STATE OF ALABAMA, DEPARTMENT OF REVENUE,	§	STATE OF ALABAMA DEPARTMENT OF REVENUE
	§	ADMINISTRATIVE LAW DIVISION
VS.		
	§	Docket No. S. 91-142
CRAFT DEVELOPMENT CORPORATION d/b/a Cotton Creek Club Gulf Shores, AL 36547	§	
	§	
Taxpayer.		

FINAL ORDER

The Revenue Department assessed State and Baldwin County sales tax against Craft Development Corporation, d/b/a Cotton Creek Club (Taxpayer) for the period January 1, 1988 through July 31, 1990. The Taxpayer appealed to the Administrative Law Division and a hearing was conducted on August 20, 1991. Bruce Ely appeared for the Taxpayer. Assistant counsel Beth Acker represented the Department. This Final Order is based on the evidence and arguments presented by the parties.

FINDINGS OF FACT

The Taxpayer operates a recreational/social facility (the club) in Gulf Shores, Alabama. The club includes an 18 hole golf course, tennis courts, a swimming pool, banquet and restaurant facilities and various other amenities common to a country club.

The club has approximately 192 members that paid a one-time initiation fee and also pay monthly membership dues. The members have unlimited access to all club facilities without extra charge, except social members must pay a green fee to play golf. The public can play oh the golf course on a space available basis by first paying a green fee. All of the club's non-golf related

facilities are private and can be used by members and invited guests only.

The Taxpayer presently pays the "public amusement" gross receipts tax levied at Code of Ala. 1975, §40-23-2(2) on alll green fees and cart f ees at the golf course. The Department audited the Taxpayer and assessed additional tax on the monthly membership dues paid by the club members.

The Department argues that the Taxpayer's golf course constitutes a public place of amusement and constitutes a public place of amusement and consequently that the Taxpayer's gross receipts from all sources are taxable. The Department also considers
initiation fees to be taxable, although not included as part of the assessment in issue.

The Taxpayer contends that the tax applies only to gross receipts derived from the operation of the public golf course.

CONCLUSIONS OF LAW

Code of Ala. 1975, §40-23-2(2) levies a tax as follows:

> Upon every person, firm or corporation engaged or continuing within this state in the business of conducting or operating places of amusement or entertainment, billiard and pool rooms . . . . golf courses, or any other place at which any exhibition, display, amusement or entertainment is offered to the public or place or places where an admission fee is charged, . . . an amount equal to four percent of the gross receipts of any such business.

The intent of §40-23-2(2) is to tax gross receipts derived from a specific public event, entertainment or activity or from

amusement devices. The tax is measured by the "gross receipts of any such business". "Such business" refers only to the specific public activity engaged in by a taxpayer, in this case the public golf course. The tax does not apply to all other business activities carried on by a taxpayer that are separate and distinct from the public activity and not otherwise taxable under §40-23-2(2).

In this case only the green fees and other gross receipts derived from the golf course and related public facilities are taxable.[1] The monthly memberships are not taxable because they are

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[1] The Taxpayer paid use tax when it purchased the golf carts and then included the cart rental fees in the measure of the gross receipts tax. However, there is some question whether the cart rentals are subject to the gross receipts tax or the lease tax, or both. The Taxpayer can purchase carts tax-free if the lease tax applies. See, §§40-23-1(9)j and 40-23-60(4)i. The question then would be whether the gross receipts tax is due in addition to the lease tax. Such double taxation may be permitted because the two taxes are on different parties, the lease tax is on the Taxpayer and the gross receipts tax is technically passed on to the consumer (golfer). See, Starlite Lanes, Inc. v. State, 214 So.2d 324.

separate and distinct from the public golf facility and are not derived from a public activity. Rather, the membership dues are paid for the privilege of belonging to the Taxpayer's private club and are used to cover the general expenses of the club's activities. See also, Northland Country Club v. Commissioner of Taxation, 241 N.W.2d 806; Twinbrook Swim. Pool Corp. v. Comptroller of Treas., 333 A.2d 49.

In summary, the gross receipts of a public golf course are taxable, whereas the gross receipts of a private golf course such as a private membership country club are not taxable. See State, Department of Revenue v. Teague, 441 So.2d 914. A club is private if only members, invited guests and guests playing under a reciprocal agreement allowed to play on the course the business of operating are allowed to play on the course. A club is public if it is "in the business" of operating a public golf course. Thus, a private club that has only one or occasional public events (open tournaments) would not be subject to the tax. Initiation fees at a private club are not taxable for the same reasons as membership dues.

This holding is supported by the rule of construction that a taxing statute must be strictly construed in favor of the taxpayer and against the Department. State v. Community Blood and Plasma Serv., 267 So.2d 176; Misener Marine Construction, Inc. v. Eagerton, 423 So.2d 161.

The above considered, the Department is directed to enter a final assessment against the Taxpayer showing no additional tax due.

Entered on October 22, 1991.

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BILL THOMPSON
Chief Administrative Law Judge