

**Revenue Ruling
No. 08- 002
January 29, 2008
Sales and Use Tax**

Sales Tax applicable to country club dues, limitations on the sales of tangible personal property and other exemptions under R.S. 47:305.14 activities, and sales tax applicable to the rehabilitation of historic properties

Purpose: The purpose of this Revenue Ruling is to address certain issues that may concern country clubs for sales taxes, such as the taxability of the dues owed by members to the club, the taxability of certain activities of the club, particularly non-profit fundraising activities, and taxability of certain capital construction costs.

Background:

For the purposes of discussion of certain issues related to the operations of a country club and ruling, "Country Club" (hereinafter "CLUB") is a fictitious club that is located in the State of Louisiana.

CLUB is a 501(C) non-profit organization which owns and operates out of a historic property. Club believes that it is providing charitable, fraternal and civic activities to community, and whether these activities may be exempt in whole or part from sales taxes. CLUB offers golf, swimming, tennis and work out facilities to its members who pay a fee to join the organization for membership and pay monthly fees to remain a member. Additionally, CLUB offers its building as a meeting place for numerous religious organizations and the use of its facilities to other community organizations for their projects. Additionally, CLUB needed renovations to its structure and contracted with a party to make repairs and renovations to an immovable. Taxes were paid on the materials.

Analysis / Discussion:

CLUB questions whether its member's dues are exempt from sales taxes under either the Louisiana Constitution or Louisiana Statute. In support of its contention that those dues are exempt from sales taxes, it relies upon La. Const. art. VII Sec. 21(B)(1)(a), and LSA-R.S. 47:305.14. CLUB also questions whether the cost of materials for repairs and renovations to its immovable property are subject to sales taxes, and contends that they are not because taxes are not owed on constructions to real estate.

Issue 1: Exclusion from sales taxes for dues of club members under R.S. 47:301 et seq. and exemption under La. Const. art. VII Sec. 21(B)(1)(a).

Louisiana law imposes a sales tax upon the dues required by a country club for membership. R.S. 47:301(14)(b)(i) states:

"Sales of services" means and includes the following: ... (14)(b)(i) The sale of admissions to places of amusement, to athletic entertainment other than that of schools, colleges, and universities, and recreational events, and the furnishing, for

A Revenue Ruling is issued under the authority of LAC 61III.101 (C). A Revenue Ruling is written to provide guidance to the public and to Department of Revenue employees. It is a written statement issued to apply principles of law to a specific set of facts. A Revenue Ruling does not have the force and effect of law and is not binding on the public. It is a statement of the department's position and is binding on the department until superseded or modified by a subsequent change in statute, regulation, declaratory ruling, or court decision.

dues, fees, or other consideration of the privilege of access to clubs or the privilege of having access to or the use of amusement, entertainment, athletic, or recreational facilities; ...

An exclusion is offered to certain eleemosynary institutions from the dues associated with benevolent purposes. The tax statute creates therein an exclusion from sales taxation, at R.S. 47:301(14)(b)(i) stating:

...but the term "sales of services" shall not include membership fees or dues of nonprofit, civic organizations, including by way of illustration and not of limitation the Young Men's Christian Association, the Catholic Youth Organization, and the Young Women's Christian Association.

The Department's interpretation of the above exclusion requires the words non-profit and civic both apply to the organization. The Department would define a civic organization to include one which principle purpose is directed toward the enhancement of and benefit of the citizenry at large. By this it is meant that the organization offers direct economic, educational, or health benefits and resources to the citizenry through benevolent activities without regard to ability to pay. The principle purpose of CLUB is not that of a civic organization. The activities of CLUB upon which it bases its purported public contributions, i.e. to allow organizations or religious memberships to use its facilities, is not the primary purpose of the club; thus, it does not qualify as a 'civic' organization. The YMCA's primary purposes include that of development of "character values" of the youth of the community, as well as the provision of education and training to benefit the community at large.

CLUB states that because it offers its members swimming, tennis and work out facilities, and because these same facilities are offered by the YMCA and the YWCA, that CLUB should qualify for the exemption of R.S 47:301(14)(b)(i) accorded those organizations. This reasoning is rejected by the Department. The YMCA and YWCA are organized to provide a place and means of spiritual and physical development for those in the community who do not otherwise have organized resources available to them. They provide their resources to anyone in the community, not just those who qualify by ability to pay. By making the facilities available to all, the YMCA and YWCA provide full community access to its facilities. Further, it is a primary purpose of these organizations, not a secondary feature of its activities, to make their resources available to the community at large.

CLUB suggests that because it is an old organization or operates out of an old property, that it is a historic organization. The department qualifies 'historic organization' as one that would devote its principal organizational purpose to the preservation of structures, artifacts, or information. To illustrate by way of example, a museum operated through an organization merely showing old works of art would not be classified as an historic organization, but as a cultural organization. That classification could be expanded if, in addition to showing works of art, the principal purpose of the museum organization was for the preservation of old works of art within the context of their relationship to history. Similarly, the Preservation Resource Center of New Orleans as a primary purpose is devoted to the preservation of historic properties of the City. Contrarily, the fact that the country club or the country club's buildings are over 100 years old does not make the organization a historic one.

CLUB asserts that it is entitled to an exemption from sales taxation pursuant to the Louisiana Constitution of 1974, Art. VII, Sec. 21(B)(1)(a) which provides in pertinent part as follows:

Section 21. In addition to the homestead exemption provided for in Section 20 of this Article, the following property and no other shall be exempt from ad valorem taxation. . .

(B)(1)(a) Property owned by a nonprofit corporation or association organized and operated exclusively for religious, dedicated places of burial, charitable, health, welfare, fraternal, or educational purposes, no part of the net earnings of which inure to the benefit of any private shareholder or member thereof and which is declared to be exempt from federal or state income tax...”.

CLUB avers that it is entitled to an exemption from sales taxes because the Louisiana Fifth Circuit, in *Metairie Country Club v. Louisiana Tax Com'n.*, 03-538 (La. App. 5th Cir. 10/28/03), 860 So.2d 165, *writ denied*, found that the non-profit country club was exempt from payment of ad valorem taxes under La. Const. art. VII, Sec 21(B)(1)(a). The Department rejects this contention. Art. VII, Section 21 confers an exemption specifically for ad valorem taxes. There is no authority to extend this exemption to that of sales taxes. Art. VII, Section 21 was preceded by Article 10 §4 of the Louisiana Constitution of 1921, and the language of both articles is substantially similar. Sales tax statutes were not adopted in Louisiana until 1948. There was no possible intent to include exemptions from sales taxes for the non-profit purposes included in the earlier or later constitutions.

CLUB further avers that because the types of organizations exempted from sales taxes under R.S. 47:305.14 are similar to those enumerated in Art. VII Section 21 of the 1974 Constitution, that the Department is bound to grant CLUB an exemption pursuant to the court decision of *Metairie Country Club, supra*. R.S. 47:305.14 states:

“The sales and use taxes imposed by taxing authorities shall not apply to sales of tangible personal property at, or admission charges for, outside gate admissions to, or parking fees associated with, events sponsored by domestic civic, educational, historical, charitable, fraternal, or religious organizations, which are nonprofit, when the entire proceeds, except for the necessary expense connected therewith, are used for educational, charitable, religious, or historical restoration purposes, including the furtherance of the civic, educational, historical, charitable, fraternal, or religious purpose of the organization. . . .”.

Again, the Department must reject this reasoning. The statutory exemption is strictly contemplating events held especially for the purpose of fundraising for “educational, charitable, religious, or historic restoration purposes, including the furtherance of the civic, educational, historical, charitable, fraternal, or religious purpose of the organization. . . .”. Under these terms, the activity must be for one of the four enumerated purposes. Therefore, while the event held may be in furtherance of civic or fraternal organizations, the event must be held for educational, charitable, religious or historic restoration purposes. This statute does not contemplate exemptions from taxation of sales taxes on fundraising efforts that are not dedicated to those enumerated public interests. It most certainly does not contemplate an exemption from sales taxes for monthly or periodic fees for club memberships in country clubs or other private clubs.

Nor does it contemplate excluding from taxation sales tax on the sales price for events held by a country club for its own member's benefit, even if ticket sales are open to the public at large.

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Issue 2: Exclusion from sales taxes on construction materials used for repairs and renovations of real (immovable) property.

There is no statutory exemption or exclusion from sales tax upon materials used in construction or repair of immovable property. All materials used in the construction, renovation or repair of immovables will have sales tax paid upon them, either by the contractor as the end user or the owner as the end user. The only exemption from sales taxes on materials for construction occurs when the contractor is constructing, renovating, or repairing structures for governmental entities, and then only when strict bidding and contractual requirements are met.¹

Conclusion

CLUB is not entitled to a sales tax exemption for monthly or periodic fees associated with private club membership. Non-profit, civic organizations may qualify for the exemption set forth at 47:301(14)(b)(i) if the principle purpose of the organization is dedicated to civic activities as defined above. Furthermore, La. Const. art. VII. sec. 21(B)(1)(a) is an exemption applicable solely to ad valorem property taxes and inapplicable to sales tax. As such, the decision of *Metairie Country Club v. Louisiana Tax Com'n.*, 03-538 (La. App. 5th Cir. 10/28/03), 860 So.2d 165, *writ denied*, has no application to the collection of sales taxes on dues of country club memberships.

Finally, sales taxes are paid on the materials of construction work without regard to whether or not the structure is historic unless the construction qualifies under the law as work done for a public entity or a specific exemption from sales and use taxes is authorized by law.

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¹ In the 2007 Regular Session of the State Legislature, the legislature created in Act 430 (HB 241) enactment R.S. 47:305.56, a sales and use tax exemption for the sale of construction materials to Habitat for Humanity affiliates located in the state of Louisiana when the materials are intended for use in construction of new residential dwellings in this state. Effective October 1, 2007.