

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

TSB-A-90(46)S
Sales Tax
September 27, 1990

STATE OF NEW YORK
COMMISSIONER OF TAXATION AND FINANCE

ADVISORY OPINION

PETITION NO. S900525A

On May 25, 1990 a Petition for Advisory Opinion was received from Lake Louise Marie Country Club, Inc., Box 2, Rock Hill, N.Y. 12775.

The issue raised by Petitioner, Lake Louise Marie Country Club, Inc., is whether an annual charge to homeowners at Lake Louise Marie for use of a swimming pool, bathrooms and lake rights are subject to New York State and local sales taxes.

In September 1984 Petitioner formed a corporation and purchased property consisting of a swimming pool, bathrooms and lake rights. In order to raise funds for the purchase, stock was sold to the homeowners. This purchase was made subject to covenants and restrictions which existed prior to the purchase.

The Declaration of Covenants and Restrictions by Lake Louise Marie Corp. and S-M-W Development Corp. dated July 29, 1960, sets forth these covenants and restrictions, in part as follows:

10. Each lot or part thereof of the said. . .lots owned by the Declarant shall after conveyance be subject to a charge at the rate of One Hundred and Twenty Five Dollars (\$125.00) annually from the date of delivery of title and each and every May 1st thereafter. Lot owner shall pay such charge to Declarant for the privilege of the use of the Lake, beach and swimming pool as set forth hereinafter and for such other designated recreational facilities which are now or hereafter may be made available whether or not the same are used. . .Lot owner further agrees that the use of said lake privileges, swimming pool, beaches are [sic] recreational facilities, is subject to the said annual charge. The charge for such privileges and other recreational facilities shall constitute a debt which may be collected by suit in any Court of competent jurisdiction, and upon the conveyance of any of the land described herein the successive owner or owners shall, from time of acquiring title, be deemed to have covenanted and agreed to pay the Declarant all charges, past or future, as provided for in this paragraph. This charge shall become a lien on the land on May 1st of each year and shall continue to be such lien until fully paid. . . .

...Denial of the use of such facilities by Declarant. . .shall remain in full force and effect until a final determination and decision is made by Lake Louise Marie Country Club Association, a membership corporation. . .

Each lot owner, upon purchase or transfer or property, is given a copy of the covenants and must abide by them in full.

Section 1101(d)(6) of the Tax Law defines dues as:

"Any dues or membership fee including any assessment, irrespective of the purpose for which made and any charges for social or sports privileges or facilities except charges for sports privileges or facilities offered to members' guests which would otherwise be exempt if paid directly by such guests."

Section 1105(f)(2) of the Tax Law imposes tax on:

"The dues paid to any social or athletic club in this state if the dues of an active, annual member. . .are in excess of ten dollars per year. . . . Where the tax on dues applies to any such social or athletic club, the tax shall be paid by all members. . . .

Section 527.11 of the New York State Sales and Use Tax Regulations states, in part:

Dues. [Tax Law, §1105(f)(2)]

(a) Imposition

(1) A tax is imposed upon 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 \$10 per year.

(3) Where the tax applies to any social or athletic club, the tax shall be paid by all members thereof, regardless of the amount of their dues or initiation fee.

* * *

(b) Definitions. As used in this section, the following terms shall mean:

(2) Dues. (i) The term dues includes:

- (a) any dues or membership fee;
- (b) any assessment, irrespective of the purpose for which made; and
- (c) any charge for social or sports privileges or facilities.

(5) Club or organization. (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 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. . . elections. . . , 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 organization structure may be formal or informal.

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Since the property owners/members of Lake Louise Marie Country Club Inc. annually vote for its board of directors and as such property owners/members own or are sold shares of stock, the membership is considered to control the election and to participate in the management of the club or organization and to possess a proprietary interest in such organization thereby causing Lake Louise Marie Country Club, Inc. to fall within the definition of a club or organization as provided under Section 527.11(b)(5) of the Sales and Use Tax Regulations.

Accordingly, the receipts from the annual charges to the property owners/members of Lake Louise Marie Country Club are considered to be payments of dues as defined under Section 1101(d)(6) of the Tax Law and Section 527.11(b)(2) of the Sales and Use Tax Regulations and not charges for the use of realty, Merrick Estates Civic Association, Inc. v. State Tax Commission, 65 AD2d 669 (1978). Therefore, such receipts are subject to New York State and local sales and use tax as imposed under Section 1105(f)(2) of the Tax Law and Section 527.11(a) of the Sales and Use Tax Regulations. The fact that the charges may become a lien on the real property of the owner/members does not prevent such charges from being the payment of taxable dues.

DATED: September 27, 1990

s/PAUL B. COBURN
Deputy Director
Taxpayer Services Division

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