STATE BOARD OF EQUALIZATION

July 22, 1969

Mr. A--- H---
---, --- & Company
Certified Public Accountants
XXXX --- ---
--- ---, CA XXXXX

Dear Mr. H---:

Your letter of June 16, 1989, to Mr. John T. Quick was referred to the undersigned for reply.

I understand that among your clients are country clubs which propose to institute a minimum food and drink purchase requirement for their members. For example, the minimum spending requirement per quarter might be $90. At the end of the quarter the member's food and drink chits would be totaled, and if the sum were less than the minimum, the difference would be added to the member's bill as are other charges for dues, locker room, insurance, etc.

In my opinion, amounts paid to meet the difference between the minimum and actual purchases are in the nature of additional membership fees rather than compensation for tangible personal property. Accordingly, such amounts are not subject to tax.

Very truly yours,

Lawrence A. Augusta
Assistant Counsel

LAA/vs

M e m o r a n d u m

550.1020

To: Los Angeles District - District
Principal Auditor (JTQ)

Date: July 22, 1969

From: Tax Counsel (LAA) – Headquarters

NONPERMITTEE

As you requested in your memorandum of June 20, 1969, I have answered directly the letter from Mr. A--- H--- dated June 16, 1969, relative to minimum food and drink purchase requirements imposed on country club members. As my answer to him merely states my conclusion, I thought a more thorough outline of my reasoning might be appreciated.

To begin with, I do not believe this is strictly a legal question, though I have tried to apply certain principles of legal reasoning to my analysis. There is a difference of opinion among legal staff members as to the correct treatment of these charges.

I suppose this minimum charge can be viewed in at least two ways: (1) As part of the gross receipts from the sales of food and drink, i.e., as an addition part of the price; or (2) As additional membership fees or dues.

I lean toward the second view because of the membership aspect of a country club. In my experience, a country club is organized as an association. Generally there is a substantial initiation fee and significant regular dues, in addition to charges for specific services or items such as green fees, cart rentals, golf equipment, food, drink, etc. The members of the organization elect officers, and possibly a board of directors, who hire professional personnel to manage the restaurant, bar, golf course, etc. If the bar and restaurant lose money, the club, i.e., the members, must make up the deficit from funds derived from other operations or from dues. I would suspect that the minimum purchase requirement is a device to keep the bar and restaurant self-supporting through encouraging use by the members, thereby increasing revenues, allowing economies of scale, and providing fresher meat and produce to maintain quality. The club will probably gain other intangible benefits as well, such as increased socializing.

I would also suspect that the minimum established will bear a relation to the amount necessary to keep the bar and restaurant at the break-even level. It will always be separately stated with actual purchases recorded.

Consequently, I view amounts paid to meet this minimum as additional costs of membership, rather than as additional amounts paid for food and drink. Therefore, such amounts are not subject to tax.

These minimum charges are not, in my opinion, the same as minimums at commercial night clubs open to the public, which are to cover the cost of entertainment and guarantee a profit to the owner. The difference is the profit motive. Most patrons will probably take the minimum if they have to pay for it anyway. In the club situation, there is a social reason for paying the minimum even if the tangible personal property is not consumed.

LAA/vs
Attachment
cc: --- – Subdistrict Administrator