

NOTE: This Revenue Notice was revoked on December 14, 1998 by Revenue Notice # 1998-24.

Revenue Notice # 94-09

Sales tax; golf, country club and athletic club memberships.

GENERAL RULE:

It is the position of the Minnesota Department of Revenue that, subject to the exception noted in the last paragraph, all charges that a member must pay as a precondition to becoming a member of a club or as a condition to remain a member of a club are subject to the Minnesota sales tax as sports and athletic club membership dues and fees.

DISCUSSION OF THE LAW:

Minnesota Statutes, section 297A.01, subdivision 3 (l), provides that for sales tax purposes, sale includes the granting of membership in a club, association or other organization if: (1) the club, association, or other organization makes available for the use of its members sports and athletic facilities (without regard to whether a separate charge is assessed for use of the facilities); and (2) use of the sports and athletic facilities is not made available to the general public on the same basis as it is made available to members. The granting of membership includes both one-time initiation fees and periodic membership dues.

DEFINITIONS FOR PURPOSES OF THIS NOTICE:

Initiation Fees. One-time or scheduled payments or contributions required by a club from an individual as a precondition for the individual to join or initially become a member of the club. These payments may increase periodically in order to spread capital improvement charges to new members.

Membership Dues. Any payments required as a condition for the member to retain all the rights and privileges of membership in a club. The failure to pay dues by the member would generally result in the termination or suspension of membership.

Stock Purchase Payments. An assessment or fee required from each member as a condition to belong to the club and which entitles the member to a share of stock in the club. The ownership of the share generally entitles the member to voting rights in the club. The shares are sold at a stated par value and when the member leaves the club, the members shares are generally sold for the stated value of the shares. Generally, a member can only sell a share of stock by selling it to a new member after getting approval from the club or by selling the stock back to the club. Often the stock certificates are retained at the clubs office and the member receives a receipt evidencing ownership of the stock. The payment may be reflected as equity on the clubs sheet.

Stock Transfer Fees. Fees charged by a club to transfer or to facilitate the transfer of ownership of shares of stock in club to a new stockholder member. A club may impose such fees in one of two ways: (1) in lieu of an initiation fee or (2) as an administrative charge in addition to the clubs initiation fees and membership dues.

Operating Assessments. Payments required from members to fund the operating expenses of the club and which are not earmarked or dedicated for specific purposes or projects.

Capital Improvement Assessments. Assessments imposed upon members to pay a set sum of money which is to be used to make capital improvements to the clubs facilities. These assessments generally require a vote of the members. The assessments may be placed in a separate account and are generally earmarked or dedicated for specific purposes or projects. The capital improvement assessment may or may not be repaid to the member. If the assessment is repaid, it is often not repaid until the member leaves the club.

Minimum Fees. Fees charged by a club to each of its members who have failed to purchase a minimum amount of goods or services from the club during a specific time period. In some cases the actual amount of purchases are subtracted from a base amount of purchases to arrive at the minimum fee. The member generally does not receive goods or services in exchange for the fee and it operates as a penalty to encourage use of the clubs facilities.

Social Membership Fees. Payments made to a club that entitle the individual access to all of the clubs facilities except the use of the clubs sports and athletic facilities. Social members would generally not be required to purchase stock in the club.

SPECIFIC RULING:

The Department takes the position that the above charges are subject to the sales tax as initiation fees or membership dues since a member must pay these charges as a precondition to becoming a member of a club or as a condition to remain a member of a club. The legislature was very specific in providing that any initial payments (initiation fees) required to join a club as well as ongoing charges (dues) that are periodically charged to remain a member would be subject to the tax. The fact that some of the charges are not scheduled charges or that they are imposed on a sporadic basis does not exempt them from the tax, since they are mandatory charges that a member must pay to retain the rights and privileges of membership in the club.

The Department also takes the position that any charges to become or remain a member of a club will not be taxable if the club treats them as a valid business indebtedness owed to the member. To constitute a valid business indebtedness there must be an existing, unconditional and legally enforceable obligation to pay money. In determining whether a valid business indebtedness exists the department will look to see if the debt qualifies under Internal Revenue Code section 163(a). Some of the factors to be considered are whether the parties intended to create a debt, whether the club is making payments on the debt, whether the debt is provable, whether the debt bears interest, whether the member intends to collect the debt, and whether the debt has economic substance.

SUPERSEDES PRIOR NOTICE:

This notice supersedes Revenue Notice 92-23, *Sales and use tax: Member governed and controlled clubs that provide sports or athletic facilities for members*, published at *State Register*, Vol. 17, Number 22, Page 1359 on November 30, 1992 (17 S.R. 1359).

Patricia A. Lien

Assistant Commissioner for Tax Policy

Dated : May 30, 1994