

Tax Notes - Initiation Fees, Membership Fees and Dues

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On and after October 1, 2006, the new law (P.L. 2006, c. 44) imposes sales and use tax on the charges for initiation fees, membership fees or dues for access to or use of the property or facilities of a health and fitness, athletic, sporting or shopping club or organization in New Jersey, unless the club or organization's members are predominantly age 18 or under.

Initiation fees, membership fees and dues are charges for the right, privilege or entitlement to use the club or organization's facilities, paid by those who have met the requirements for membership, which includes the mere payment of fees, dues, or similar charges. A membership conveys a right, privilege or entitlement which is not available to a non-member, other than as a guest.

Charges in the Nature of Initiation Fees, Membership Fees or Dues

Any fee that is required to be paid in order to gain access to or use of the property or facilities of a health and fitness, athletic, sporting or shopping club or organization in New Jersey is subject to tax as a "charge in the nature of..." Examples include, but are not limited to, joining fees, registration fees, sign-up fees, enrollment fees, etc.

A separately stated charge for a class where an instructor is present is not subject to tax (i.e., karate, jazzercise, dance class, pilates, yoga, etc.). Charges for personal instruction are not subject to tax. See N.J.S.A. 54:32B-2(e)(4)(A).

Transitional Rules for Initiation Fees, Membership Fees and Dues

Charges that allow the member access to or use of such clubs and facilities are taxable for periods on and after October 1, 2006. Since such charges are not subject to tax prior to October 1, the following transitional rules apply:

Initiation fees - Initiation fees are fees generally paid in advance of membership, at the time the member joins. Initiation fees are paid in addition to the actual membership dues or fees. If an initiation fee is paid in full prior to October 1, 2006, there is no tax due because the sale of the initiation is deemed to have taken place prior to October 1. However, all initiation fees paid on or after October 1 are subject to tax, including all installment payments of an initiation fee imposed prior to October 1 but paid after October 1.

Membership fees - Membership fees are subject to tax on and after October 1. If a membership fee is paid in full prior to October 1, 2006, the fee must be allocated and tax is due for all periods on and after October 1. If the membership fee is paid monthly, then to accommodate monthly billings, the fee is subject to 7% tax for the first billing period that begins on or after October 1.

Additional Information

Exempt Organizations

There is an exemption in the Sales and Use Tax Act for sales made by qualified exempt organizations which are directly related to the purposes for which they have been organized, as stated in their charter or official organizing documents. N.J.S.A. 54:32B-9(b)

If a non-profit organization is operated with a business purpose and engages in making sales in the course of such business that are in substantial competition with privately operated non-exempt business entities, such sales are not directly related to the exempt purposes of the non-profit organization. See N.J.A.C. 18:24-9.11(d).

Under these circumstances, the sale of a membership or an additional or supplemental membership for the use of health and fitness, athletic or sporting facilities is subject to sales tax. If the non-profit organization has a general membership fee that is unrelated to the use of the health & fitness, athletic or sporting facility, any additional or supplemental membership fee for the use of such facilities must be separated from the general membership charge or the entire charge is subject to tax. The separation of fees must be clearly stated in the initial billing or in the written agreement and must be reasonably allocated between the services provided to allow exclusion of the general membership fee.

NOTE: This does not affect an exempt organization's status as a IRC 501(c)(3) organization, or the purchase exemption allowed such organizations. Qualified 501(c)(3) organizations continue to be exempt from **paying** sales tax on their purchases. However, where the exempt organization is carrying on a trade or business on a regular and continuous basis, it must **collect** sales tax in the same manner required of a privately operated nonexempt business. See N.J.A.C. 18:24-9.11. (New Jersey Administrative Code)

Therefore, the organization must collect sales tax from its members for initiation or membership charges or dues for access to a health and fitness, athletic or sporting facility. The tax is paid by the members and collected by the exempt organization along with the fees or dues. The tax is not imposed on or paid by the exempt organization.

Governmental Sales

Charges made by New Jersey governmental agencies, instrumentalities or political subdivisions are subject to tax.

Capital Assessments

Separately stated charges assessed against members for the purpose of making improvements to the facility are not deemed to be membership dues or fees and thus, are not subject to sales tax.

Admissions Charges for Participation Sports

The law still contains an exemption for admissions charges to or for the use of any facility where the patron will be a participant in sporting activities. Admissions to bowling alleys, swimming pools, golf courses, baseball batting cages, and pool halls remain exempt from tax. The taxability of such admission charges are unaffected by the new law. However, the new law does impose tax on membership fees or dues paid to the same type of facilities.

Guest Fees

A club or organization may allow limited or occasional use of the property or facilities to non-members. Fees charged to non-members such as guest fees are not membership fees and are not subject to tax; for example, a fee charged to a non-member to play a round of golf or a one day pass to a fitness center.

Frequently Asked Questions

A private country club sells a share of stock in the corporation as a membership and/or initiation fee. The club charges annual dues to each member as well. Which fees are subject to tax?

Since the stock purchase in this case is "in the nature of" an initiation fee because it is a condition precedent to membership, both fees are subject to tax.

A condominium association levies an association fee on all owners of property in the complex for the upkeep of the grounds, which includes facilities such as a swimming pool, clubhouse with fitness equipment, tennis or basketball courts. All owners must pay the fee as a condition of ownership. Is the association fee a taxable membership fee?

No. The association fee is a condition of ownership in the community and does not merely entitle members access to or use of the facilities.

A social organization sells memberships which entitle its members to engage in dining and social activities while at the club. The organization also maintains a swimming pool or other health, fitness or sporting facility that is available to members for an additional membership fee. Which fees are subject to tax?

The membership which allows access to only the dining and social facilities is not subject to tax; however, a separate fee to access the health, fitness or sporting facility is taxable. If both fees are not separately charged and stated to members, the entire charge is a taxable membership.

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