



SC REVENUE RULING #91-18

SUBJECT: Country Club Membership Dues
(Admissions Tax)

TAX ANALYST: Deana West

EFFECTIVE DATE: See Conclusion

SUPERCEDES: All previous documents and any oral directives in conflict herewith.

REFERENCE: S.C. Code Ann. Section 12-21-2410 (1976)
S.C. Code Ann. Section 12-21-2420 (1976)

AUTHORITY: S. C. Code Ann. Section 12-4-320 (Enacted June 1991)
SC Revenue Procedure #87-3

SCOPE: A Revenue Ruling is the Commission's official interpretation of how tax law is to be applied to a specific set of facts. A Revenue Ruling is public information and remains a permanent document until superceded by a Regulation or is rescinded by a subsequent Revenue Ruling.

Question:

Are social membership dues paid to a for-profit country club subject to the admissions tax?

Facts:

Country clubs offer recreation, sports, dining and social facilities to members and guests. Some of the facilities that are available include golf, tennis, swimming and the clubhouse. Depending upon the membership category, a person entering or using the clubs' facilities must pay annual or monthly membership dues and/or separate charges for each admission or use of the golf course, courts, pool, etc.

Currently, for-profit country clubs remit the admissions tax on annual or monthly membership dues that are in excess of social membership dues and on certain other separate charges, such as green fees, court fees and New Year's Eve parties. These clubs, however, have not been required to remit the admissions tax on membership dues of a "true" social member (i.e. a member entitled to use of the clubhouse who does not receive any discount or privileges for use of the other club facilities).

For purposes of this ruling, membership dues are defined as obligations into which members of a club enter to pay a sum, to be fixed usually by the club's by-laws or board of directors, for the maintenance of the organization, continuing privilege of membership and right to enter or use the facilities. Such membership dues are paid at recurring intervals, usually monthly or annually.

Discussion:

Code Section 12-21-2420 imposes the admissions tax and reads, in part:

There shall be levied, assessed, collected and paid upon all paid admissions to all places of amusement within this State a license tax of four percent...

During the past legislative session, the General Assembly amended Code Section 12-21-2420, as stated above, to increase the admissions tax from 4% to 5% effective February 1, 1992.

Code Section 12-21-2410 defines various terms found in the article and reads, in part:

For purposes of this article and unless otherwise required by the context:

- (1) The word "admission" means the right or privilege to enter into or use a place or location;
- (2) The word "place" means any definite enclosure or location; and
- (3) The word "person" means individual, partnership, corporation, association or organization of any kind whatsoever.

The code, however, does not define the terms "place of amusement" or "paid admissions".

In determining the meaning of the term "place of amusement", recent commission rulings provide guidance. In South Carolina Revenue Rulings #89-8 and #90-7, a "place of amusement" was defined as any enclosure or location consisting of an activity that occupies ones' spare time, distracts the mind, relaxes, entertains or gives pleasure. Based upon this definition, country clubs are considered places of amusement.

In determining the meaning of the term "paid admissions", the measure of the admissions tax, the courts provide guidance. In Beach v. Livingston, 248 SC 135, 149 SE 2d 328 (1966), the South Carolina Supreme Court reviewed the application of the admissions tax upon persons charged for participating in a recreational activity open to the public when no charge was made for entering the facility. Specifically, the court reviewed charges collected to use a bowling facility. The court concluded the tax was applicable and that it was "logical to conclude that the word 'use' means that a tax is imposed upon a person who avails himself of the facilities of a place of amusement".

In Venture Management Incorporated v. South Carolina Tax Commission, No. 80-CP-40-4157 (Apr. 4, 1981), the Circuit Court reviewed the taxation of an annual membership fee or charge imposed upon members of a for-profit tennis and swim club. Since the members could not enter or use the facility without payment of the annual fee, the court concluded that "...the payment of the charge was a condition for the privilege to enter into or use the facilities of the club" and was taxable under Code Section 12-21-2420.

Furthermore, the court supported its conclusion by stating:

Exemptions are provided in 12-21-2420 for charges made by certain eleemosynary and nonprofit corporations or organizations. It further specifically provides:

* * * no admission tax shall be charged or collected by reason of any charge made to any member of a nonprofit organization or corporation for the use of the said organization or corporation of which he is a member.* * *

By enacting this exclusion or exemption, legislative intent is reflected to tax similar charges by other organizations.

"When certain persons or things are specified in a law, contract or will, an intention to exclude all others from its operation may be inferred. Little v. Town of Conway, 171 S.C. 27, 171 S.E. 2d 447, West Virginia Pulp and Paper Co. v. Riddock, 225 S.C. 283, 82 S.E. 2d 189.

Similarly, in Wildewood Country Club, Inc., No. 90-CP-40-5223 (Jan. 24, 1991), the Richland County Court of Common Pleas reviewed the taxation of annual fees and monthly dues paid by social, tennis, golf and combination members of a privately owned for-profit club. At the club under review, the club members, including social members, paid annual fees and monthly dues, instead of green fees, which entitled them to play golf either free or at a discount. The court concluded "the fees and dues were payments for the privilege of using Wildewood's recreation facilities. As such, they are within Section 12-21-2420 and thus subject to taxation".

Based upon the above discussion, the term "paid admission" is defined as the amount required to be given for the right to enter into or use a place or location.

As previously stated, the Commission has not taxed membership dues of "true" social members (i.e. members entitled to use of the clubhouse who do not receive any discount or privileges for use of the other club facilities). However, the Commission has determined that "true" social members, as well as social members receiving free or discounted use of the club's facilities, are paying for the right or privilege to enter into our use a place of amusement. All social membership fees, including those paid by "true" social members should be subject to the admissions tax. Therefore, a change in Commission policy is in order with respect to the taxation of true social membership dues.

Conclusion:

Membership dues paid to a for-profit country club that allows social members discounts or privileges for the use of the other club facilities are subject to the admissions tax for all periods open under statute. Effective April 1, 1992, all other social membership dues paid to a for-profit country club are subject to the admissions tax.

All other types of memberships to a for-profit country club, such as golf, tennis and swimming memberships, are no longer taxed only on the membership dues exceeding the social portion of the dues. Instead, the entire amount of these membership dues are subject to the admissions tax, effective April 1, 1992.

SOUTH CAROLINA TAX COMMISSION

s/S. Hunter Howard, Jr.

S. Hunter Howard, Jr., Chairman

s/A. Crawford Clarkson, Jr.

A. Crawford Clarkson, Jr., Commissioner

s/T. R. McConnell

T. R. McConnell, Commissioner

Columbia, South Carolina
October 9, 1991