

New York State Department of Taxation and Finance
Office of Tax Policy Analysis
Taxpayer Guidance Division

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Sales Tax
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Taxability of Fees Paid for Pilates Classes and Personal Instruction at Weight Control Salons, Gymnasiums, and Similar Establishments in New York City

The issue raised is whether the separate fees charged at a Pilates facility for classes and personal instruction are subject to New York State and local New York City sales taxes.

A variety of Pilates training and fitness activities are offered by Company at its facility in New York City. The facility has Pilates mats and Pilates exercise and workout equipment. Group, semi-private, and private instruction are offered in beginner through expert levels in various types of Pilates classes. The class instructors are all trained in the authentic Pilates method.

Fees for the classes are charged on either a per-class basis, or as a package of 5, 10, or 20 classes. The clients do not control any social or athletic activities nor do they participate in the selection of other clients or management of the club. The clients also do not possess any proprietary interest in the facility. The number of clients is limited by the size of the facility on a first-come, first-served basis.

Applicable law and regulations

Section 1101(d)(13) of the Tax Law defines the term *social or athletic club* as:

Any club or organization of which a material purpose or activity is social or athletic.

Section 1105 of the Tax Law provides, in part:

Imposition of sales tax. On and after June first, nineteen hundred seventy-one, there is hereby imposed and there shall be paid a tax . . . upon:

* * *

(f)(1) Any admission charge where such admission charge is in excess of ten cents to or for the use of any place of amusement in the state, except charges for admission to race tracks, boxing, sparring or wrestling matches or exhibitions which charges are taxed under any other law of this state, or dramatic or musical arts performances, or live circus performances, or motion picture theaters, and 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. . . .

Section 1107(a) of the Tax Law provides, in part:

General. On the first day of the first month following the month in which a municipal assistance corporation is created under article ten of the public authorities law for a city of one million or more, in addition to the taxes imposed by sections eleven hundred five and eleven hundred ten, there is hereby imposed on such date, within the territorial limits of such city, and there shall be paid, additional taxes . . . which except as provided in subdivision (b) of this section, shall be identical to the taxes imposed by sections eleven hundred five and eleven hundred ten. Such sections and the other sections of this article, including the definition and exemption provisions, shall apply for purposes of the taxes imposed by this section in the same manner and with the same force and effect as if the language of those sections had been incorporated in full into this section and had expressly referred to the taxes imposed by this section.

Section 1212-A(a)(2) of the Tax Law authorizes New York City to impose a local sales tax at the same uniform rate on "beauty, barbering, hair restoring, manicuring, pedicuring, electrolysis, massage services and similar services, and every sale of services by weight control salons, health salons, gymnasiums, turkish and sauna bath and similar establishments and every charge for the use of such facilities . . . but excluding services rendered by a physician, osteopath, dentist, nurse, physiotherapist, chiropractor, podiatrist, optometrist, ophthalmic dispenser or a person performing similar services licensed under title VIII of the education law;" such tax to be administered and collected by the Commissioner of Taxation and Finance.

Section 11-2002(h) of the Administrative Code of the City of New York imposes sales tax, in part, on:

Receipts from . . . massage services and similar services, and every sale of services by weight control salons, health salons, gymnasiums, turkish and sauna bath and similar establishments and every charge for the use of such facilities. . . .

Section 527.11(b) of the Sales and Use Tax Regulations provides, in part, the following definitions of terms that are contained in section 1105(f)(2) of the Tax Law:

(5) Club or organization. (i) The phrase *club or organization* means any entity which is composed of persons associated for a common objective or common activities. Whether the organization is a membership corporation or association or business corporation or other legal type of organization is not relevant. Significant factors, any one of which may indicate that an entity is a club or organization, are: an organizational structure under which the membership controls social or athletic activities, tournaments, dances, elections, committees, participation in the selection of members and management of the club or organization, or possession by the members of a proprietary interest in the organization. The organizational structure may be formal or informal.

(ii) A *club or organization* does not exist merely because a business entity:

(a) charges for the use of facilities on an annual or seasonal basis, even if an annual or season pass is the only method of sale and provided such passes are sold on a first-come, first-served basis;

(b) restricts the size of the membership solely because of the physical size of the facility. Any other type of restriction may be viewed as an attempt at exclusivity;

(c) uses the word *club* or *member* as a marketing device;

(d) offers tournaments, leagues and social activities which are controlled solely by the management.

* * *

(7) Athletic club. (i) An *athletic club* is any club or organization which has as a material purpose or activity the practice, participation in or promotion of any sports or athletics.

* * *

(ii) *Athletic activities* does not include exercising or calisthenics solely for health or weight reduction purposes, as contrasted to sports. An establishment that merely provides steam baths, saunas, rowing machines, shaking machines and other exercise equipment shall not be considered an athletic club. However, there is a . . . local sales tax in the city of New York on every sale of services by weight control salons, health salons, gymnasiums, Turkish baths, sauna baths and similar establishments, and on every charge for the use of such facilities.

Opinion

The fees paid by Company's clients entitle them to participate in group Pilates classes or, by appointment, in one-on-one Pilates sessions with an instructor. Such activities are provided at Company's facility and include the use of various exercise equipment to improve the client's physical well-being and overall fitness.

The fees paid by the clients for the use of the facility do not constitute admissions to a place of amusement. Therefore, such fees are not subject to sales tax on admission charges under section 1105(f)(1) of the Tax Law. See *Pontius Realty, Inc.*, Adv Op Comm T&F, May 31, 2000, TSB-A-00(26)S. The clients do not control any social or athletic activities, do not participate in the management of the facility or in the selection of other participants, or possess any proprietary interest in Company. The number of clients or participants is restricted solely because of the physical size of the facility. Therefore, the facility is not a social or athletic club as defined in section 1101(d)(13) of the Tax Law and paragraphs (5) and (7) of section 527.11(b)

of the Sales and Use Tax Regulations. Accordingly, charges to the clients are not subject to tax as dues paid to a social or athletic club under section 1105(f)(2) of the Tax Law.

Since Pilates classes and personal Pilates instruction are not included within the services enumerated under section 1105(c) of the Tax Law and the fees for such services are not subject to the tax imposed under section 1105(f), the charges for such classes are not subject to the New York State sales tax.

Based on the facilities and services provided, Company's facility does, however, constitute a weight control salon, gymnasium, or other establishment as described in section 11-2002(h) of the Administrative Code of the City of New York. See *Pontius Realty, Inc., supra*, and section 527.11(b)(7)(ii) of the Sales and Use Tax Regulations. Section 11-2002(h) of the Administrative Code imposes local sales tax on the receipts from every sale of services and charges for the use of the facilities by weight control salons, health salons, gymnasiums, and similar establishments located in New York City. Clients are provided with Pilates classes and personal Pilates instruction for a fee. Since Company's facility is a weight control salon, gymnasium, or similar establishment, the fees for Pilates classes and personal Pilates instruction are charges for the sale of a service of and for the use of such a facility and are subject to New York City sales tax under section 11-2002(h).

Therefore, the separate fees paid by Company's clients for Pilates classes and personal Pilates instruction are subject to New York City sales tax under section 11-2002(h) of the Administrative Code of the City of New York, but are not subject to New York State sales tax.

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