

**TENNESSEE DEPARTMENT OF REVENUE
LETTER RULING # 11-19**

WARNING

Letter rulings are binding on the Department only with respect to the individual taxpayer being addressed in the ruling. This presentation of the ruling in a redacted form is informational only. Rulings are made in response to particular facts presented and are not intended necessarily as statements of Department policy.

SUBJECT

Application of the Tennessee sales tax to sports and fitness center membership fees.

SCOPE

This letter ruling is an interpretation and application of the tax law as it relates to a specific set of existing facts furnished to the Department by the taxpayer. The rulings herein are binding upon the Department, and are applicable only to the individual taxpayer being addressed.

This letter ruling may be revoked or modified by the Commissioner at any time. Such revocation or modification shall be effective retroactively unless the following conditions are met, in which case the revocation shall be prospective only:

- (A) The taxpayer must not have misstated or omitted material facts involved in the transaction;
- (B) Facts that develop later must not be materially different from the facts upon which the ruling was based;
- (C) The applicable law must not have been changed or amended;
- (D) The ruling must have been issued originally with respect to a prospective or proposed transaction; and
- (E) The taxpayer directly involved must have acted in good faith in relying upon the ruling; and a retroactive revocation of the ruling must inure to the taxpayer's detriment.

FACTS

[TAXPAYER] operates a sports and fitness center at its [CENTER NAME] in [CITY], Tennessee for the benefit of [REDACTED INFORMATION], as well as community members.¹

[TAXPAYER]'s [REDACTED] are members of the [CENTER] facilities and, upon payment of a [REDACTED] fee, automatically receive access privileges during [TIME PERIOD]. Effective [DATE], employees [REDACTED] receive free memberships while employed by [TAXPAYER].

Family members of [REDACTED], as well as [TAXPAYER]'s [REDACTED], staff and their family members, and members of the community, access [CENTER] upon completion of a membership form and payment of membership fees to [CENTER]. Members who do not have a valid [TAXPAYER] photo identification card are required to pay an activation fee to obtain a [CENTER] photo identification card that is used to gain entry to the physical fitness areas. Guests accompanying a [CENTER] member may purchase a guest pass, valid for one day, and use any [CENTER] facility. Guests do not complete a membership form. [CENTER] also charges rental fees for towels, lockers, the golf simulator, outdoor equipment (*i.e.*, tents, sleeping bags and pads, camping equipment, backpacks, kayaks, paddles, personal flotation devices, helmets, bicycles, etc.) and for use of the facility for special events.

[CENTER] employs four full-time professional staff members, one of which is the Fitness Coordinator. The Fitness Coordinator is certified by the Aerobics and Fitness Association of America as a personal fitness trainer and group exercise instructor and holds a CPR certification. The Director of [CENTER], another of the professional staff members, also holds a CPR certification and is certified by the American Red Cross to conduct CPR and first aid training courses. Both of these employees are employed year round and generally work a regular 40-hour per week schedule.

Both the Fitness Coordinator and the Director of [CENTER] are certified to perform health assessments and physical fitness testing. The physical fitness testing is used to assess the member's current fitness level, in order to devise an individualized fitness program. These employees also administer participant questionnaires, which are given to persons interested in starting a physical fitness program to determine the safety or possible risk of exercise for them.

[CENTER] does not currently employ a staff member licensed by the state of Tennessee in a medical and/or paramedical discipline. However, the [TAXPAYER] [CENTER] works with the [REDACTED] to provide auxiliary services such as massage therapy. [REDACTED] does have staff licensed by the state of Tennessee in a medical and/or paramedical discipline.

During the [TIME PERIOD], the facilities are open an average of 91 hours per week. At all other times, the facilities are open an average of 85 hours per week. Members are entitled to participate each day the facilities are open, but specific areas may be closed for a certain period of time due to a special event or program. During the times a specific area is closed for a special event or program, [CENTER] members have access to other parts of the facilities.

¹ [TAXPAYER] has indicated that the facts presented in this letter ruling are valid with respect to all periods beginning [DATE].

The [CENTER] facilities have over [NUMBER OVER 15,000] square feet used for physical fitness purposes; approximately [NUMBER OVER 15,000] square feet of [REDACTED] are used as physical fitness and participant space. Each space has square footage allotted for physical fitness, as outlined below:

[REDACTED]

[CENTER] offers the following programs, activities, and equipment to its members: racquetball; exercise equipment; a track for walking, jogging, and running; pools; and aerobic and group exercise instruction.

QUESTIONS

1. Are the fees for both full-year and partial memberships in [CENTER] exempt for purposes of the Tennessee sales tax pursuant to TENN. CODE ANN. § 67-6-330(a)(17) (Supp. 2010)?
2. If the membership dues collected by [CENTER] are exempt from the Tennessee sales tax pursuant to TENN. CODE ANN. § 67-6-330(a)(17) (Supp. 2010), is the exemption applicable retroactively to [DATE], with respect to sales of full-year memberships?
3. Are the activation fees collected for photo identification cards exempt pursuant to TENN. CODE ANN. § 67-6-330(a)(17) (Supp. 2010)?
4. Are the charges for guest passes to the [CENTER] facilities exempt pursuant to TENN. CODE ANN. § 67-6-330(a)(17) (Supp. 2010)?
5. Are fees charged by [CENTER] for the use of towels, lockers, and outdoor equipment exempt pursuant to TENN. CODE ANN. § 67-6-330(a)(17) (Supp. 2010)?
6. Are the fees collected by [CENTER] for rentals of the facilities to non-exempt entities exempt pursuant to TENN. CODE ANN. § 67-6-330(a)(17) (Supp. 2010)?

RULINGS

1. Yes. The fees for both full year and partial memberships in [CENTER] are exempt for purposes of the Tennessee sales tax pursuant to TENN. CODE ANN. § 67-6-330(a)(17) (Supp. 2010).
2. TENN. CODE ANN. § 67-6-330(a)(17)(B) (Supp. 2010) requires that the exemption be approved by the Department of Revenue. The effective date of the exemption will be determined based on information provided in the application for exemption and is permitted to predate the filing of the exemption application.
3. Yes. The activation fees collected for photo identification cards are exempt for purposes of the Tennessee sales tax pursuant to TENN. CODE ANN. § 67-6-330(a)(17) (Supp. 2010).
4. Yes. The charges for guest passes to the [CENTER] facilities are exempt for purposes of the Tennessee sales tax pursuant to TENN. CODE ANN. § 67-6-330(a)(17) (Supp. 2010).

5. Yes. Fees charged by [CENTER] for use of towels, [CENTER] lockers, and outdoor equipment are exempt for purposes of the Tennessee sales and use tax pursuant to TENN. CODE ANN. § 67-6-330(a)(17) (Supp. 2010).
6. Yes. The charges for rentals of the [CENTER] facilities to non-exempt entities are exempt for purposes of the Tennessee sales tax pursuant to TENN. CODE ANN. § 67-6-330(a)(17) (Supp. 2010).

ANALYSIS

The Tennessee Retailers' Sales Tax Act, TENN. CODE ANN. § 67-6-101, *et seq.*, imposes the sales and use tax on retail sales in Tennessee of tangible personal property and certain enumerated services. In addition, TENN. CODE ANN. § 67-6-212 (Supp. 2010) generally imposes the sales tax on admission charges, dues, and fees to various recreational activities and events, as well as on charges for the use of tangible personal property in such activities.

1. Membership fees

The fees for both full-year and partial memberships in [CENTER] are exempt for purposes of the Tennessee sales tax pursuant to TENN. CODE ANN. § 67-6-330(a)(17) (Supp. 2010).

TENN. CODE ANN. § 67-6-212(a)(1) (Supp. 2010) imposes the Tennessee sales tax on the sales price of “[d]ues or fees to recreation clubs,” including “any fees paid for the use of facilities or services rendered at a health spa or club or any similar facility or business.” TENN. COMP. R. & REGS. 1320-5-1-.116(3) (2000) (“Rule 116(3)”) provides that membership dues or fees “shall include initiation fees ... and any other fees required for membership.” [CENTER] is a sports and fitness center that is properly characterized as a “health spa or club or any similar facility or business” within the meaning of TENN. CODE ANN. § 67-6-212(a)(1).

Accordingly, the fees for both full-year and partial memberships in [CENTER] will be generally subject to the Tennessee sales tax, unless a specific exemption from taxation applies. As discussed below, the fees come within the scope of the exemption provided by TENN. CODE ANN. § 67-6-330(a)(17)(A) and are therefore exempt for purposes of the sales tax.²

Specifically, TENN. CODE ANN. § 67-6-330(a)(17)(A) exempts from the sales tax imposed by TENN. CODE ANN. § 67-6-212 “[d]ues, membership application fees, admission fees, contributions or rental charges for equipment paid to any corporation or enterprise that offers, on a regular, full-time basis, services or facilities for the development or preservation of physical fitness through exercise or athletics.” To qualify for the exemption, [CENTER] must also meet the following requirements, which are set forth under TENN. CODE ANN. § 67-6-330(a)(17)(A)(i)-(v): i) the enterprise must have at least one full-time employee certified in administering health assessments, or at least one full-time employee licensed by the state that represents a medical and/or paramedical discipline; ii) the facility must be open at least seventy hours per week; iii) the enterprise must permit participation by each member each day in operation; iv) the facility must have at least 15,000 square feet in use for physical fitness purposes; and v) the enterprise

² Note that TENN. CODE ANN. § 67-6-330(a)(17)(B) disallows the exemption for any taxpayer that is listed under Industry 7992 and Industry 7997 of the Standard Industrial Classification Index of 1987. The Taxpayer is not an entity listed under either of these classifications.

must offer three or more of the following programs and/or activities: health assessments that include blood chemistry and urinalysis; racquetball; exercise equipment; track or swimming; and aerobics.

Here, [CENTER] satisfies the initial set of requirements under TENN. CODE ANN. § 67-6-330(a)(17)(A). First, the fees for both full year and partial memberships in [CENTER] are properly characterized as dues, membership application fees, or admission fees. Second, [CENTER] constitutes an enterprise that offers services or facilities for the development or preservation of physical fitness through exercise or athletics. Third, such services and facilities are offered on a regular, full-time basis.

[CENTER] also meets the additional requirements set forth under TENN. CODE ANN. § 67-6-330(a)(17)(A)(i)-(v), as explained below.

TENN. CODE ANN. § 67-6-330(a)(17)(A)(i) requires that the enterprise have at least one full-time employee certified in administering health assessments, or at least one full-time employee licensed by the state that represents a medical and/or paramedical discipline. [CENTER] employs a Fitness Director and a Director of [CENTER] as full-time professional staff members. The Fitness Coordinator and the Director of [CENTER] are certified to perform health assessments and physical fitness testing.

TENN. CODE ANN. § 67-6-330(a)(17)(A)(ii) requires that the facility be open at least seventy hours per week. The facts indicate that [CENTER] satisfies this requirement. During the [REDACTED TIME PERIOD], the facilities are open an average of 91 hours per week. At all other times, the facilities are open an average of 85 hours per week.

TENN. CODE ANN. § 67-6-330(a)(17)(A)(iii) provides that the enterprise must permit participation by each member each day in operation. The Taxpayer has indicated that [CENTER] members are entitled to participate each day the facilities are open, although specific areas may be closed for a certain period of time due to a special event or program. During the times a specific area is closed for a special event or program, [CENTER] members have access to other parts of the [CENTER] facilities. Accordingly, [CENTER] permits participation by each member each day in operation.

TENN. CODE ANN. § 67-6-330(a)(17)(A)(iv) requires that the facility have at least 15,000 square feet in use for physical fitness purposes. As indicated in the Facts section, above, these facilities contain well in excess of 15,000 square feet of space dedicated to use for physical fitness purposes.

TENN. CODE ANN. § 67-6-330(a)(17)(A)(v) provides that the enterprise must offer three or more of the following programs and/or activities: health assessments that include blood chemistry and urinalysis; racquetball; exercise equipment; track or swimming; and aerobics. The Taxpayer has indicated that [CENTER] offers the following programs, activities, and equipment to its members: racquetball; exercise equipment; a track for walking, jogging, and running; pools; and aerobic and group exercise instruction. The Taxpayer therefore satisfies this final requirement.

Accordingly, the fees for both full-year and partial memberships in [CENTER] are exempt for purposes of the Tennessee sales tax pursuant to TENN. CODE ANN. § 67-6-330(a)(17).

2. Retroactive application of the exemption

The Taxpayer is precluded from claiming the exemption under TENN. CODE ANN. § 67-6-330(a)(17)(A) until the Department has actually approved its claim of entitlement to exempt status. TENN. CODE ANN. § 67-6-330(a)(17)(B) provides that “[b]efore any corporation or enterprise can be exempted” under TENN. CODE ANN. § 67-6-330(a)(17)(A), the Department “shall, based upon information supplied by the person claiming such exemption, approve such exemption.”

However, if the application supports a determination by the Department that all statutory criteria for exemption were satisfied prior to the application date, the Department can approve the exemption with an effective date that is prior to the application date.

3. Activation fees for photo identification cards

The activation fees collected for photo identification cards are exempt pursuant to TENN. CODE ANN. § 67-6-330(a)(17).

TENN. CODE ANN. § 67-6-212(a)(1) imposes the Tennessee sales tax on the sales price of “[d]ues or fees to recreation clubs,” including “any fees paid for the use of facilities or services rendered at a health spa or club or any similar facility or business.” However, TENN. CODE ANN. § 67-6-330(a)(17)(A) exempts from the sales tax imposed by TENN. CODE ANN. § 67-6-212 “[d]ues, membership application fees, admission fees ... paid to any corporation or enterprise that offers, on a regular, full-time basis, services or facilities for the development or preservation of physical fitness through exercise or athletics.” Rule 116(3) provides that membership dues or fees “shall include initiation fees ... and any other fees required for membership.” As discussed in the response to Question #1, above, the requirements found under TENN. CODE ANN. § 67-6-330(a)(17)(A)(i)-(v) must also be met for the exemption to apply.

Here, the activation fees collected for photo identification cards are properly characterized as fees paid for the use of the [CENTER] facilities. Members who do not have a valid [TAXPAYER] photo identification card are required to pay the fee to obtain a [CENTER] photo identification card, which is used to gain scanned entry to the physical fitness areas. Thus, the fee for the photo identification card is in essence a fee that is required for admission to the [CENTER] facility; in accordance with Rule 116(3), the fee therefore constitutes a membership fee.

Therefore, the activation fees collected for photo identification cards are subject to the Tennessee sales tax pursuant to TENN. CODE ANN. § 67-6-212(a)(1). However, as explained in the response to Question #1, membership and admission fees paid for the use of the [CENTER] facilities come within the scope of the exemption under TENN. CODE ANN. § 67-6-330(a)(17)(A). Additionally, [CENTER] meets the additional requirements found under TENN. CODE ANN. § 67-6-330(a)(17)(A)(i)-(v).

Thus, the fees collected for photo identification cards constitute membership or admission fees that are exempt from the sales tax under TENN. CODE ANN. § 67-6-330(a)(17)(A), for the same reasons discussed in the response to Question #1.

4. Guest passes

The charges for guest passes to the [CENTER] facilities are exempt for purposes of the Tennessee sales tax pursuant to TENN. CODE ANN. § 67-6-330(a)(17).

TENN. CODE ANN. § 67-6-212(a)(1) imposes the Tennessee sales tax on the sales price of “[d]ues or fees to recreation clubs,” including “any fees paid for the use of facilities or services rendered at a health spa or club or any similar facility or business.” However, TENN. CODE ANN. § 67-6-330(a)(17)(A) exempts from the sales tax imposed by TENN. CODE ANN. § 67-6-212 “[d]ues, membership application fees, admission fees ... paid to any corporation or enterprise that offers, on a regular, full-time basis, services or facilities for the development or preservation of physical fitness through exercise or athletics.” As discussed in the response to Question #1, above, the requirements found under TENN. CODE ANN. § 67-6-330(a)(17)(A)(i)-(v) must also be met for the exemption to apply.

Here, the charges for [CENTER] guest passes are properly characterized as fees paid for the use of the [CENTER] facilities. Therefore, such charges are generally subject to the Tennessee sales tax pursuant to TENN. CODE ANN. § 67-6-212(a)(1). However, as explained in the response to Question #1, admission fees paid for the use of the [CENTER] facilities come within the scope of the exemption under TENN. CODE ANN. § 67-6-330(a)(17)(A). Additionally, [CENTER] meets the additional requirements found under TENN. CODE ANN. § 67-6-330(a)(17)(A)(i)-(v).

Thus, the charges for [CENTER] guest passes constitute admission fees that are exempt from the sales tax under TENN. CODE ANN. § 67-6-330(a)(17)(A), for the same reasons discussed in the response to Question #1.

5. Charges for use of various items

Fees charged by [CENTER] for use of towels, lockers, and outdoor equipment are exempt for purposes of the Tennessee sales and use tax pursuant to TENN. CODE ANN. § 67-6-330(a)(17) (Supp. 2010).

1) Outdoor equipment

Fees charged by [CENTER] for use of outdoor equipment are exempt for purposes of the Tennessee sales and use tax pursuant to TENN. CODE ANN. § 67-6-330(a)(17).

TENN. CODE ANN. § 67-6-212(a)(4) imposes the Tennessee sales tax on the sales price of “[c]harges made for the privilege of using tangible personal property for amusement, sports, entertainment, or recreational activities such as trampolines, golf carts, bowling shoes, skates or other sports and athletic equipment.” The outdoor equipment is tangible personal property used for such activities. Thus, charges for the use of these items are generally subject to the Tennessee sales tax under TENN. CODE ANN. § 67-6-212(a)(4).

However, TENN. CODE ANN. § 67-6-330(a)(17)(A) exempts from the sales tax imposed by TENN. CODE ANN. § 67-6-212 “rental charges for equipment paid to any corporation or enterprise that offers, on a regular, full-time basis, services or facilities for the development or preservation of physical fitness through exercise or athletics.” As discussed in the response to Question #1, above, the requirements found under TENN. CODE ANN. § 67-6-330(a)(17)(A)(i)-(v) must also be met for the exemption to apply.

Here, the outdoor equipment is properly characterized as “equipment” offered by [CENTER] for use in amusement, sports, entertainment, or recreational activities. Additionally, as discussed in the response to Question #1, [CENTER] meets the additional requirements found under TENN. CODE ANN. § 67-6-330(a)(17)(A)(i)-(v). Accordingly, fees charged by [CENTER] for use of the outdoor equipment are exempt for purposes of the Tennessee sales and use tax pursuant to TENN. CODE ANN. § 67-6-330(a)(17).

2) *Lockers and towels*

Charges for the use of towels and lockers constitute fees that are exempt from the sales tax under TENN. CODE ANN. § 67-6-330(a)(17)(A).

TENN. CODE ANN. § 67-6-212(a)(1) imposes the Tennessee sales tax on the sales price of “[d]ues or fees to recreation clubs,” including “any fees paid *for the use of facilities* or services rendered at a health spa or club or any similar facility or business.” (Emphasis added.) However, TENN. CODE ANN. § 67-6-330(a)(17)(A) exempts from the sales tax imposed by TENN. CODE ANN. § 67-6-212 “[d]ues, membership application fees, admission fees ... paid to any corporation or enterprise that offers, on a regular, full-time basis, services or facilities for the development or preservation of physical fitness through exercise or athletics.” As discussed in the response to Question #1, above, the requirements found under TENN. CODE ANN. § 67-6-330(a)(17)(A)(i)-(v) must also be met for the exemption to apply.

Here, charges for the use of towels and lockers are properly characterized as fees paid for the use of the [CENTER] facilities. Therefore, such charges are generally subject to the Tennessee sales tax pursuant to TENN. CODE ANN. § 67-6-212(a)(1). However, as explained in the response to Question #1, fees paid for the use of the [CENTER] facilities come within the scope of the exemption under TENN. CODE ANN. § 67-6-330(a)(17)(A). Additionally, [CENTER] meets the additional requirements found under TENN. CODE ANN. § 67-6-330(a)(17)(A)(i)-(v).

Thus, the charges for the use of towels and lockers constitute fees that are exempt from the sales tax under TENN. CODE ANN. § 67-6-330(a)(17)(A), for the same reasons discussed in the response to Question #1.

6. Rentals of the [CENTER] facilities

Charges for rentals of the [CENTER] facilities to non-exempt entities are exempt for purposes of the Tennessee sales tax pursuant to TENN. CODE ANN. § 67-6-330(a)(17).

As discussed above, TENN. CODE ANN. § 67-6-212(a)(1) imposes the Tennessee sales tax on the sales price of “[d]ues or fees to recreation clubs,” including “any fees paid for the use of facilities or services rendered at a health spa or club or any similar facility or business.” However, TENN. CODE ANN. § 67-6-330(a)(17)(A) exempts from the sales tax imposed by TENN. CODE ANN. § 67-6-212 “[d]ues, membership application fees, admission fees ... paid to any corporation or enterprise that offers, on a regular, full-time basis, services or facilities for the development or preservation of physical fitness through exercise or athletics.”

Here, charges made to non-exempt entities renting the [CENTER] facilities are properly characterized as fees paid for the use of the facilities. Therefore, such charges are generally subject to the Tennessee sales tax pursuant to TENN. CODE ANN. § 67-6-212(a)(1). However, as

explained in the response to Question #1, admission fees paid for the use of the [CENTER] facilities come within the scope of the exemption under TENN. CODE ANN. § 67-6-330(a)(17)(A). Additionally, [CENTER] meets the additional requirements found under TENN. CODE ANN. § 67-6-330(a)(17)(A)(i)-(v).

Thus, the charges for rentals of the [CENTER] facilities constitute admission fees that are exempt from the sales tax under TENN. CODE ANN. § 67-6-330(a)(17)(A), for the same reasons discussed in the response to Question #1.

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APPROVED: Richard H. Roberts
Commissioner of Revenue

DATE: 6/9/11