

**New York State Department of Taxation and Finance
Office of Counsel**

TSB-A-16(13)S
Sales Tax
April 26, 2016

STATE OF NEW YORK
COMMISSIONER OF TAXATION AND FINANCE

ADVISORY OPINION

PETITION NO. S150121B

The Department of Taxation and Finance received a Petition for an Advisory Opinion from [REDACTED] (Petitioner). Petitioner requests guidance on whether state and local taxes apply to its receipts for entry fees to high intensity interval training (HIIT) fitness classes offered at its facility within New York City. Petitioner further requests guidance on whether state and local taxes apply to its receipts for entry fees to its weight loss challenges.

We conclude that Petitioner's receipts for class entry fees are subject to local sales tax pursuant to Administrative Code of the City of New York (Administrative Code) § 11-2002(a). Likewise, the receipts for entry fees into its weight loss challenges are subject to local sales tax pursuant to Administrative Code § 11-2002(a). Neither entry fee is subject to New York State sales tax.

Facts

Petitioner offers heart-rate based HIIT instructional fitness classes. Petitioner's customers wear heart rate monitors during classes. Heart rates are displayed on viewing monitors within the exercise studio. The coach overseeing the fitness class attempts to ensure that performance is maximized throughout the class, as measured by heart rate and caloric burn.

Customers purchase classes in six different ways, with the different annual fees covering different numbers of classes in a given time period or an unlimited number of classes per month.

All plans provide access to group training classes only, which are always led by a certified coach. Instructional classes include the use of treadmills, rowing machines, and other resistance training tools (equipment). All use of equipment is strictly limited to group classes. There is no option for the use of the equipment or the larger facility as a whole outside of scheduled group class times.

Petitioner's customer base includes athletes and non-athletes seeking to raise their fitness levels, increase cardiovascular health, and build muscle. The overall goal of more than 90% of the customers is not simple weight loss. However, Petitioner does offer an optional weight loss challenge. Petitioner's customers may participate in the challenge by paying an additional fee. The winner of the challenge is determined by highest percentage of body fat reduction and wins

a cash prize. The participants in the weight loss challenge do not obtain any additional access to Petitioner's facilities or equipment.

Analysis

Tax Law § 1105(f) imposes sales tax, in part, on receipts from:

(1) Any admission charge... to or for the use of any place of amusement in the state... except charges to a patron for admission to, or use of, facilities for sporting activities in which such patron is to be a participant, such as bowling alleys and swimming pools. . . .

(2)(i) The dues paid to any social or athletic club in this state if the dues... are in excess of ten dollars per year, and on the initiation fee alone, regardless of the amount of dues, if such initiation fee is in excess of ten dollars....

Petitioner's class entry fees and weight loss challenge fees do not constitute charges for admission to a place of amusement. Therefore, the receipts for those fees are not subject to sales tax on admission charges under Tax Law § 1105(f)(1). *See* NYT-G-12(1)S; NYT-G-08(2)S; TSB-A-00(26)S; TSB-A-87(21)S.

Dues or membership fees paid to an athletic club would be subject to State and local sales tax. However, the petitioner is not operating an athletic club because there is no organizational structure under which members control social or athletic activities of the club, participate in club member selection, participate in club management, or possess a proprietary interest in the club. *See* 20 NYCRR § 527.11(b). Accordingly, Petitioner's receipts for entry fees into classes or weight loss challenges are not subject to tax as dues paid to an athletic club pursuant to Tax Law § 1105(f)(2).

Moreover, Tax Law § 1105(c) imposes tax on receipts from every sale, except for resale, of certain enumerated services. Because personal training services are not included in the services taxed under Tax Law § 1105(c), the receipts from such services are not subject to New York State sales tax. *See* TSB-A-03(38)S.

However, the City of New York imposes a local sales tax at the same uniform rate on "every sale of services by weight control salons, health salons, gymnasiums, turkish and sauna baths and similar establishments and every charge for the use of such facilities" *See* Tax Law § 1212-A(a)(2); Administrative Code § 11-2002(a). An establishment that provides steam baths, saunas, rowing machines, shaking machines or other exercise equipment and does not provide facilities for participatory sports activities is considered to be a weight control salon subject to the tax imposed by Administrative Code § 11-2002(a). *See* TSB-A-10(46)S. Facilities for participatory sports activities include, for example, basketball courts, volleyball courts, swimming pools or racquetball courts. *See* TSB-A-14(12)S; TSB-A-10(46)S; TSB-A-08(12)S.

Because Petitioner does not provide any participatory sporting activities or facilities to its members, Petitioner's facility is a weight control salon, gymnasium or similar establishment as

described in Administrative Code § 11-2002(a). Petitioner's receipts for class entry fees, therefore, are subject to tax pursuant to Administrative Code § 11-2002(a). Likewise, the receipts for entry fees into weight loss challenges are subject to tax pursuant to Administrative Code § 11-2002(a) as a sale of a service by a weight control salon, health salon, gymnasium, or similar establishment and/or a charge for the use of such facilities.

DATED: April 26, 2016

_____/S/
DEBORAH R. LIEBMAN
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NOTE: An Advisory Opinion is issued at the request of a person or entity. It is limited to the facts set forth therein and is binding on the Department only with respect to the person or entity to whom it is issued and only if the person or entity fully and accurately describes all relevant facts. An Advisory Opinion is based on the law, regulations, and Department policies in effect as of the date the Opinion is issued or for the specific time period at issue in the Opinion. The information provided in this document does not cover every situation and is not intended to replace the law or change its meaning.