**Opinion Letter**

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| **Letter Number:** | **O-2000-002** |

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| **Tax Type:** | **Kansas Retailers' Sales Tax** |
| **Brief Description:** | **Capital improvement fees imposed by a country club.** |
| **Keywords:** |  |
| **Approval Date:** | **02/01/2000** |

**Body:**

Office of Policy & Research

February 1, 2000

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RE: Your letter of January 25, 2000

Dear XXXX:

Thank you for your letter that we received late last month. In it, you ask whether a capital improvement fee imposed by your country club on its members is subject to Kansas sales tax. Please be advised that, based on the information you provided, these charges are subject to Kansas sales tax.

K.A.R. 92-19-73 currently governs the taxability of membership fees and dues. It provides:

Membership fees and dues. (a) Each public or private club, organization or business charging dues to members for the use of the facilities for recreation and entertainment shall collect sales tax on the gross receipts received from the dues.
(b) “Dues” means any charge which is a debt owed to the club, organization or business by an existing member or prospective member in order for the member or prospective member to enjoy the use of the facilities of the club, organization or business for recreation or entertainment, and shall include periodic or one time special assessments, initiation or entry fees.
(c) “Recreation and entertainment” means any activity which provides a diversion, amusement, sport or refreshment to the member and specifically includes health, fitness, exercise and athletic activities.

Your club’s capital improvement fee is a “charge which is a debt owed to the club . . . by an existing member . . . in order for the member . . . to enjoy the use of the facilities of the club . . . for recreation or entertainment.” A member who refuses to pay the capital improvement fee would be denied the use of your club. This makes these payments subject to sales tax under this regulation.

The department has recently begun the process of updating K.A.R. 92-19-73. The following are the proposed changes to the regulation are being submitted as part of the first step in the review process for adopting new administrative regulations.

Membership fees and dues. (a) Each public or private club, organization, or business charging dues to members for the use of the facilities for recreation and *or* entertainment shall collect sales tax on the gross receipts received from the dues, *except for:*

*(1) clubs and organizations that are exempt from property tax pursuant to K.S.A. 79-201* Eighth*, and amendments, which include certain military veteran organizations, such as the American Legion and Veterans of Foreign Wars;*
*(2) clubs and organizations that are exempt from property tax pursuant to K.S.A. 79-201* Ninth*, and amendments, which include certain humanitarian community service organizations such as Y.M.C.A’s, Y.W.C.A’s, Boy Scouts, and Girl Scouts; and*
*(3) nonprofit organizations that support nonprofit zoos, when the organization is exempt pursuant to Section 501(c)(3) of the federal internal revenue code of 1986 and the dues are used to support the operation of the zoo.*
(b) “Dues” means any charge which *that* is a debt owed to the club, organization, or business by an existing member or prospective member in order for the member or prospective member to enjoy the use of the facilities of the club, organization or business for recreation or entertainment, and, *except as provided in subsections (c)*, shall include periodic or one time special assessments, initiation, or entry fees.
*(c)(1) Dues shall not include a redeemable equity contribution required for membership, when the club or organization is obligated to repay the contribution, and the contribution is reflected as a liability on the club or organization’s books and records. Redeemable equity contributions may include, but are not limited to, membership stock, certificates of membership, refundable deposits, capital surcharges, and special assessments.*
*(2) When all or part of a redeemable equity contribution paid to acquire or retain membership ceases to be carried as a liability on a club or organization’s books and records and has not been redeemed by a former member or former member’s estate, the amount of the contribution that is no longer carried as a liability shall be subject to sales tax.*
*(d)*“Recreation and *or* entertainment” means any activity which *that* provides a diversion, amusement, sport, or refreshment to the member and specifically includes*, but is not limited to,* health, fitness, exercise, and athletic activities.

Under subsection (c) of this proposal, sales tax would be due on a country club’s capital improvement fees if the fee is not carried as a liability on the country clubs books. This means, for example, that if a member of the club joined in 1985 and paid a $20,000 for membership stock, pays a $5,000 capital improvement fee in 2002, and then is paid $25,000, as required under the by-laws by an initiate member for the membership stock when he or she leaves in 2003, there would be no tax on the $5,000 capital improvement payment. If the same member left and the stock value remained at $20,000, the $5,000 payment would be taxable.

If your club has by-laws, corporate minutes, or other documentation that shows that its members will recoup the capital improvement fee when they leave your club, you should submit copies of the documentation to me and ask me to reconsider this determination. Otherwise, the capital improvement fees charged by your club are fully taxable.

Sincerely,

Thomas E. Hatten

Attorney/Policy & Research

**Date Composed: 02/17/2000 Date Modified: 10/10/2001**