

**TENNESSEE DEPARTMENT OF REVENUE
LETTER RULING # 11-52**

WARNING

Letter rulings are binding on the Department only with respect to the individual taxpayer being addressed in the ruling. This presentation of the ruling in a redacted form is informational only. Rulings are made in response to particular facts presented and are not intended necessarily as statements of Department policy.

SUBJECT

The application of the Tennessee sales and use tax to capital assessments included on the invoice for monthly country club dues paid by members.

SCOPE

This letter ruling is an interpretation and application of the tax law as it relates to a specific set of existing facts furnished to the Department by the taxpayer. The rulings herein are binding upon the Department, and are applicable only to the individual taxpayer being addressed.

This letter ruling may be revoked or modified by the Commissioner at any time. Such revocation or modification shall be effective retroactively unless the following conditions are met, in which case the revocation shall be prospective only:

- (A) The taxpayer must not have misstated or omitted material facts involved in the transaction;
- (B) Facts that develop later must not be materially different from the facts upon which the ruling was based;
- (C) The applicable law must not have been changed or amended;
- (D) The ruling must have been issued originally with respect to a prospective or proposed transaction; and
- (E) The taxpayer directly involved must have acted in good faith in relying upon the ruling; and a retroactive revocation of the ruling must inure to the taxpayer's detriment.

FACTS

[TAXPAYER] is a country club located in [LOCATION], Tennessee. The Taxpayer issues a monthly dues statement to every member of the country club. Until [DATE], the Taxpayer charged its members the following two separate assessments (the "Assessments"):

- 1) The "Capital Improvement Fund" assessment consisted of three different capital assessments imposed beginning in [YEAR], [YEAR], and [YEAR] respectively to fund

various capital improvements to the country club. The funds were not formally dedicated to the payment of capital improvement expenses and related debt, but were in fact used for that purpose.

2) The second assessment was implemented to fund a major renovation to the Taxpayer's clubhouse. The second assessment was approved in [YEAR] and increased in [YEAR].

Each assessment is a fixed amount per month and is included as a separate line item on the monthly statement. Each member of the country club is required to pay the same amount; no member receives a discount or has the option of not paying the assessment. The Taxpayer accounts for the funds separately.

[REDACTED INFORMATION]

QUESTION

Are the Assessments subject to the Tennessee sales and use tax?

RULING

No. The Assessments are exempt from the Tennessee sales and use tax pursuant to TENN. CODE ANN. § 67-6-330(a)(12) (Supp. 2010).

ANALYSIS

TENN. CODE ANN. § 67-6-212(a)(1) (Supp. 2010) imposes the Tennessee sales tax on the sales price¹ of dues or fees to membership sports and recreation clubs. TENN. COMP. R. & REG. 1320-

5-1-.116(1) (2000) provides that the term "membership sports and recreation clubs" includes sports and recreation clubs that are restricted to use by members and their guests, such as country clubs. TENN. COMP. R. & REG. 1320-5-1-.116(3) (2000) states that membership dues or fees "shall include initiation fees, required stock purchases and any other fees required for membership."

However, TENN. CODE ANN. § 67-6-330(a)(12) (Supp. 2010) provides an exemption from the tax imposed under TENN. CODE ANN. § 67-6-212(a)(1) for "[m]embership assessments for capital improvements made by a recreation club, community service organization or country club against its members." The formal designation of membership fees as intended for capital improvements is not required. Rather, it is sufficient that the taxpayer separately itemize the charges related to the capital improvement on the membership dues statement; retain such charges in a separate account; and actually use all of the funds to make capital improvements (*i.e.*, no portion of the funds may be used for operating or other expenses). *See Nashville Golf & Athletic Club v. Huddleston*, 837 S.W.2d 49, 54 (Tenn. 1992) (rejecting argument that exemption required golf club to capitalize expenditures for capital improvements on its federal tax returns).

¹ TENN. CODE ANN. § 67-6-102(82)(A) (Supp. 2010) defines the term "sales price" in pertinent part as the "total amount of consideration, including cash, credit, property, and services, for which personal property or services are sold, leased, or rented, valued in money, whether received in money or otherwise," without any deduction for the costs of goods sold, labor or service costs, and other expenses of the seller.

In the Taxpayer's case, each Assessment is included as a separate line item on the monthly statement. The Assessments are used to fund various capital improvements to the country club; the Taxpayer accounts for the funds separately. As a result, the Assessments are exempt from the Tennessee sales and use tax pursuant to TENN. CODE ANN. § 67-6-330(a)(12).

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APPROVED: Richard H. Roberts
Commissioner of Revenue

DATE: 09/21/2011