

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

TSB-A-92 (72) S
Sales Tax
October 26, 1992

STATE OF NEW YORK
COMMISSIONER OF TAXATION AND FINANCE

ADVISORY OPINION

PETITION NO. S920428A

On April 28, 1992, a Petition for Advisory Opinion was received from KPMG Peat Marwick, 345 Park Avenue, New York, New York 10154.

The issue raised by Petitioner, KPMG Peat Marwick, is whether membership dues and initiation fees paid by members of Petitioner's clients golf country club are subject to State and local sales and use taxes.

Petitioner's client owns a golf country club facility (the "Facility") in the State of New York. In accordance with local zoning approval requirements, a New York not-for-profit corporation (the "Operator"), will be established as a separate entity responsible for the operation of the Facility. Petitioner's client will own one hundred percent of the outstanding stock of the Operator. The Operator will enter into a long-term management contract with Petitioner's client pursuant to which the Operator will manage the Facility on a not-for-profit basis. All profits derived from the operation of the Facility will be retained by the Operator and used to repay any operating deficits funded by Petitioner's client. If there are no operating deficits funded by Petitioner's client, all profits derived from the operation or any excess funds are to be used for future operating shortfalls.

Petitioner's client will appoint all members of the Board of Directors of the Operator. This Board will be responsible for the administration of the Facility and has authority to control the management and affairs of the Facility. An advisory Board of Governors will also be appointed by Petitioner's client to act as liaison between the members of the Facility and the Operator. The Board of Governors will serve only in an advisory capacity with no duty or power to negotiate or otherwise act on behalf of the Facility members.

Under this structure, Petitioner's client would continue to own and control the Facility through the Operator.

Each person who acquires a domestic membership in the Facility is required to pay an initiation deposit and is entitled to its return in full and without interest, 30 years from the date of admission to the Facility or 30 days after resignation and resale of membership, whichever occurs first. In addition, each member will be required to pay annual dues to the Facility.

The members of the Facility would not: (1) have control over social or athletic activities, tournaments, dances, elections or committees; (2) be entitled to participate in the selection of members and management of the Facility; or (3) possess a proprietary interest in the Facility.

Petitioner's client or the Operator may restrict the size of the membership. However, this restriction would be solely because of the physical size of the Facility, and not as an attempt at exclusivity.

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 "

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

(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 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.

(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 or organization". 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.

In Brierwood Village, Inc., Adv Op Comm T&F, February 13, 1989, TSB-A-89(6)S, the Commissioner advised that inasmuch as (1) the membership of the club possessed no proprietary rights therein and had no control over its activities or management and (2) membership in the club was not exclusive, with members being appointed and accepted from a waiting list maintained

TSB-A-92 (72) S
Sales Tax
October 26, 1992

by Petitioner, the subject club was not a "social or athletic club" within the meaning of section 1105(f)(2) of the Tax Law. Annual membership "fees" or "dues" were thus not subject to the imposition of sales tax.

Accordingly, pursuant to Section 1105(f)(2) of the Tax Law, Section 527.11(b)(5) of the Sales and Use Tax Regulations and Brierwood Village, Inc., *supra*, since membership will not be exclusive, members will not possess a proprietary interest in the Facility and will not have control over the activities or management of the Facility, Petitioner's client and the Operator will not be deemed a social and athletic club and, therefore, membership dues and initiation fees paid by members will not be subject to State and local sales and use taxes.

DATED: October 26, 1992

s/PAUL B. COBURN
Deputy Director
Taxpayer Services Division

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