

in the aggregate, assess tax in the amount of \$2,147,194.00, late filing payment penalties of \$504,437.00, late filing penalty increases of \$20,250.00 and interest of \$314,299.33, for a total of \$2,986,180.33. Copies of the Notices are attached as Exhibit 1.

3. The Department erred in assessing Petitioner for its activities under the Illinois Hotel Operator's Occupation Tax Act because Petitioner is not a "hotel" as defined in Section 2(1) of the Act (35 ILCS 145/2(1)). Alternatively, Petitioner is exempt from the tax because it is a private club subject to the exemption in Section 480.101(b)(2) of the Illinois Administrative Code.

BACKGROUND AND RELEVANT FACTS

Nature of Sybaris' Business:

4. Sybaris began doing business in Illinois in 1974. It currently maintains three facilities in Illinois: Downers Grove, Frankfort, and Glenview.

5. Sybaris suites may only be reserved for use by Sybaris members.

6. Sybaris members pay an annual membership fee, which entitles them to reserve times to use suites and receive suggestions and other communications designed to enhance their personal relationships. Higher level memberships grant those members opportunities for discounts on suites and other preferences.

7. At each location, Sybaris members, who must show proof of age over 18, can reserve the use of a suite specifically designed to be a romantic retreat for couples to be intimate for several hours.

8. Sybaris does not hold itself out to the public as a hotel.

9. All street signage refers to the Sybaris facilities as "Sybaris Pool Suites" or a "romantic getaway". There is no street signage that indicates to passers-by whether suites are currently available.

10. Sybaris suites are available by reservation only.
11. Sybaris' members generally live in close proximity to its suites' locations.
12. Only two persons may use a Sybaris suite, a rule that is strictly enforced.

Attempts to circumvent this rule results in the loss of membership and, in extreme circumstances, the arrest and physical removal of the offending member from Sybaris premises.

13. Children, pets and visitors are not permitted in a Sybaris suite.

14. Sybaris suites are reserved for and charges are based on either a block of 4 hours or an overnight stay.

15. Sybaris suites are frequently used by members for less than the total time for which the suite is reserved.

16. No general housekeeping or maid service is available to members while they are using a Sybaris suite.

17. There are no common areas for members at any Sybaris facility.

18. The check-in office at each Sybaris facility offers for sale memorabilia and sexual aids, and two facilities offer liquor by the bottle, but no food, snacks or toiletries are offered for sale.

19. Sybaris collects Illinois sales tax on the items sold to members at its check-in offices.

20. Each Sybaris suite is designed for couples only, with two chairs, two robes, two cups and two champagne flutes.

21. Sybaris suites have no dressers in which to place or store clothing.

22. Sybaris suites have no nightstands with storage.

23. Sybaris suites have no desks or work areas.

24. Sybaris facilities do not offer copying, printing or facsimile services to members.

25. Sybaris suites have no kitchens or food preparation areas.
26. Sybaris suites have neither a telephone nor windows.
27. No Sybaris facility has a laundry room for members or offers laundry services to members.
28. Each Sybaris suite has a two person steam room and either a whirlpool tub, larger spa, or a pool of varying size, depending upon room size and price.
29. Each Sybaris suite has a DVD player and television along with adult videos for members to use as part of their intimate experience.
30. There is generous use of glass and mirrors in a Sybaris suite, both on the walls and over the bed.
31. Depending upon the location and size of a Sybaris suite, the suite contains at least one of the following:
 - a. A hook above the bed to which a member can attach a patented device known as a “Taiwan basket” to enhance a couple’s sensual experience;
 - b. Hooks on a diagonal across the bed to which a member can attach a device known as an “intimacy hammock” or “love swing” to enhance a couple’s sensual experience; or
 - c. “Sexual furniture” from an unrelated company, designed to enhance a couple’s sensual experience.

Prior Court Finding that Sybaris is not a Hotel:

32. In 1989, the Village of Downers Grove passed an ordinance establishing a tax on “persons engaged in the business of renting, leasing or letting rooms in a hotel” (the “1989 Downers Grove Tax”). A copy of the ordinance is attached as Exhibit 2.

33. The 1989 Downers Grove Tax ordinance defined a “hotel” as “any building or buildings in which the public may, for a consideration, obtain living quarters, sleeping or housekeeping accommodations. The term includes inns, motels, hotels, tourist homes or courts, lodging houses, rooming houses and apartment houses”.

34. The 1989 Downers Grove Tax ordinance defined the terms “room” and “rooms” as “...any living quarters, sleeping or housekeeping accommodations”.

35. The definitions of “hotel” and “room / rooms” in the 1989 Downers Grove Tax ordinance are identical to the definitions of those terms in Sections 2(1) and 2(4) of the Act.

36. Shortly after the enactment of the 1989 Downers Grove Tax, Sybaris, through its then attorneys, challenged whether the tax applied to its operations, and on January 18, 1990, the village issued a letter to Sybaris agreeing that after review by the village’s legal department, the tax did not apply to Sybaris (Exhibit 3).

37. In 1993, the Village of Downers Grove passed a new ordinance establishing a hotel tax (the “1993 Downers Grove Tax”). A copy of the ordinance is attached as Exhibit 4)

38. The 1993 Downers Grove Tax ordinance defined a “hotel” as “any building or buildings in which the public may, for rent, obtain living quarters, sleeping or housekeeping accommodations. The term includes inns, motels, hotels, clubs, tourist homes or courts, lodging houses, rooming houses and apartment houses”.

39. The 1993 Downers Grove Tax ordinance further defined a “hotel room” as “any room or rooms with living quarters, sleeping or housekeeping accommodations and offered for rental on a daily or weekly basis, or any fraction thereof, including but not limited to hourly or half day rentals.”

40. The definitions of “hotel” and “room / rooms” in the 1993 Downers Grove Tax ordinance are broader in scope than the definitions of those terms in the Act.

41. The Village of Downers Grove brought an action before the Circuit Court in DuPage County requesting, in part, a finding that Sybaris was subject to the 1993 Downers Grove Tax. The action bore case number 93 MR 298.

42. After trial in the above action, the court entered an order finding Sybaris (1) not to be a hotel as defined by the 1993 Downers Grove Tax ordinance and (2) not a business for use by the public generally. A copy of the order is attached as Exhibit 5.

43. The Village of Downers Grove appealed from that order to the Appellate Court for the Second District of Illinois.

44. On appeal, the appellate court, in that matter bearing appeal number 2-91-0601, affirmed the decision of the trial court that Sybaris is not a “hotel” under the definition of the 1993 Downers Grove Tax ordinance. The appellate court did not address whether Sybaris is a private club because the finding that Sybaris is not a hotel rendered the question moot. A copy of the opinion, issued as a Rule 23 Order, is attached as Exhibit 6.

2014 Audit of Sybaris by Illinois Department of Revenue:

45. In 2014, Sybaris was audited by the Department with regard to the Illinois Hotel Operator’s Occupation Tax for the period July 1, 2008 through March 31, 2014.

46. On October 8, 2014, the Department issued a Notice of Proposed Liability to Petitioner, a copy of which is attached as Exhibit 7, asserting tax due under the Act of \$2,147,194.00 plus penalty of \$398,578.00 and interest of \$239,325.00, for a total of \$2,785,097.00.

47. On November 21, 2014, Sybaris filed a Form ICB-1, Request for Informal Conference Board Review, with the Department’s Informal Conference Board (the “Board”). The Board granted Petitioner’s request.

48. The informal conference was held on March 30, 2015.

49. On June 4, 2015, the Board issued its Action Decision, stating that Sybaris is a hotel and not a private club (Exhibit 8).

50. On October 15, 2015, the Department issued the Notices.

APPLICABLE LAW

51. Section 3(A) of the Illinois Hotel Operator's Occupation Tax Act imposes a tax on "persons engaged in the business of renting, leasing or letting rooms in a hotel..." (35 ILCS 145/3(A)).

52. For purposes of the Act, Section 2(1) of the Act defines "Hotel" as "any building or buildings in which the public may, for a consideration, obtain living quarters, sleeping or housekeeping accommodations. The term includes inns, motels, tourist homes or courts, lodging houses, rooming houses and apartment houses."

53. Section 2(4) of the Act defines "Room" or "rooms" as "any living quarters, sleeping or housekeeping accommodations."

54. Section 480.101(b)(2) of the Illinois Administrative Code (86 Ill. Adm. Code 480.101(b)(2)) provides that "Since the tax is limited to the renting of rooms to the "public", a private club that restricts its renting of rooms to its members and their guests would not be liable for the tax on its rental receipts from those rooms."

55. Neither the Act nor the Administrative Code provides any other definitions of the above terms in the context of the Illinois Hotel Operator's Occupation Tax Act.

56. On January 28, 2005, the Department issued General Information Letter ST 05-0016-GIL to a taxpayer other than Sybaris requesting a determination that the requesting taxpayer's operations are not subject to the Hotel Operator's Occupation Tax (Exhibit 9).

57. The facts presented by the taxpayer requesting the ruling are very similar to Sybaris' operations.

58. The Department's response states in part, "As you are aware, a private club which restricts the renting of rooms to its members and its guests does not incur Hotel Operator's Occupation tax on its rental receipts for such rooms. See 86 Ill. Adm. Code 480.101(b)(2)."

ERRORS

59. The Department incorrectly categorized Sybaris as a "hotel" subject to the Act:

- a. Sybaris does not provide living quarters to its members.
- b. Sybaris does not provide sleeping accommodations to its members.
- c. Sybaris does not provide housekeeping accommodations to its members.

60. The Department incorrectly determined that Sybaris is not a private club.

61. The Department failed to consider that other governmental agencies in Illinois have concluded that Sybaris' operations do not fall within the definition of "hotel" as set forth in the Act, and that in one instance a trial court and an appellate court in Illinois reached the same conclusion with a more inclusive definition than that in the Act.

62. The Department failed to give consideration to its own General Information Letter ST 05-0016-GIL, which when presented with a very similar fact pattern did not reject the requesting taxpayer's statement that it was a private club, and in fact reiterated that a private club meets the exception of 86 Ill. Adm. Code 480.101(b)(2).

CONCLUSION AND RELIEF REQUESTED

63. Sybaris is not a "hotel" as defined by the Illinois Hotel Operator's Occupation Tax Act, and therefore is not subject to the Illinois Hotel Operator's Occupation Tax.

64. Alternatively, Sybaris is a private club described in 86 Ill. Adm. Code 480.101(b)(2) and therefore exempt from the Illinois Hotel Operator's Occupation Tax.

WHEREFORE, Sybaris Clubs International, Inc., an Illinois Corporation, prays the Illinois Independent Tax Tribunal issue an Order providing as follows:

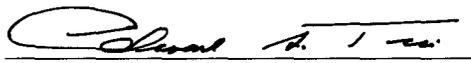
A. Finding that Petitioner is not a “hotel” subject to the Illinois Hotel Operator’s Occupation Tax;

B. Finding that Petitioner is a private club exempt from the Illinois Hotel Operator’s Occupation Tax;

C. Reversing the Notices of Tax Liability issued by the Illinois Department of Revenue on October 15, 2015, under the Illinois Hotel Operator’s Occupation Tax Act; and

D. Enjoining the Illinois Department of Revenue from further assessing Petitioner tax under the Illinois Hotel Operator’s Occupation Tax Act.

Respectfully Submitted,
Sybaris Clubs International, Inc.

By: 
One of its attorneys

Robert A. Carson (ARDC #3126935)
rcarson@gouldratner.com
Edward A. Trio (ARDC #2857324)
etrio@gouldratner.com
Gould & Ratner, LLP
222 North LaSalle Street, Suite 800
Chicago, IL 60601
312-236-3003

4826-2630-4554, v. 3

Notice of Tax Liability

for Form RHM-1-C, Hotel Operators' Occupation Tax Audit Report



217 782-6045

October 15, 2015



Letter ID: CNXXXX7751995X40

License No: HM-14800

Account ID: 41375521

#BWNKMGV
#CNXX XX77 5199 5X40#
SYBARIS CLUBS INTERNATIONAL INC
ATTN: GOULD & RATNER LLP POA EDWARD A.
TRIO
222 N LA SALLE ST STE 800
CHICAGO IL 60601-1011

We have audited your account for the reporting periods July 01, 2008, through June 30, 2009. As a result we have assessed the amounts shown below.

	<u>Liability</u>	<u>Payments/Credit</u>	<u>Unpaid Balance</u>
Tax	374,993.00	0.00	374,993.00
Late Payment Penalty	149,997.00	0.00	149,997.00
Late Filing Penalty Increase	6,000.00	0.00	6,000.00
Interest	148,413.78	0.00	148,413.78
Assessment Total	\$679,403.78	\$0.00	\$679,403.78

If you agree, pay the assessment total as soon as possible to minimize additional penalty and interest. Mail a copy of this notice and your payment with the voucher on the enclosed Taxpayer Statement. By including a copy of this notice, your payment will be properly applied to the audit liability.

If you do not agree, you may contest this notice by following the instructions listed below.

- If the amount of this tax liability, exclusive of penalty and interest, is more than \$15,000, or if no tax liability is assessed but the total penalties and interest is more than \$15,000, file a petition with the Illinois Independent Tax Tribunal within 60 days of this notice. Your petition must be in accordance with the rules of practice and procedure provided by the Tribunal (35 ILCS 1010/1-1, et seq.).
- In all other cases that do not fall within the jurisdiction of the Illinois Independent Tax Tribunal, file a protest with us, the Illinois Department of Revenue, and request an administrative hearing within 60 days of the date of this notice, which is December 14, 2015. Submit your protest on Form AH-4, Protest and Request for Administrative Hearing with the Illinois Department of Revenue (available on our website at tax.illinois.gov). Mail form AH-4 along with a copy of this notice to the address on the form. If you do not file a protest within the time allowed, you will waive your right to a hearing, and this liability will become final. An administrative hearing is a formal legal proceeding conducted pursuant to the rules adopted by the Department and is presided over by an administrative law judge. A protest of this notice does not preserve your rights under any other notice.
- Instead of filing a petition with the Illinois Independent Tax Tribunal or a protest with us, the Illinois Department of Revenue, you may instead, under Sections 2a and 2a.1 of the State Officers and Employees Money Disposition Act (30 ILCS 230/2a, 230/2a.1), pay the total liability under protest using Form RR-374, Notice of Payment Under Protest (available on our website at tax.illinois.gov), and file a complaint with the circuit court for a review of our determination.

If you do not protest this notice or pay the assessment total in full, we may take collection action against you for the balance due, which may include levy of your wages and bank accounts, filing of a tax lien, or other action to satisfy your liability.

If you have questions, write or call us weekdays between 8:00 a.m. and 4:00 p.m. Our contact information is listed below.

BUREAU OF AUDITS
TECHNICAL REVIEW SECTION
ILLINOIS DEPARTMENT OF REVENUE
PO BOX 19012
SPRINGFIELD IL 62794-9012

217 785-6579

Penalties and Fees

For detailed information on penalties and rates in effect for specific periods on or after January 1, 1994, see Publication 103.

- 1 **Late-filing or Nonfiling penalty** - You owe this penalty if you do not file a return by the due date, including any extended due date, or you file a return that is not processable and you do not correct it within 30 days of the date we notify you.
- 2 **Late-payment penalty for underpayment of estimated or quarter-monthly tax** - You owe this penalty if you were required to make estimated or quarter-monthly tax payments and failed to do so, or if you failed to pay the required amount by the payment due date.
- 3 **Late-payment penalty for regular tax payments** - You owe this penalty if you did not pay the tax you owed by the original due date of the return.
- 4 **Negligence penalty** - You owe this penalty if, in preparing a return or amended return, you do not make a reasonable attempt to comply with the provisions of any tax act, including showing careless, reckless, or intentional disregard for the law or regulations.
- 5 **Fraud penalty** - You owe this penalty if any part of a deficiency is due to fraud.
- 6 **Cost of collection fee** - You owe this fee if you do not pay the total amount you owe within 30 days after a bill has been issued.
- 7 **Bad check penalty** - You owe this penalty if you send a remittance to the Department that is not honored by your financial institution.
- 8 **Failure to disclose participation in a reportable transaction penalty** - You owe this penalty if you were required to disclose your participation in an abusive tax shelter transaction and did not do so by the required due date.
- 9 **Reportable transaction understatement penalty** - You owe this penalty if you do not report and pay the full amount of your tax liability as the result of participating in an abusive tax shelter transaction.

10 100 percent interest penalty - You owe this penalty if you

- were contacted by the Internal Revenue Service or Illinois Department of Revenue regarding the use of a potentially abusive tax transaction for a taxable year;
- are later found to have a deficiency in that taxable year that is the result of the tax avoidance transaction; and
- did not report or pay that liability before we issued a Notice of Deficiency.

11 Audit penalty - You owe this penalty if you did not pay the tax you owed before the start of an audit or investigation.

12 Nonfiling penalty for transaction return - You owe this penalty if you are a retailer required to file a transaction return (ST-556, Sales Tax Transaction Return) by the due date, even if no tax is due on the return.

Are penalties ever abated?

If you were unable to either timely pay the required amount of estimated or quarter-monthly payments, pay the tax you owed by the due date, or file your tax return by the extended due date because of a casualty, disaster, or other similar circumstance, you may request a waiver of penalties due to reasonable cause. To request this waiver, send us a detailed explanation of the cause of the delay and any documentation you have to support your request. Reasonable cause will be determined on a case-by-case basis according to our rules and regulations.

How is interest figured?

Interest is calculated on your tax from the day after the original due date of your return through the date you pay the tax (for certain tax periods interest may also accrue on penalties). Interest accrues at simple rates established by the Internal Revenue Service. See Publication 103 for more information.

Bankruptcy Information

If you are currently under the protection of the Federal Bankruptcy Court, contact us and provide the bankruptcy number and the bankruptcy court. The bankruptcy automatic stay does not change the fact that you are required to file tax returns.

Taxpayer Bill of Rights

- You have the right to call the Department of Revenue for help in resolving tax problems.
- You have the right to privacy and confidentiality under most tax laws.
- You have the right to respond, within specified time periods, to Department notices by asking questions, paying the amount due, or providing proof to refute the Department's findings.
- You have the right to appeal Department decisions, in many instances, within specified time periods, by asking for Department review, by filing a petition with the Illinois Independent Tax Tribunal, or by filing a complaint in circuit court.
- If you have overpaid your taxes, you have the right, within specified time periods, to file for a credit (or, in some cases, a refund) of that overpayment.
- For more information about these rights and other Department procedures, you may contact us. Our contact information is on the front of this notice.

Notice of Tax Liability

for Form RHM-1-C, Hotel Operators' Occupation Tax Audit Report



217 782-6045

#BWNKMGV
#CNXX X2X3 7372 9449#
SYBARIS CLUBS INTERNATIONAL INC
ATTN: GOULD & RATNER LLP POA EDWARD A.
TRIO
222 N LA SALLE ST STE 800
CHICAGO IL 60601-1011

October 15, 2015



Letter ID: CNXX2X373729449

License No: HM-14800
Account ID: 41375521

We have audited your account for the reporting periods July 01, 2009, through March 31, 2014. As a result we have assessed the amounts shown below.

	<u>Liability</u>	<u>Payments/Credit</u>	<u>Unpaid Balance</u>
Tax	1,772,201.00	0.00	1,772,201.00
Late Payment Penalty	354,440.00	0.00	354,440.00
Late Filing Penalty Increase	14,250.00	0.00	14,250.00
Interest	165,885.55	0.00	165,885.55
Assessment Total	\$2,306,776.55	\$0.00	\$2,306,776.55

If you agree, pay the assessment total as soon as possible to minimize additional penalty and interest. Mail a copy of this notice and your payment with the voucher on the enclosed Taxpayer Statement. By including a copy of this notice, your payment will be properly applied to the audit liability.

If you do not agree, you may contest this notice by following the instructions listed below.

- If the amount of this tax liability, exclusive of penalty and interest, is more than \$15,000, or if no tax liability is assessed but the total penalties and interest is more than \$15,000, file a petition with the Illinois Independent Tax Tribunal within 60 days of this notice. Your petition must be in accordance with the rules of practice and procedure provided by the Tribunal (35 ILCS 1010/1-1, *et seq.*).
- In all other cases that do not fall within the jurisdiction of the Illinois Independent Tax Tribunal, file a protest with us, the Illinois Department of Revenue, and request an administrative hearing within 60 days of the date of this notice, which is December 14, 2015. Submit your protest on Form AH-4, Protest and Request for Administrative Hearing with the Illinois Department of Revenue (available on our website at tax.Illinois.gov). Mail form AH-4 along with a copy of this notice to the address on the form. If you do not file a protest within the time allowed, you will waive your right to a hearing, and this liability will become final. An administrative hearing is a formal legal proceeding conducted pursuant to the rules adopted by the Department and is presided over by an administrative law judge. A protest of this notice does not preserve your rights under any other notice.
- Instead of filing a petition with the Illinois Independent Tax Tribunal or a protest with us, the Illinois Department of Revenue, you may instead, under Sections 2a and 2a.1 of the State Officers and Employees Money Disposition Act (30 ILCS 230/2a, 230/2a.1), pay the total liability under protest using Form RR-374, Notice of Payment Under Protest (available on our website at tax.Illinois.gov), and file a complaint with the circuit court for a review of our determination.

If you do not protest this notice or pay the assessment total in full, we may take collection action against you for the balance due, which may include levy of your wages and bank accounts, filing of a tax lien, or other action to satisfy your liability.

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BUREAU OF AUDITS
TECHNICAL REVIEW SECTION
ILLINOIS DEPARTMENT OF REVENUE
PO BOX 19012
SPRINGFIELD IL 62794-9012

217 785-6579

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- 4 **Negligence penalty** - You owe this penalty if, in preparing a return or amended return, you do not make a reasonable attempt to comply with the provisions of any tax act, including showing careless, reckless, or intentional disregard for the law or regulations.
- 5 **Fraud penalty** - You owe this penalty if any part of a deficiency is due to fraud.
- 6 **Cost of collection fee** - You owe this fee if you do not pay the total amount you owe within 30 days after a bill has been issued.
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- 9 **Reportable transaction understatement penalty** - You owe this penalty if you do not report and pay the full amount of your tax liability as the result of participating in an abusive tax shelter transaction.

10 100 percent interest penalty - You owe this penalty if you

- were contacted by the Internal Revenue Service or Illinois Department of Revenue regarding the use of a potentially abusive tax transaction for a taxable year;
- are later found to have a deficiency in that taxable year that is the result of the tax avoidance transaction; and
- did not report or pay that liability before we issued a Notice of Deficiency.

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If you are currently under the protection of the Federal Bankruptcy Court, contact us and provide the bankruptcy number and the bankruptcy court. The bankruptcy automatic stay does not change the fact that you are required to file tax returns.

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- You have the right to privacy and confidentiality under most tax laws.
- You have the right to respond, within specified time periods, to Department notices by asking questions, paying the amount due, or providing proof to refute the Department's findings.
- You have the right to appeal Department decisions, in many instances, within specified time periods, by asking for Department review, by filing a petition with the Illinois Independent Tax Tribunal, or by filing a complaint in circuit court.
- If you have overpaid your taxes, you have the right, within specified time periods, to file for a credit (or, in some cases, a refund) of that overpayment.
- For more information about these rights and other Department procedures, you may contact us. Our contact information is on the front of this notice.

Taxpayer Statement



217 782-6041

October 15, 2015



Letter ID: CNXXXX91854X9440

#BWNKMGV
#CNXX XX91 854X 9440#
SYBARIS CLUBS INTERNATIONAL INC
ATTN: GOULD & RATNER LLP POA EDWARD A.
TRIO
222 N LA SALLE ST STE 800
CHICAGO IL 60601-1011

License No: HM-14800
Account ID: 41375521
Total amount due: \$2,986,180.33

This statement lists our most recent information about your unpaid balance, available credits, or returns you have not filed. A payment voucher is included so you may pay the balance due.

Hotel Operators Occupation Tax

License No: HM-14800

Period	Tax	Penalty	Interest	Other	Payments/Credits	Balance
30-Jun-2009	374,993.00	155,997.00	148,413.78	-	-	679,403.78
31-Mar-2014	1,772,201.00	368,690.00	165,885.55	-	-	2,306,776.55

SQA

Retain this portion for your records.

P-000126

Fold and detach on perforation. Return bottom portion with your payment.

Taxpayer Statement (R-12/08) (136)



Letter ID: CNXXXX91854X9440
SYBARIS CLUBS INTERNATIONAL INC

Mail this voucher and your payment to:
ILLINOIS DEPARTMENT OF REVENUE
PO BOX 19006
SPRINGFIELD IL 62794-9006

Total amount due: \$2,986,180.33

Write the amount you are paying below.

\$ _____
Write your Account ID on your check.

000 006 003994744483 731 123199 7 0000298618033

9/89

ORDINANCE NO. 3250

**AN ORDINANCE IMPOSING A TAX ON PERSONS
ENGAGED IN THE BUSINESS OF RENTING, LEASING OR LETTING
ROOMS IN A HOTEL AND AMENDING CHAPTER 21 OF
THE DOWNERS GROVE MUNICIPAL CODE WITH RESPECT THERETO**

WHEREAS, pursuant to Section 6.3-14 of the Illinois Municipal Code, the corporate authorities of any municipality are authorized to impose a tax upon all persons engaged in such municipality in the business of renting, leasing or letting rooms in a hotel, and to provide for the administration and enforcement of such tax and for the collection thereof, so long as the amounts collected are expended solely to promote tourism and conventions within that municipality or to otherwise attract nonresidential overnight visitors thereto; and,

WHEREAS, the Council of the Village of Downers Grove has determined it to be necessary and desirable to impose such a tax pursuant to the aforesaid authority,

NOW, THEREFORE, BE IT ORDAINED by the Council of the Village of Downers Grove, DuPage County, Illinois, as follows:

SECTION 1. That Chapter 21 of the Downers Grove Municipal Code is hereby amended by adding, immediately after Article V therein, a new Article VI as follows:

VI. Municipal Hotel Tax.

Sec. 21-15. Imposed; rate; exemption

(a) A tax is hereby imposed upon all persons engaged in the village in the business of renting, leasing or letting rooms in a hotel on the gross rental receipts from such renting, leasing or letting, excluding, however, from gross rental receipts, the proceeds of such renting, leasing or letting to permanent residents of that hotel.

(b) The tax shall be at the rate of two percent (2%) of the gross rental receipts until December 31, 1990, at which time such tax shall increase on an annual basis until 1993 as follows:

- (1) Effective January 1, 1991, such tax shall be at the rate of three percent (3%) of the gross rental receipts;
- (2) Effective January 1, 1992, such tax shall be at the rate of four percent (4%) of the gross rental receipts; and
- (3) Effective January 1, 1993, such tax shall be at the rate of five percent (5%) of the gross rental receipts.

(c) A taxpayer subject to the tax imposed in paragraph (a) hereof may claim an exemption for gross rental receipts subject to said tax, if gross rental receipts are derived from binding and guaranteed room contract(s) entered into on or before September 5, 1989. In order to claim this exemption, the taxpayer must submit written proof of said binding and guaranteed contract in a form satisfactory to the corporate authorities on the monthly tax return required in sec. 21-17 hereof during the month in which said exempt gross receipts are received by the taxpayer. Failure by the taxpayer to claim said exemption in the month in which said gross receipts are received shall constitute an automatic waiver and bar to receipt of said exemption.

Sec. 21-16. Definitions

For purposes of this tax, the following definitions shall apply:

(a) A hotel is any building or buildings in which the public may, for a consideration, obtain living quarters, sleeping or housekeeping accommodations. The term includes inns, motels, tourist homes or courts, lodging houses, rooming houses and apartment houses.

(b) A permanent resident is any person who has occupied or has the right to occupy any room or rooms in a hotel for at least thirty (30) consecutive days.

(c) A person is any natural individual, firm, partnership, association, joint stock company, joint venture, public or private corporation, or a receiver, executor, trustee, guardian or other representative appointed by order of any court.

(d) Rent or rental is the consideration received for occupancy, valued in money, whether received in money or otherwise, including all receipts, cash, credits and property or services of any kind or nature.

(e) A room or rooms are any living quarters, sleeping or housekeeping accommodations.

Sec. 21-17. Tax returns and payment.

(a) Each person subject to the tax imposed in section 21-15 hereof shall make a tax return as required by this section to the village treasurer on or before the twentieth day of each month stating:

1. Name;
2. Principal place of business;
3. Gross receipts during the prior month upon the basis of which the tax is imposed;
4. Amount of tax;
5. Such other reasonable and related information as the corporate authorities may require.

(b) Each person making the return shall, at the time of making such return, pay to the village treasurer the amount of tax herein imposed.

Sec. 21-18. Reimbursement for tax liability.

Persons subject to the tax imposed by this Article may reimburse themselves for their tax liability for such tax by separately stating such tax as an additional charge, which charge may be stated in combination, in a single amount, with the State tax imposed under "The Hotel Operators Occupation Tax Act".¹

Sec. 21-19. Records; audit.

- (a) Every person subject to the tax imposed by this Article shall keep separate books or records of his business so as to show the rents and occupancies taxable under this Article separately from his transactions not taxable hereunder. If any such person fails to keep such separate books or records, he shall be liable for the tax at the rate designated in section 21-15 hereof upon the entire proceeds from his hotel.
- (b) The village manager or his designee shall have the right to cause an audit of the taxpayer's records required in paragraph (a) hereof at the expense of the taxpayer.

Sec. 21-20. Expenditure of Proceeds.

The proceeds from the tax collected pursuant to this Article shall be expended solely to promote tourism and conventions in the village, or otherwise to attract nonresident, overnight visitors to the village. No such funds shall be used to advertise for or otherwise promote new competition in the hotel business.

SECTION 2. The various provisions of this ordinance are to be considered as severable and if any part or portion of this ordinance shall be

held invalid by a court of competent jurisdiction, such decision shall not affect the validity of the remaining portions of this ordinance.

SECTION 3. That all ordinances or parts of ordinances in conflict with the provisions of this ordinance are hereby repealed.

SECTION 4. That this ordinance shall be in full force and effect from and after its passage and publication in pamphlet form as provided by law.

Clay M. Cheever.
Mayor

Passed: September 5, 1989

Published: September 6, 1989

Attest: Barbara Waldner
Village Clerk

¹Ill. Rev. Stats., ch. 120, §481b.31 et seq.



Civic Center • Downers Grove, Illinois 60515-4776 • (312) 964-0300

January 18, 1990

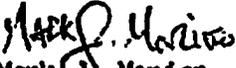
Kenneth C. Knudson, Jr.
Sybaris Club
600 Ogden Avenue
Downers Grove, IL 60515

Dear Mr. Knudson:

The Village has received and reviewed the December 12, 1989, letter from Thomas J. Murphy of Bell, Boyd & Lloyd, regarding the Village of Downers Grove's hotel tax and its application to the Sybaris Club at 600 Ogden Avenue. Our Legal Department concurs with Mr. Murphy's contention that the Village's hotel tax is not applicable to the Sybaris Club and therefore will not pursue collecting this tax.

Thank you for bringing this matter to our attention. I apologize for sending some earlier correspondence to Mr. Richard Starke who was, as I understand, the former manager. If you have any questions or would like additional information, please do not hesitate to contact me.

Sincerely,


Mark J. Morien
Deputy Village Manager

MJM:mp

cc: Kurt Bressner, Village Manager
Barbara Gosselar, Village Attorney
Kathleen Gregory, Director of Administrative Services

Exhibit A

04/92

ORDINANCE NO. 3540

**AN ORDINANCE AMENDING THE PROVISIONS OF
THE DOWNERS GROVE MUNICIPAL CODE TO REPEAL
THE MUNICIPAL HOTEL TAX AND TO ESTABLISH A HOTEL USE TAX**

WHEREAS, The Village of Downers Grove is an Illinois Municipal Corporation and a Home Rule unit pursuant to the Constitution and laws of the State of Illinois; and

WHEREAS, as a Home Rule unit the Village of Downers Grove may exercise any power and perform any function pertaining to its government and affairs including, but not limited to, the power to regulate for the protection of the public health, safety, morals and welfare; to license; to tax; and to incur debt; and

WHEREAS, the creation and administration of a HOTEL USE TAX pertains to the government and affairs of the Village of Downers Grove; and

WHEREAS, the Village Council has determined that it is necessary and desirable to modify the existing Village of Downers Grove, hotel occupation tax by replacing it with a hotel use tax pursuant to the Home Rule powers of the Village; with the revenue to be derived from this tax credited to and deposited in the General Fund of the Village to be used for general corporate purposes, including but not necessarily limited to, providing funds for the promotion and conduct of community-wide celebrations, special events and other activities or functions which promote or otherwise advance the Village of Downers Grove as a destination for visitors, including conventions, sporting events, festivals and tourists,

NOW, THEREFORE, BE IT ORDAINED by the Council of the Village of Downers Grove, DuPage County, Illinois, as follows:

SECTION 1. That Chapter 21, Article VI, entitled "Municipal Hotel Tax", Sections 21-15 through 21-20, of the Downers Grove Municipal Code are hereby amended by deleting same in their entirety and substituting in their place, the following:

"ARTICLE VI. HOTEL USE TAX

Section 21-15	Definitions
Section 21-16	Tax; Incidence; Payment; Collection
Section 21-17	Books and Records; Inspections; Contents
Section 21-18	Reporting; Transmittal; Delinquency; Penalty
Section 21-19	Proceeds
Section 21-20	Exemption
Section 21-21	Acts of Agent or Employee
Section 21-23	Severability

Section 21-15 Definitions

For the purpose of this Article, the following words as used herein shall be construed to have the meanings herein ascribed:

Director	The Senior Director of Finance and Administrative Services for the Village of Downers Grove, or any person certified by him as his designee, deputy or representative.
Hotel	Any building or buildings in which the public may, for rent, obtain living quarters, sleeping or housekeeping accommodations. The term includes, inns, motels, hotels, clubs, tourist homes or courts, lodging houses, rooming houses and apartment houses.
Hotel Room	Any room or rooms with living quarters, sleeping or housekeeping accommodations and offered for rental on a daily or weekly basis, or any fraction thereof, including but not limited hourly or half day rentals.
Owner	Any person having an ownership interest in or conducting the operation of a hotel or receiving the consideration for the rental of hotel rooms.
Permanent Resident	Any person who has occupied or has the right to occupy any hotel room in a hotel for at least thirty (30) consecutive days.

Section 21-16 Tax; Incidence; Payment; Collection

1. **Tax Imposed:** A tax is hereby levied and imposed upon the use and privilege of renting, leasing or letting a Hotel Room within the Village. The tax shall be at the rate of two percent of the gross rental receipts.

2. **Incidence of Tax:** The ultimate incidence of and liability for payment of the tax is to be borne by the person who seeks the privilege of occupying the Hotel Room, such person hereinafter referred to as renter.

3. **Payment of Tax:** The tax herein levied shall be paid in addition to any and all other taxes and charges. It shall be the duty of the Owner of every Hotel to secure the tax from the renter of the Hotel Room and to pay the tax over to the Village under the procedures prescribed by the Director, or as otherwise provided in this Article.

4. **Collection:** Every person required to collect the tax levied by this Article shall secure the tax from the renter at the time he collects the rental payment for the Hotel Room. The amount due under the tax provided in this Article shall be stated separately upon the invoice, receipt or other statement or memorandum given to the renter at the time of payment.

Section 21-17 Books and Records; Inspections; Contents

1. The Director may enter the premises of any Hotel and inspect books and records in order to effectuate the proper administration of this Article and to assure the enforcement of the collection of the tax imposed. Except where the Director determines that immediate inspection is necessary to preserve records or otherwise ensure compliance with this Article VI, the Director shall give the Hotel not less than forty-eight (48) hours prior notice of such inspection.

2. No person shall prevent, hinder or interfere with the Director in the discharge of his duties under this Article.

3. It shall be the duty of every Owner to keep accurate and complete books and records to which the Director shall at all times have full access, which records shall include a daily sheet showing:

a. The number of Hotel Rooms rented during the twenty-four (24) hour period, including multiple rental of the same Hotel Room where such shall occur; and,

b. The actual Hotel receipts collected for the date in question.

Section 21-18 Reporting; Transmittal; Delinquency; Penalty

1. **Monthly Reporting:** On or before the last day of each calendar month, the Owner or Owners of each Hotel Room within the Village shall file a monthly tax return showing tax receipts received with respect to each Hotel Room during the prior month. The return shall include:

- a. Name
- b. Location of Hotel
- c. Gross receipts during the prior month upon the basis of which the tax is imposed
- d. Amount of the tax
- e. Such other reasonable and related information as the Director may from time to time require

2. **Monthly Payment:** The tax shall be due on the day the monthly return is due as provided herein. At the time of filing such returns, the Owner shall pay to the Director all taxes, interest and penalties, if any, due for the period to which the return applies; provided, however, the establishment making the monthly return may retain an amount of money equal to three percent (3%) of the tax due as compensation for services rendered in the collection and payment of such tax.

3. **Penalty:** If for any reason any tax is not paid when due, a penalty at the rate of one percent (1%) per thirty (30) day period, or any portion thereof, shall be added and collected.

Section 21-19 Proceeds

All proceeds resulting from the imposition of the tax under this Article, including interest and penalties, shall be paid into the Treasury of the Village and shall be credited to and deposited into the Treasury of the Village and shall be credited to and deposited in the General Fund of the Village.

Section 21-20 Exemption

The tax imposed by Section 21-16 shall not apply to permanent residents.

Section 21-21 Acts of Agent or Employee

Every act or omission of whatsoever nature constituting a violation of any of the provisions of this Article, by any officer, director, manager or other agent or employee of an Owner, shall be deemed and held to be the act of such Owner, and said Owner shall be liable and punishable in the same manner as if said act or omission had been done or omitted by said Owner personally.

Section 21-23 Severability

If any provision of this Article or the application thereof to any person or circumstance is held invalid, the remainder of this Article and the application thereof to other persons or circumstances shall not be affected thereby.

SECTION 2. That all ordinances or parts of ordinances in conflict with the provisions of this ordinance are hereby repealed.

SECTION 3. That this ordinance shall be in full force and effect from and after March 1, 1993.

Betty M. Cheever
Mayor

Passed: February 15, 1993

Published: February 16, 1993

Attest: Barbara Waldner
Village Clerk

2940
995
1990

IN THE CIRCUIT COURT FOR THE EIGHTEENTH JUDICIAL CIRCUIT,
DUPAGE COUNTY, ILLINOIS

VILLAGE OF DOWNERS GROVE,
Plaintiff,

v.

SYBARIS CLUBS INTERNATIONAL, INC.,
d/b/a SYBARIS CLUB,
Defendant.

No. 93 MR 298

ORDER

This cause having come on for trial and the Court having heard and considered the evidence and the arguments of counsel and being fully advised in the premises:

THE COURT FINDS AS FOLLOWS:

1. The primary purpose of the subject property is not that of a "hotel" as defined and used in ordinance 3540, but a facility whose primary use is as a private place of enhanced romantic surrounding for sexual activity between two and only two adult persons, and not for use by the public generally.

2. Also existing, at relevant and pertinent times thereto, within the Village of Downers Grove is another facility of substantially identical purposes to that operated by the Defendant, which has not been held by the Village of Downers Grove to be subject to the Hotel Use Tax, namely, Clearwater Hot Tubs.

IT IS THEREFORE ORDERED:

1. Judgment is hereby declared in favor of the Defendant, Sybaris International, Inc, d/b/a Sybaris Club, and against the Plaintiff, Village of Downers Grove, on the Complaint for Declaratory Judgment and on the Counter-Complaint for Declaratory Judgment.

2. Village of Downers Grove is hereby enjoined and restrained from collecting or imposing the Hotel Use Tax upon the Defendant, Sybaris International, Inc, d/b/a Sybaris Club pursuant to ordinance 3540.

ENTER:

John D. ...

DATED:

5-4-94

DONOVAN AND ROBERTS. P.C. #21500
104 E. Roosevelt Rd., Suite 202
Post Office Box 417
Wheaton, Illinois 60189-0417
Telephone: (708) 668-4211

5/2/94, 2:13 sybaris ORDER

FILED
MAY - 4 1994
CLERK OF THE
COURT
JUDICIAL CIRCUIT
DUPAGE COUNTY
ILLINOIS

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UNITED STATES OF AMERICA

FILED

STATE OF ILLINOIS)
APPELLATE COURT) ss
SECOND DISTRICT)

95 MAY -2 AM 8:08

At a Session of the Appellate Court begun and held at Elgin on the 1st day of January, in the year of our Lord one thousand nine hundred and ninety-five within and for the Second District of Illinois;

Present: Honorable ROBERT D. MCLAREN, Presiding Justice
HONORABLE JOHN J. BOWMAN, Justice
HONORABLE MICHAEL J. COLWELL, Justice
HONORABLE DANIEL D. DOYLE, Justice
HONORABLE FRED A. GEIGER, Justice
HONORABLE SUSAN HITCHINSON, Justice
HONORABLE LAWRENCE D. INGLIS, Justice
HONORABLE S. LOUIS RATHJE, Justice
HONORABLE ROBERT R. THOMAS, Justice
LOREN J. STROTZ, Clerk
KENNETH R. RAMSEY, Sheriff

#2-94-0601
VILLAGE OF DOWNERS GROVE,
Plaintiff-Appellant,
vs.
SYBARIS CLUBS INTERNATIONAL, INC.
D/B/A SYBARIS CLUB,
Defendant-Appellee.

APPEAL FROM THE
CIRCUIT COURT OF
DuPage County

TRIAL COURT NO.
93MR0298
93MR298

Judge John W. Darrish

MANDATE

BE IT REMEMBERED, that, to wit: On the 10th day of March, 1995, a Decision of the aforementioned Court was entered and in accordance with the views expressed in the attached Decision the judgment of the trial court is Affirmed in part, Vacated in part.

CERTIFICATE

I, LOREN J. STROTZ, Clerk of the Appellate Court, Second District of the State of Illinois, and keeper of the records, files and Seal thereof, do hereby certify that the foregoing is a true copy of the final order of said Appellate Court, in the above entitled cause of record in my said office.

IN WITNESS WHEREOF, I have hereunto subscribed my name and affixed the Seal of said Court this 28th day of April, 1995, A.D.

Loren J. Strotz

IMAGED
8

Clerk of the Appellate Court
Second District

**This Order Is Not Precedential
And Is Not To Be Cited**

FILED

MAR 10 1995

No. 2-94-0601

**LOREN J. STROTZ, CLERK
APPELLATE COURT 2ND DISTRICT**

IN THE
APPELLATE COURT OF ILLINOIS
SECOND DISTRICT

VILLAGE OF DOWNERS GROVE,)	Appeal from the Circuit Court
Plaintiff-Appellant,)	of Du Page County.
v.)	No. '93-MR-0298
SYBARIS CLUBS INTERNATIONAL,)	Honorable John W. Darrah,
INC., d/b/a SYBARIS CLUB,)	Judge, Presiding.
Defendant-Appellee.)	

RULE 23 ORDER

On February 15, 1993, the plaintiff, the village of Downers Grove, Illinois, adopted an ordinance establishing a "hotel use tax", which imposes a 2% tax on the use and privilege of renting or leasing a hotel room within the village. (Downers Grove Municipal Code §21-16, ordinance No. 3540 (19__).) A "hotel" is defined in the ordinance as:

"Hotel. Any building or buildings in which the public may, for rent, obtain living quarters, sleeping or housekeeping accommodations. The term includes, [sic] inns, motels, hotels, clubs, tourist homes or courts, lodging houses, rooming houses and apartment houses." Downers Grove Municipal Code §21-15, ordinance No. 3540 (19__).

Following passage of this ordinance, the defendant, Sybaris Clubs International, Inc. (Sybaris), refused to collect the hotel

No. 2-94-0601

tax for its facility known as the Sybaris Pool Suites, located within Downers Grove. Subsequently, the village filed a complaint for declaratory judgment against Sybaris, asking that the court find ordinance No. 3540 valid and seeking an order that the Sybaris facility was subject to the ordinance's provisions. Sybaris filed an answer generally denying the allegations of the plaintiff's complaint. In addition, the defendant filed affirmative defenses and a three-count countercomplaint for declaratory judgment, alleging that the Sybaris facility is not a "hotel" for purposes of the Hotel Use Tax (Downers Grove Municipal Code §21-15, ordinance 3540 (19__)), that ordinance No. 3540 creates an unreasonable classification in violation of the uniformity requirements of section 2 of Article IX of the 1970 Constitution (Ill. Const. 1970, art. IX, §2), and that ordinance No. 3540 violates the provisions of the Illinois Municipal Code (65 ILCS 5/8-11-6a (West 1992)).

The evidence presented at trial sheds light on the Sybaris facility. Kenneth Knudsen, the sole shareholder of Sybaris Clubs International, Inc., purchased the property, then known as the Ogden Motel, on Ogden Avenue in Downers Grove in 1974. While Knudsen developed "the Sybaris concept," he continued operation of the property as a motel until 1977, when the property was converted to a Sybaris facility. Knudsen characterized the Downers Grove Sybaris as a facility "to cater to married couples for the purpose of a sexual intimate escape."

The record reveals that there are four styles of suites at the Downers Grove Sybaris: whirlpool suites, deluxe whirlpool suites, swimming pool suites, and deluxe swimming pool suites. The whirlpool suite contains a whirlpool and a glass block bathroom with a see-through shower. The deluxe whirlpool suite offers the same features with the addition of a steam room. The swimming pool suite has a glass partition separating two rooms, and contains a 20-foot swimming pool and steam room. The deluxe swimming pool suite is a two-story room with a steamroom, fireplace, swimming pool, a larger whirlpool, and double pedestal sinks.

Each room contains what is commonly known as a waterbed, though the defendant prefers to call the bed a "waterbladder" resting on a "fornication platform." Additionally, each room contains an apparatus known as a "Taiwan basket," to which Knudsen owns the patent. The Taiwan basket is an "intercourse aiding apparatus" which consists of a rigid frame supported above the bed, an elongated panel of cloth, and cables suspending the cloth panel from the frame. The cloth panel is suspended from the frame in such a way that an opening in the cloth panel would, directly above the waterbed, strategically expose the genitalia of an individual seated in the basket. Each room also contains a television, video cassette recorder, compact disc player, refrigerator, and microwave oven. The rooms do not contain dressers, closets, hangers, telephones, windows, or kitchens. No

No. 2-94-0601

room service is provided. Rooms at the Downers Grove Sybaris may be rented for a minimum four hour period and the facility is open 24 hours a day.

Pamela Parenty, the general manager of the Downers Grove Sybaris, testified that the Sybaris does not provide rooms for sleeping and that members come to the Sybaris for sex, not sleep. Parenty also stated that when individuals stop at the Sybaris looking for a motel room they are told by Sybaris personnel that they are in the wrong place and are given a brochure for future reference. Upon seeing the room rates and pictures in the brochure, Parenty testified that the prospective motel guests agree that they are in the wrong place. The price sheet listing the room rates expressly states the Sybaris "is not a hotel and is not to be used as a hospitality suite."

Various architectural plans relating to the Downers Grove Sybaris were admitted at trial as exhibits. These plans designated part of a Sybaris suite as a "bedroom" or "sleeping area" and referred to the complex as consisting of "one story concrete block motel units." Knudsen testified, however, that these terms were those of the architect, not Knudsen or his employees.

The Downers Grove Sybaris employs approximately 15 individuals, including front desk, maintenance, and housekeeping personnel. Parenty testified that maintaining immaculate cleanliness is important at the Sybaris because of the exposure

of "the most vulnerable private parts" of the members. The rooms are not cleaned while in use by members. However, a member may specifically request that a room be "touched up." Before a room is rented again, the housekeeping staff changes the linens, empties the garbage cans and ashtrays, sanitizes the room, drains and scours the whirlpool, and cleans all external surfaces.

Knudsen testified that the Sybaris is a private club, not a hotel. The Sybaris club rules state that only two people are allowed in a room, and to rent a room, at least one of the individuals must be a member of the Sybaris. To become a member, a person must pay an application fee, ranging from \$25 to \$150, depending upon the type of membership the individual is purchasing, provide a driver's license for identification, and provide sufficient information to a Sybaris employee to aid the employee in filling out a membership card. Furthermore, it is the practice and policy of the Downers Grove Sybaris to rent rooms to couples only, and children and guests are not allowed in the facilities. The rules also state that "[t]he cottages are designed for short romantic getaways and not designed for [a] multiple day stay." Approximately 50% of the Downers Grove Sybaris rentals are for stays shorter than overnight.

Knudsen also testified, over objection from the plaintiff, regarding a similar facility, known as "Clearwater Hot Tubs" (Clearwater), within Downers Grove. Clearwater is not subject to the hotel use tax. Knudsen explained that Clearwater rents

No. 2-94-0601

private rooms containing a hot tub, bathroom facilities, toiletries, and towels. Each room also contains stereo equipment and mats to lay down in a loft area. In Knudsen's opinion, Clearwater is very similar to the Sybaris. The Clearwater rooms, however, do not have waterbeds, televisions, or microwave ovens. Knudsen's opinion was based solely on his observations when he had twice visited Clearwater for personal use of its facilities.

Upon conclusion of the evidence, the trial court found that the primary purpose of the Downers Grove Sybaris was not that of a "hotel" as defined in the ordinance, but rather as "a private place of enhanced romantic surrounding for sexual activity" between two, and only two, adult persons. Sybaris, the trial court found, was "not for use by the public generally." Furthermore, the trial court found that "another facility of substantially identical purposes" as the Sybaris, namely, Clearwater, had not been held by the village to be subject to the hotel use tax. Therefore, the trial court ordered that declaratory judgment be entered for the defendant on the complaint and also on the defendant's countercomplaint, which included the claims that the hotel user tax be declared unconstitutional (Ill. Const. 1970, art. IX, §2) and in violation of the Illinois Municipal Code (65 ILCS 5/8-11-6a (West 1992)), and that the village of Downers Grove is enjoined from collecting or imposing the hotel use tax upon the defendant.

In making our determination, we are guided by the standards regarding review of taxing laws. "Taxing laws are to be strictly construed and are not to be extended beyond the clear import of the language used. If there is any doubt in its application, the taxing ordinance must be construed most strongly against the government and in favor of the taxpayer." (Kennedy Brothers, Inc. v. Property Tax Appeal Board (1987), 158 Ill. App. 154, 159, quoting Getto v. City of Chicago (1979), 77 Ill. 2d 346, 359, quoting Oscar L. Paris Co. v. Lyons (1956), 8 Ill. 2d 590, 598.) Thus, in the present case, we must construe the ordinance against the village of Downers Grove and in favor of Sybaris if doubt exists as to the application of the hotel use tax to Sybaris.

Initially, we note that the village devotes much space in its appellate brief on the issue of whether the Downers Grove Sybaris is or is not a "club." The relevant threshold inquiry in this case is not whether Sybaris is a "club," but rather whether Sybaris is a "hotel," which is defined in the pertinent ordinance as "any building or buildings in which the public may, for rent, obtain living quarters, sleeping or housekeeping accommodations." (Downers Grove Municipal Code §21-15, ordinance No. 3540 (19__).) The fact that the definition of "hotel" may include clubs within its ambit is irrelevant if the club in question is not deemed a "hotel."

The trial court's finding that the Downers Grove Sybaris is not a hotel, as defined in the ordinance, is not against the

reveals, however, that in Sybaris' countercomplaint, Sybaris alleged that the provisions of the questioned ordinance created an unreasonable classification in violation of the uniformity requirements within the Illinois Constitution. (Ill. Const. 1970, Art IX, §2.) Sybaris also raised this issue as an affirmative defense. The determination of whether a facility similar to the Sybaris is not taxed under the ordinance is relevant to the uniformity challenge. (Federated Distributors, Inc. v. Johnson (1988), 125 Ill. 2d 1, 15; Northwestern University v. City of Evanston (1991), 221 Ill. App. 3d 893, 896.) Indeed, the village recognized this issue as raised in its prayer for relief contained in its reply to Sybaris' answer to the original complaint. Thus, the trial court did not err in allowing Knudsen to testify regarding his personal knowledge of Clearwater.

Because the hotel user tax does not apply to the Sybaris, it is unnecessary to reach the issue of whether ordinance No. 3540 is unconstitutional. (Ill. Const. 1970, art. IX, §2.) A court will consider a constitutional question only where the case cannot be determined on other grounds. (Bonaguro v. County Officers Electoral Board (1994), 158 Ill. 2d 391, 396.) Thus, the trial court need not have decided this nonjusticiable issue, and we vacate that part of the trial court's order which pertains to the constitutionality of the hotel use tax.

Finally, the claim in the defendant's countercomplaint regarding the validity of the Downers Grove hotel use tax under

No. 2-94-0601

the Illinois Municipal Code (65 ILCS 5/8-11-6a (West 1992)) is also not justiciable because of the finding that the hotel use tax is not applicable to the Downers Grove Sybaris. Thus, we vacate that part of the trial court's order which pertains to the validity of the hotel use tax under the Illinois Municipal Code. 65 ILCS 5/8-11-6a (West 1992).

The judgment of the circuit court of Du Page County is affirmed in part and vacated in part.

Affirmed in part; vacated in part.

MCLAREN, P.J., with BOWMAN and COLWELL, JJ., concurring.

Notice of Proposed Liability
for Sales, Use, and Excise Taxes and Fees



October 8, 2014



Letter ID: L0302731744

SYBARIS CLUBS INTERNATIONAL INC
2430 E RAND RD
ARLINGTON HTS IL 60004-5877

Taxpayer ID: 36-3357812
License No: HM-14800
Account ID: 41375521
Audit ID: A1697423360
Return type: RHM-1
Audit periods: 07/2008 - 03/2014



We have audited your account and have determined that there is additional liability due.

Tax	\$2,147,194.00
Penalty	\$398,578.00
Interest	\$239,325.00
Total	\$2,785,097.00

Our calculations, periods covered, and other explanations resulting in the determination are attached for your review.

If you agree with the tax amount as shown, contact us using the information listed below for further instructions. Please note, if you sign the Audit Report, you waive the right to seek review by the Informal Conference Board.

If you do not agree with the figures, you may request a review of this proposed liability by the Informal Conference Board (Section 2505-510). To do this, you must complete Form ICB-1, Request for Informal Conference Board Review, within 60 days from the date of this notice and mail it, along with a copy of the auditor's work papers and a copy of this notice, to:

INFORMAL CONFERENCE BOARD
100 W RANDOLPH SUITE 7-286
CHICAGO IL 60601

If you do not request an ICB review within 60 days from the date of this notice, we will issue a Notice of Tax Liability for the amount proposed to be due.

Sincerely,

Jason Misuinas
Revenue Auditor

ILLINOIS DEPARTMENT OF REVENUE
9511 HARRISON AVENUE
DES PLAINES IL 60016

847 521-8984
847 294-4246 fax



Illinois Department of Revenue

Informal Conference Board
Louise Calvert
100 West Randolph, 7-286
Chicago, Illinois 60601
Telephone: 312 814-1722
Fax: 312 814-1402

RE: Docket No. 14-0367
Sybaris Clubs International, Inc.
Account ID: 4137-5521
Audit ID: A1697423360
License No: HM-14800

ACTION DECISION

The Informal Conference Board has reviewed the Illinois Department of Revenue Audit Bureau's proposed adjustments in this matter and finds that the proposed adjustments are correct.

The Taxpayer is operating a hotel and is not a private club. The Taxpayer is subject to the Hotel Operators' Occupation Tax.

The Audit Bureau is instructed to conclude and process the audit in a manner consistent with this decision.

Taxpayer Request for Audit Adjustments Denied.

A handwritten signature in black ink, appearing to read "Michael R. Pieczonka", written over a horizontal line.

MICHAEL R. PIECZONKA
MEMBER, INFORMAL CONFERENCE BOARD

A handwritten signature in black ink, appearing to read "Dan Hall", written over a horizontal line.

DAN HALL
MEMBER, INFORMAL CONFERENCE BOARD

BRIAN WOLFBERG
MEMBER, INFORMAL CONFERENCE BOARD

6-4-15
DATE ENTERED

A private club which restricts its renting of rooms to its members and their guests does not incur Hotel Operators' Occupation Tax on its rental receipts from such rooms. See 86 Ill. Adm. Code 480.101(b)(2). (This is a GIL.)

January 28, 2005

Dear Xxxxx:

This letter is in response to your letter dated December 21, 2004, in which you request information. The Department issues two types of letter rulings. Private Letter Rulings ("PLRs") are issued by the Department in response to specific taxpayer inquiries concerning the application of a tax statute or rule to a particular fact situation. A PLR is binding on the Department, but only as to the taxpayer who is the subject of the request for ruling and only to the extent the facts recited in the PLR are correct and complete. Persons seeking PLRs must comply with the procedures for PLRs found in the Department's regulations at 2 Ill. Adm. Code 1200.110. The purpose of a General Information Letter ("GIL") is to direct taxpayers to Department regulations or other sources of information regarding the topic about which they have inquired. A GIL is not a statement of Department policy and is not binding on the Department. See 2 Ill. Adm. Code 1200.120. You may access our website at www.ILTAX.com to review regulations, letter rulings and other types of information relevant to your inquiry.

The nature of your inquiry and the information you have provided require that we respond with a GIL. In your letter you have stated and made inquiry as follows:

We respectfully request a General Information Letter pursuant to 2 Ill. Admin. Code Section 1200.120 regarding the taxability of our client's business operations. The paragraphs below completely discuss the specific facts and legal authorities. There are no audits or litigation cases pending with respect to this request. To the best of the knowledge of both our client and our office, the Department has not previously ruled on the same or a similar issue for our client or predecessors. Neither our client nor our office previously submitted the same or a similar issue to the Department but withdrew it before a letter ruling was issued. We thank you in advance for your prompt attention to this matter.

Facts

Our client operates a 'romantic getaway'. Our client operates as a private club whereby the purchase of a membership is required. Privacy is an important part of our client's business. Our client does not operate a hotel nor are its rooms used as hospitality suites.

The Annual Membership is \$25, which allows members to make reservations and stay at one of its rooms that contain hot tubs and even small pools. The Annual Membership

also provides members with special discount offers and complimentary items for birthday and anniversary reservations. Our client also offers an advanced membership or status (for an additional fee) that provides all of the benefits of the Annual Membership plus additional discounts.

Legal Authorities

We believe that receipts from our client's membership fees and member room fees are not subject to either Retailers' Occupation Tax or Hotel Operators' Occupation Tax. The Department's Regulation 86 Ill. Admin. Code Section 480.101(b)(2) provides that '[s]ince the tax is limited to the renting of rooms to the 'public', a private club which restricts its renting of rooms to its members and their guests would not be liable for the tax on its rental receipts from such rooms'.

Request for Ruling

Based on the facts and legal authorities contained in this request, we respectfully request that the Department issue a General Information Letter indicating that our client's membership fees and member rooms fees are not subject to either Retailers' Occupation Tax or Hotel Operators' Occupation Tax.

Please call the undersigned if you have any questions or need any additional information. Also, please call the undersigned prior to issuing a letter that does not indicate that our client's membership fees and member rooms fees are not subject to either Retailers' Occupation Tax or Hotel Operators' Occupation Tax.

DEPARTMENT'S RESPONSE:

The Illinois Retailers' Occupation Tax Act, 35 ILCS 120/1 et seq., and the Use Tax Act, 35 ILCS 105/1 et seq., apply to the retail sale of tangible personal property. Generally, the Department does not consider receipts from the sale of club membership fees to be gross receipts from the sale of tangible personal property. Rather, a membership fee is considered an intangible, which is not subject to Retailers' Occupation Tax or Use Tax liability. This is the case when the sale of membership rights does not include the transfer of tangible personal property.

If an organization gives items to their members in Illinois, such as membership cards, pins, patches, or other complimentary items, those organizations owe Use Tax on the cost price of those items.

As you are aware, a private club which restricts its renting of rooms to its members and their guests does not incur Hotel Operators' Occupation Tax on its rental receipts from such rooms. See 86 Ill. Adm. Code 480.101(b)(2).

I hope this information is helpful. If you require additional information, please visit our website at www.ILTAX.com or contact the Department's Taxpayer Information Division at (217) 782-3336. If you are not under audit and you wish to obtain a binding PLR regarding your factual situation, please submit a request conforming to the requirements of 2 Ill. Adm. Code 1200.110 (b).

Very truly yours,

Edwin E. Boggess
Associate Counsel

EEB:msk