 15, 1983 a Petition for Advisory Opinion was received from Country Club Management Corp., 8900 23rd Avenue, Jackson Heights, N.Y. 11369.

The issue raised is whether Petitioner's charges to members constitute dues paid to a social or athletic club, within the meaning of Section 1105(f)(2) of the Tax Law.

Petitioner operates a swim club, whose facilities are available only to "members". Membership is available on a seasonal basis. The swim club's facilities consist of lockers, three swimming pools, handball, volleyball, basketball and tennis courts, a snack bar and a children's day camp. The lockers are provided as an incident of membership.

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)

Petitioner has stated that the membership does not control social or athletic activities, tournaments, dances, elections or committees, does not participate in the selection of members, does not participate in the management of the club, and possesses no proprietary interest in the organization. Petitioner also states that the club is not exclusive, membership being sold on a first-come, first-served basis.

In accordance with the foregoing, Petitioner's club is not a "social or athletic club" within the meaning of section 1105(f)(2) of the Tax Law. Payments for membership are therefore not subject to tax under such provision.

DATED: January 31, 1984

s/FRANK J. PUCCIA
Director
Technical Services Bureau