

# Club's Nonmember Activity Fees Are Not Subject to Sales Tax, New York Tax Department Says

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By Paige Jones

Just in time for Memorial Day — the unofficial start of summer — the New York State Department of Taxation and Finance has announced that a residential social club's receipts from nonmember activity fees such as children's camps are not subject to sales tax.

In an [advisory opinion](#) released May 24, the state tax department's Office of General Counsel said that fees charged to nonmembers for club-sponsored activities are not subject to tax "merely as a result of the club's relationship to its members," and that "the nature of each activity" should determine its taxability.

The club's receipts from membership dues, however, are subject to sales tax under tax law. Members are considered owners of the club and its properties, while nonmembers hold no rights, according to the opinion.

The opinion "highlights a unique tax in New York on social and athletic clubs," Timothy Noonan of Hodgson Russ LLP said in a May 24 email to Tax Analysts.

"As this ruling makes clear, the customer's membership status makes a big difference," Noonan said. "Indeed, two taxpayers could get the exact same thing from the club (tennis lessons, sing-a-longs, etc.), but only the member would have to pay sales tax."

However, Noonan pointed out that the specifics of a member's status can affect the department's stance on whether membership dues are taxable. "For instance, dues paid to clubs are not taxable if the members have no proprietary interest in the club, do not participate in the selection of management or other members, etc.," he said.

"The ruling doesn't really get into this issue, but the nuances here highlight how careful these sorts of clubs need to be," Noonan added.

The opinion concluded that three activities offered to nonmembers — tennis lessons, half-day children's camps, and singalong sessions — are not subject to the state's 4 percent sales tax because those services are typically not taxable statewide. The camp fee includes lunch, which could have made the fee subject to sales tax, but the tax department determined the lunch to be "incidental to the overall charge for the camp."

A fourth activity — the rental of club facilities for an event — was determined to be subject to sales tax only if the club also provides catering services for the event, according to the opinion. Citing state tax law, the opinion said tax is imposed "on the receipts from every sale by caterers, including in the amount of such receipts any 'other charge' made to its customers." Thus a fee

paid for a room rental, if the room is rented in conjunction with catering service, would be subject to state sales tax, according to the opinion.