

SUMMARY

A Country Club that owns a golf course and clubhouse and provides social and recreational facilities for its members. The Club seeks advice regarding the taxability of an assessment it plans to charge its members to make capital improvements to the club facilities. The capital improvements will be financed through a mortgage. Members will pay the assessment in installments.

A capital assessment is distinguishable from an admission charge, and would ordinarily have the following characteristics: (1) it would be a specific demand or request by the club upon its membership, as a whole or as a class for a certain sum of money which is paid proportionally by each member of the class (which may be paid in installments); (2) it would not be paid to obtain membership or for the right of the member to use the club's recreational or physical fitness facilities or equipment; (3) it would be separately stated on the billing to the member; (4) when paid, it would be separately accounted for on the club's books and records, and not reflected as an operating revenue account; (5) it would be used to pay for capital improvements to the club facilities, or for debt-service on the financing thereof; (6) it would not result in a decrease of membership dues or fees; and (7) the proceeds from it would not be used to pay for any operating expenses. If these characteristics are present in the assessment contemplated by the Club, then the assessment will be considered a capital assessment that is exempt from tax.

Interest, loan costs, and legal fees directly related to the capital improvements are considered part of the total cost of the capital improvements.

Re: Technical Assistance Advisement 99A-038

Sales and Use Tax - Assessment Charged to Country Club
Members for Capital Improvements

Section: 212.04, F.S.

Petitioner: XXX (herein "Club")

FEI: XX

Dear :

This letter is a response to your petition dated September 1, 1998, for the Department's issuance of a Technical Assistance Advisement ("TAA") concerning the above referenced party and matter. Your petition has been carefully examined and the Department finds it to be in compliance with the requisite criteria set forth in Chapter 12-11, F.A.C. This response to your request constitutes a TAA and is issued to you under the authority of s. 213.22, F.S.

FACTS

In your letter, you stated the facts relevant to Taxpayer's situation as follows:

The [Club] is a not for profit entity. It owns land and a clubhouse building and other amenities. The [Club] leases a golf course from [City] on a long-term basis. The [Club] is a non-equity membership entity operated on a semi-private basis. Members of the [Club] are allowed to use the facilities in exchange for the payment of monthly dues and the related charges. Residents of [City] may use the golf course on a daily basis. The members are not charged green fees, but residents pay a green fee for an arrangement similar to a daily membership.

The members of the [Club] do not pay for an equity ownership[;] they pay an initiation fee and monthly dues. If they resign they are not due any money. There is not any provision regarding the payment of any amount to any member upon termination of the club.

The Board of Directors ("Board") of the [Club] decided to

approach the members about making capital improvements by renovating the clubhouse facilities that the [Club] owns. The membership approved the renovations. The Board determined that there were two possible means of paying for the renovations.

The first method would be a one-time assessment to each member for his share of the capital improvements. The Board feels that this would be a financial strain on a number of its members and has abandoned this approach.

The second method proposed to pay for the capital improvements is the creation of a monthly capital assessment. Each member would be assessed a set specified amount on a monthly basis to pay for the capital improvements. In order to accomplish this it is necessary to obtain a loan for the capital improvements. As soon as the debt on the renovations is paid[,] the assessment ends. This assessment is not in lieu of a dues increase. The fee structure remains the same, before and after the assessment. Only the members are paying for the renovations.

The amounts billed to the members are separately stated on their monthly billing statements. The amounts received from the members are kept in a separate account, are being used only for the capital improvements and debt retirement, and are being treated as a contribution to capital for accounting purposes.

The Club was issued a Letter of Technical Advice, dated August 5, 1998, discussing this issue.

REQUESTED ADVISEMENT

The taxpayer endeavors to determine:

1. Whether the Country Club, a non-equity club, can charge its members a special assessment, which will be placed in a separate account, accounted for as a contribution to capital, and used to retire debt, without being subject to

sales tax on the assessment?

2. If so, whether the interest paid on the debt constitutes a capital improvement or if the assessment must be split between the principal part (capital improvements) and the interest part?
3. Can the special assessment be charged as a set specified amount each month, which amount would be used to retire the debt?
4. Which costs can be paid that are considered capital improvements, and do the soft costs such as loan fees and legal fees to close the transaction qualify as part of the capital improvement?

Discussion, Analysis, and Conclusion of Law

Section 212.04(1)(a), F.S., sets forth the "legislative intent that every person is exercising a taxable privilege who sells or receives anything of value by way of admissions."

Section 212.04(1)(b), F.S., provides:

(b) For the exercise of such privilege, a tax is levied at the rate of 6 percent of sales price, or the actual value received from such admissions, which 6 percent shall be added to and collected with all such admissions from the purchaser thereof, and such tax shall be paid for the exercise of the privilege as defined in the preceding paragraph.... (Emphasis Supplied)

Section 212.02(1), F.S., provides in pertinent part:

The term "admissions" means and includes... 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.... (Emphasis Supplied)

Rule 12A-1.038(1), F.A.C., provides in part:

It is the specific legislative intent that each and every sale, admission, use, storage, consumption, or rental is taxable under Chapter 212, F.S., unless such sale, admission, use, storage, consumption, or rental is specifically exempt. The exempt status of the transaction must be established by the dealer....

According to Taxpayer's TAA Request, the Club is a not for profit entity that owns land, a clubhouse building, and other amenities, and leases a golf course from the city on a long-term basis. Members of the Club use the facilities in exchange for the payment of monthly dues and related charges. The members are not charged green fees, but nonmembers who are residents of the city and wish to use the golf course must pay a green fee for each day of use.

Members of the Club do not have equity in the club. Each member pays an initiation fee and monthly dues. Members are not entitled to receive any money upon resignation from, or termination of membership in, the club.

When the Club's Board recently brought before the members a proposal to renovate the clubhouse facilities, the members approved the renovation plans. To fund the approved renovations, the Board considered two methods of imposing assessments on the members. Under the first method, each member would be assessed, and required to pay, a one-time, lump-sum assessment for the member's share of the capital improvements. However, the Board believes that this first funding method would be a financial strain on a number of its members, and has decided to utilize the second method of imposing the assessment.

The second method is to impose a "monthly capital assessment." (TAA Request, p. 2). Each member would be assessed a set specified amount on a monthly basis to pay for the capital improvements. In order to accomplish the second method, the Club must secure a loan for the capital improvements. The assessment would end as soon as the debt on the renovations was paid.

The TAA Request recites that the contemplated assessments would not be in lieu of a dues increase, and that the members' dues would remain the same after the assessments. The amounts billed to the members will be separately stated on their monthly billing statements. Furthermore, the amounts received from the members will be kept in a separate account, used only for the capital improvements and debt retirement, and treated as contributions to capital for accounting purposes.

The Club seeks to charge its members a special assessment, as a monthly charge, which will be placed in a separate account and accounted for as a contribution to capital, without being subject to sales tax on the assessment.

Pursuant to the Florida Statutes, all dues and fees paid for admission to use club facilities are taxable. Sections 212.02(1) and 212.04(1), F.S. As the First District Court of Appeal noted in Dept. of Revenue v. John's Island Club, 680 So.2d 475, 477 (Fla. 1st DCA 1996), "[t]he terms 'dues' and 'fees' are not defined by statute."

In that case, the court considered whether dues and fees included assessments charged by John's Island Club, a not-for-profit recreational facility, to its members for repair and replacement of the facilities. Id. at 476. Any person joining the club after the imposition of the assessment would be required to pay the assessment. Id. Although members were entitled to the value of their contribution if they resigned from the club, the value of the contribution decreased by 10% each year. Id. Thus, after ten years, the contribution "had no redemptive value." Id.

In determining the meaning of "dues and fees" under Section 212.02(1), F.S., the court adhered to the fundamental principle that statutes should be construed based on the plain and ordinary meaning of the terms adopted by the legislature. Id. at 477; see Parker v. State, 406 So.2d 1089, 1091 (Fla. 1981)(observing that legislative intent is the "pole star" by which courts are to be guided when interpreting statutory provisions); Aetna Cas. & Sur. Co. v. Huntington Nat'l Bank, 604 So.2d 1315 (Fla. 1992)(providing that legislative intent is

gleaned from the plain language of the statute). Applying this principle, the court held that "additional paid in capital does not fall within the generally understood definition of 'dues' and 'fees' as applied to a club." John's Island Club, supra at 477. Moreover, the court expressly invalidated Rule 12A-1.005(5)(d)1.b., F.A.C., which provided that capital assessments were subject to tax. Id. at 477-78.

After John's Island Club, supra at 477, it is clear that capital assessments are not "dues" or "fees." What constitutes a capital assessment, however, is less certain since this term is not statutorily defined. In determining what constitutes a capital assessment, the Department must look to the plain and ordinary meaning of the term.

"Assessment" is defined in Webster's New World Dictionary (1986, p. 82) as "an amount assessed." "Assess," in turn, means "to impose a fine, tax, or special payment on (a person or property)." Id. "Special assessment" is separately defined as "a special tax levied on a property to pay for a local public improvement, as a sewer, that will presumably benefit that property." Id. at 1286. An assessment, therefore, is in the nature of an involuntary charge, not regularly recurring, for a special purpose. On the other hand, "dues" and "fees" are fixed amounts, which are periodically paid, for the privilege of membership in a club, and which are directed to the maintenance of the club. See Thompson v. Wyandach Club, 127 N.Y.S. 195, 200 (N.Y. 1911); Garden City Golf Club v. Corwin, 57 F.2d 283, 286 (E.D.N.Y. 1932). See also John's Island Club v. Department of Revenue, Fla. Admin. Order No. 95-1179RX (April 10, 1995).

In order for a payment to be considered a capital assessment by a club to its members, and not a charge for admissions, the payment would ordinarily have the following characteristics:

(1) It would be a specific demand or request by the club upon its membership, as a whole or as a class for a certain sum of money which is paid proportionally by each member of the class (which may be paid in installments);

(2) It would not be paid to obtain membership or for the right

of the member to use the club's recreational or physical fitness facilities or equipment;

(3) It would be separately stated on the billing to the member;

(4) When paid, it would be separately accounted for on the club's books and records, and not reflected as an operating revenue account;

(5) It would be used to pay for capital improvements to the club facilities, or for debt-service on the financing thereof;

(6) It would not result in a decrease of membership dues or fees; and

(7) The proceeds from it would not be used to pay for any operating expenses.

According to the Club, the contemplated assessment will be separately stated on the members' monthly billing statements, will be placed in a separate account and accounted for as a contribution to capital, will be used only for capital improvements and debt retirement, and will not result in a decrease in fees. Therefore, the assessment has characteristics 3, 4, 5, 6, and 7, discussed above. Additionally, since the "fee structure remains the same, before and after the assessment," members will still be required to pay dues before they will be entitled to use the Club facilities. (TAA Request, p. 2). The assessment also has characteristic 2.

As to characteristic 1, regarding the assessment being a charge of a specified amount, paid as a lump sum or in installments, it is unclear whether the Club has identified a specified amount for the assessment. If a specified amount has been identified then the assessment will qualify, whether the payment of the amount is made in one lump-sum or in installments.

Next, the Club seeks advice about what costs will be considered attributable to capital improvements. Capital improvements include any amount paid for permanent improvements that increase the value of any property or estate, and any amount paid to

restore the property. In addition, capital improvements include repairs to capital assets that arrest deterioration and appreciably prolong the life of the property. See Black's Law Dictionary (6th Edition). Expenditures for repairs and routine maintenance that do not materially add to the value of the asset, or appreciably prolong its useful life, would appear to be operating expenses, and not for capital improvements. See John's Island Club v. Department of Revenue, Fla. Admin. Order No. 95-1179RX (April 10, 1995).

Finally, the Club inquires whether the portion of the payments attributable to interest, loan costs, and legal fees will be subject to tax. So long as the interest, loan costs, and legal fees are directly related to the capital improvements, they are considered part of the total cost of the capital improvements. Thus, it is appropriate for the Club to pay these expenses with the proceeds of the assessment for capital improvements. The assessment remains exempt. Under no circumstances, however, should any portion of the assessment be used to cover operating expenses. If any portion of the assessment were used for operating expenses, it would be in the nature of a due or fee, as it would be directed to the operation of the club. Thus, that portion of the assessment would be subject to sales tax.

So long as the assessments contemplated by the Club have the seven characteristics set forth above, they appear not to be "dues and fees" and, therefore, are exempt from tax.

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 upon 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 from that which is 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 s. 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,

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