

SUMMARY

QUESTION: ARE CLUB MEMBERSHIP FEES, PAID TO THE TAXPAYER, SUBJECT TO SALES AND USE TAX ON ADMISSIONS?

ANSWER: THE CLUB MEMBERSHIP FEES ARE SUBJECT TO SALES AND USE TAX PURSUANT TO SECTION 212.04(1)(A), F.S.

January 20, 2012

Re: **Technical Assistance Advise ment – 12A-003**
Taxability of Club Membership Fees
Sales and Use Tax - Admissions
Sections 212.04(1)(a), 212.02(1), Florida Statutes (F.S.)
Rule 12A-1.005(4)(d)3., Florida Administrative Code (F.A.C.)

Dear XXX:

This is in response to your letter dated XXX, requesting this Department's issuance of a Technical Assistance Advise ment ("TAA") pursuant to Section 213.22, F.S., and Rule Chapter 12-11, F.A.C., regarding the taxability of certain club membership fees paid to the Taxpayer. An examination of your letter has established that you have complied with the statutory and regulatory requirements for issuance of a TAA. Therefore, the Department is hereby granting your request for a TAA.

ISSUE

The issue is whether club membership fees, paid to the Taxpayer, are subject to sales and use tax on admissions.

FACTS

The Taxpayer (or "the Club") owns, operates, and maintains a nine-hole golf course, tennis courts, and a clubhouse. The primary purpose of the Club is defined in Article III, Second Amended and Restated Articles of Incorporation for the Club, which provides, "The primary purposes for which the Club is organized are to own, operate and manage a country club and the recreational and other facilities and services related thereto and a

wastewater treatment plant and other facilities and services related thereto.” The members of the Club are primarily homeowners in surrounding communities, however, special memberships are provided to the developer and “any owner or owners of commercial units constructed on the Commercial Property.”

. . .”¹ Membership in the Club is mandatory with all acquisitions of condominiums or single family homes in these communities. The homeowners pay their respective homeowner associations² annual dues, which include monies to be forwarded to the Club for Club membership fees and Club assessments. XXX County property records indicate the property, on which the Club is located, is owned by the Club.

TAXPAYER POSITION

It is the Taxpayer’s position that the membership fees and assessments paid to the Club represent nontaxable admissions pursuant to Rule 12A-1.005(4)(d)3., F.A.C. The Taxpayer asserts that the fees are: mandatory; paid to an association³; and required to be paid as a condition of ownership. Taxpayer further provides that the club facilities are part of the common elements or common areas of the real property.⁴

LAW AND DISCUSSION

Section 212.04(1)(a), F.S., indicates, “. . . [it is] the legislative intent that every person is exercising a taxable privilege who sells or receives anything of value by way of admissions.”

Section 212.02(1), F.S., provides in part, “The term ‘admissions’ means and includes the net sum of money after deduction of any federal taxes for admitting a person or vehicle or persons to any place of amusement, sport, or recreation . . . and all dues and fees paid to private clubs and **membership clubs** providing recreational or physical fitness facilities, including, but not limited to, golf, tennis, swimming, yachting, boating, athletic, exercise, and fitness facilities, except physical fitness facilities owned or operated by any hospital licensed under chapter 395.” (Emphasis added)

It is clear that fees paid to membership clubs, providing recreational facilities, are subject to sales and use tax on admissions. Taxpayer relies on Rule 12A-1.005(4)(d)3., F.A.C., to support the contention that the subject fees are not subject to tax. This reliance is unfounded. The Rule provides the following as an example of fees that “. . . do not entitle the payor to the use of the club’s recreational or physical fitness facilities . . .”, and would therefore not be subject to taxation:

¹ See Second Amended and Restated Articles of Incorporation for the Club.

² There are six separate homeowner associations.

³ Taxpayer cites Downey v. Jungle Den Villas Recreation Association, Inc., 525 So.2d 438 (Fla. 5th DCA 1988) and assert the Club is a “de facto” association. In Downey, it was determined a recreation association (where only unit owners comprise the members of the recreation association) was a de facto condominium association for purposes of assessing unit owners for a swimming pool.

⁴ Taxpayer provided amended condominium declarations for the homeowner associations referenced above and assert these declarations demonstrate the Club property as common property.

Mandatory dues and fees paid to a condominium association, homeowners' association, or cooperative association when they are required to be paid as a condition of ownership or occupancy of real property **and the club facilities are part of the common elements or common areas of real property.** (Emphasis added.)

The Club does not meet the requirements of Rule 12A-1.005(4)(d)3., F.A.C., because the club is not an "association" as defined by s. 718.103, Florida Statute, or a homeowners' association under s. 720.301, F.S. Additionally, it is not a common element or common area of condominium or homeowners' association property.

Condominiums: Condominiums and the forms of ownership interests therein are strictly creatures of statute. Woodside Village Condominium Ass'n, Inc. v. Jahren, 806 So. 2d 452 (Fla. 2002); Neuman v. Grandview At Emerald Hills, Inc., 861 So. 2d 494 (Fla. Dist. Ct. App. 4th Dist. 2003). "Association" is defined in Section 718.103 as, "in addition to any entity responsible for the operation of common elements owned in undivided shares by unit owners, any entity which operates or maintains other real property in which unit owners have use rights, where membership in the entity is composed **exclusively of unit owners** or their elected or appointed representatives and is a required condition of unit ownership." (Emphasis added)

A unit owner is defined as "a record owner of legal title to a condominium parcel." In this instance, the Club is not a common element according to the definition in Chapter 718, F.S., (see discussion below) and it is not composed exclusively of condominium unit owners. In addition to condominium owners, the Club is composed of single family home owners, the developer, and any other class that the Board of Directors may establish. Therefore, the Club is not an association for the purposes of Chapter 718, F.S.

Section 718.103(8), F.S., defines common elements to mean "the portions of the **condominium property** not included in the units." Further, subsection (8) specifies that condominium property is "the lands, leaseholds, and personal property that are **subjected to condominium ownership**, whether or not contiguous, and all improvements thereon and all easements and rights appurtenant thereto intended for use in connection with the condominium." (Emphasis added.) The Club is not a condominium because it does not meet the requirements of Chapter 718, F.S., nor is the club owned by a condominium. Statements by owners/members that club property is common property do not override the statutory definition or negate the fact that the property is owned by an entity that is not a condominium under Chapter 718, F.S.

Homeowners' Associations: Homeowners' Associations are governed by Chapter 720, F.S., which explicitly does not apply to "the commercial or industrial parcels in a community that contains both residential parcels and parcels intended for commercial or industrial use. Section 720.302, F.S.

Section 720.301, F.S., defines a homeowners' association as:

a Florida corporation responsible for the operation of a **community** or a mobile home subdivision in which the voting membership is made up of parcel owners or their agents, or a combination thereof, and in which membership is a mandatory condition of parcel ownership, and which is authorized to impose assessments that, if unpaid, may become a lien on the parcel. The term "homeowners' association" does not include a community development district or other similar special taxing district created pursuant to statute. (Emphasis added)

"Community" means the real property that is or will be subject to a declaration of covenants which is recorded in the county where the property is located. The term "community" also includes all real property, including undeveloped phases, that is or was the subject of a development-of-regional-impact development order, together with any approved modification thereto. The Club has control only over country club and the recreational and other facilities and services related thereto. The Club is not responsible for the "community" as defined by Chapter 720, F.S. Therefore, the Club is not a homeowners' association.

According to Section 720.301(2), F.S., governing homeowners' associations, a "common area" includes:

all real property within a community which is owned or leased by an association or dedicated for use or maintenance by the association or its members, including, regardless of whether title has been conveyed to the association:

- (a) Real property the use of which is dedicated to the association or its members by a recorded plat; or
- (b) Real property committed by a declaration of covenants to be leased or conveyed to the association.

On the facts given, the real property does not appear to be dedicated to a homeowners' association by deed or plat nor has it been leased or conveyed to the association.

Downey is not applicable with regard to the requirements found in Chapter 212, F.S. 525 So. 2d at 438-440. In Downey, the dispute addressed the association's failure to obtain a unanimous vote of condominium unit owners in making an assessment to pay for capital improvements, as required by Chapter 718, F.S., governing condominium associations. The court determined that the legislative intent of protecting unit owners with a

unanimous vote could not be avoided by setting up an independent entity to perform the functions of the condominium association. While this decision provides guidance regarding the protection of condominium unit owners⁵ in regard to mandatory voting procedures to make assessments by an association, the decision is not applicable with regard to tax assessments.

The Club's fees are taxable under Section 212.04, F.S., as taxable admissions because the subject fees are paid to a membership club for use of recreational facilities.

RESPONSE

The club membership fees are subject to sales and use tax pursuant to Section 212.04(1)(a), F.S.

This response constitutes a Technical Assistance Advisement under Section 213.22, F.S., which is binding on the Department only under the facts and circumstances described in the request for this advice as specified in Section 213.22, F.S. Our response is predicated on those facts and the specific situation summarized above. You are advised that subsequent statutory or administrative rule changes, or judicial interpretations of the statutes or rules, upon which this advice is based, may subject similar future transactions to a different treatment than expressed in this response.

You are further advised that this response, your request and related backup documents are public records under Chapter 119, F.S., and are subject to disclosure to the public under the conditions of Section 213.22, F.S. Confidential information must be deleted before public disclosure. In an effort to protect confidentiality, we request you provide the undersigned with an edited copy of your request for Technical Assistance Advisement, the backup material and this response, deleting names, addresses and any other details which might lead to identification of the taxpayer. Your response should be received by the Department within 15 days of the date of this letter.

Sincerely,

R. Clay Brower
Revenue Program Administrator
Technical Assistance and Dispute Resolution
(850) 717-6306

RCB/
Ctrl# 110468

⁵ Unlike the facts in Downey, supra, the Club provides for two classes of membership other than the owner member class. Further, it is not clear the Developer retains any ownership rights.