

**TENNESSEE DEPARTMENT OF REVENUE  
LETTER RULING # 08-22**

**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 and use tax to a weight loss program.

**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 his detriment.

**FACTS**

[THE TAXPAYER] is a company that sells a weight loss program, which includes the following components: a [NAME OF PROGRAM]; an exercise plan prepared by a [NAME - TRAINER]; use of a [FITNESS CENTER]; and a [NAME – PROGRAM]. Customers who purchase the weight loss program become members of the Fitness Center. As part of the [NAME OF PROGRAM], members are given menus designed by the Taxpayer's registered dietician from which to choose the members' meals. Members go to the Fitness Center two to three times per week for individual consultation, coaching, accountability and support.

The Fitness Center is located on-site at the same location as the office. The space allotted for the Fitness Center is about 900 square feet and includes an exercise room for classes and cardio and circuit training equipment. In addition, the Fitness Center is open to its members at any time the business is open. Members can use the Fitness Center regardless of whether they utilize another component of the weight loss program during the same visit. A [NAME – TRAINER] prepares an exercise program for members individually and meets with members every two weeks to reassess each member's activity level. As part of the [NAME – PROGRAM], members receive a weekly newsletter and monthly Life Success lessons with motivational tips, recipes and articles about various health issues. No supplements are provided along with the purchase of the weight loss program.

Members pay the same price whether or not they use the Fitness Center. The Taxpayer encourages and expects members to use the Fitness Center. In some cases, however, members live an hour away and do not use the Fitness Center regularly. Members pay an enrollment fee, which covers the cost of the first consultation and the processing of the paperwork. Then, members have the choice of paying the full price for a one-year or two-year membership, or they can make monthly payments. There is no finance charge.

The Taxpayer also sells protein drinks and bars, but does not sell any other prepackaged foods.

### **QUESTION**

Is the Taxpayer's weight loss program subject to the Tennessee sales and use tax?

### **RULING**

Yes, except for the first one hundred fifty dollars (\$150) per member per year of membership fees, which is exempt from the sales and use tax under Tenn. Code Ann. § 67-6-330(a)(3) (2006).<sup>1</sup>

### **ANALYSIS**

Retail sales in Tennessee are subject to sales and use tax under Tenn. Code Ann. § 67-6-101 *et seq.* Specifically, Tenn. Code Ann. § 67-6-212(a)(1) (Supp. 2007) levies a tax on the sales price of dues or fees to recreation clubs, including any fees paid for the use of facilities or services rendered at a health club or any similar facility. Furthermore, TENN. COMP. R. & REGS. 1320-5-1-116(1) ("Rule 116") provides that recreational clubs shall include establishments primarily engaged in operating health clubs and similar facilities featuring exercise and other active physical fitness conditioning. However, under Tenn. Code Ann. § 67-6-330(a)(3) (2006), the first one hundred fifty dollars (\$150) per member per year of membership dues or fees of a recreation club is exempt from the sales tax on dues or fees imposed by Tenn. Code Ann. § 67-6-

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<sup>1</sup> Note that the exemption for the first one hundred fifty dollars (\$150) per member per year of membership fees is scheduled to expire on July 1, 2009. In addition, legislation is pending to repeal the exemption. For updates, go to the Department's website at [www.state.tn.us/revenue/tntaxes/salesanduse.htm](http://www.state.tn.us/revenue/tntaxes/salesanduse.htm).

212, and if more than one year's dues are paid in advance, the one hundred fifty dollar (\$150) exemption shall be applied to each year's dues or fees.<sup>2</sup>

Accordingly, the Taxpayer's weight loss program is subject to the sales and use tax under Tenn. Code Ann. § 67-6-212(a)(1) (Supp. 2007) if the following requirements are met: (1) the Taxpayer is a health club or similar facility featuring exercise and other active physical fitness conditioning; and (2) the fees paid are for the use of facilities or services rendered at a health club or similar facility.

The Taxpayer's weight loss program is taxable under Tenn. Code Ann. § 67-6-212(a)(1) (Supp. 2007) as fees paid for the use of facilities or services rendered at a health club or similar facility.

The Taxpayer is a health club or similar facility featuring exercise and active physical fitness conditioning under Tenn. Code Ann. § 67-6-212(a)(1) (Supp. 2007). The Tennessee Supreme Court held that a business providing tanning services or tanning beds to customers for a charge qualifies as a "similar facility" to a health club because "health spas or clubs include tanning services and tanning beds among those services and equipment typically provided." *P & P Enterprises, Inc. v. Celauro*, 733 S.W.2d 878, 879 (1987) (quoting the trial court's findings). Based on the rationale of the Tennessee Supreme Court in *P & P Enterprises*, the Taxpayer qualifies as a health club, thus satisfying the first requirement, because health clubs typically offer what the Taxpayer's weight loss program provides, namely, use of a fitness center providing exercise classes and cardio and circuit training equipment and related services, such as weight management programs, personal trainers with exercise plans, and newsletters on health-related issues. *Id.* Furthermore, the fees paid for the weight loss program fall within the scope of Tenn. Code Ann. § 67-6-212(a)(1) (Supp. 2007) because the fees are *for the use of facilities* (*i.e.* the Fitness Center) *or services rendered* (*i.e.* the Weight Management Program, Exercise plan, and Life Success newsletter and lessons) (emphasis added). None of the services are provided off-site or at a location separate from where the Fitness Center is located, thus satisfying the second requirement.

Accordingly, the Taxpayer is a health club or similar facility featuring exercising and active physical fitness conditioning, and the fees paid are for use of its facilities or services rendered at the facility.

Therefore, the sale of the Taxpayer's weight loss program is subject to sales and use tax as fees paid for the use of facilities or services rendered at a health club or similar facility. However, under Tenn. Code Ann. § 67-6-330(a)(3) (2006), the first one hundred fifty dollars (\$150) per member per annum of membership dues or fees of a recreation club is exempt from the sales tax on dues or fees imposed by Tenn. Code Ann. § 67-6-212. If more than one year's dues are paid in advance, the one hundred fifty dollar (\$150) exemption shall be applied to each year's dues or fees. Accordingly, the first one hundred fifty dollars (\$150) each member pays for one year's membership to the weight loss program shall be exempt from the sales and use tax. However,

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<sup>2</sup> Tenn. Code Ann. § 67-6-330(a)(17)(A) (2006) provides an exemption for a physical fitness facility that meets several specific requirements, including the requirement in subdivision (iv) to have at least fifteen thousand (15,000) square feet in use for physical fitness purposes. Because the Taxpayer stated that only 900 square feet is provided for physical fitness purposes, this exemption is not available to the Taxpayer, and the additional requirements to meet the exemption do not need to be discussed.

under Rule 116,<sup>3</sup> membership fees include the Taxpayer's enrollment fee, so the enrollment fee is included in the application of the one hundred fifty dollar (\$150) exemption provided under Tenn. Code Ann. § 67-6-330(a)(3) (2006). Note that the exemption for the first one hundred fifty dollars (\$150) per year per member of membership fees is scheduled to expire on July 1, 2009. In addition, legislation is pending to repeal the exemption. For updates, go to the Department's website at [www.state.tn.us/revenue/tntaxes/salesanduse.htm](http://www.state.tn.us/revenue/tntaxes/salesanduse.htm).

Note that, although not included in the purchase of the weight loss program, the Taxpayer also sells protein drinks and bars. Tenn. Code Ann. § 67-6-202(a) (Supp. 2007) levies a tax on the sale at retail of tangible personal property, including protein drinks and bars. Therefore, the sale of protein drinks and bars is subject to the sales and use tax.<sup>4</sup>

### CONCLUSION

The Taxpayer's weight loss program is taxable under Tenn. Code Ann. § 67-6-212(a)(1) (Supp. 2007) as fees paid for the use of facilities or services rendered at a health club or similar facility because the Taxpayer is a health club or similar facility, and the fees paid for the weight loss program are for the use of its facilities or services rendered at the facility.

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APPROVED: Reagan Farr  
Commissioner of Revenue

DATE: 3-12-08

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<sup>3</sup> Rule 116(3) provides that "[m]embership dues or fees shall include initiation fees... and any other fees required for membership."

<sup>4</sup> Note that food is taxed at a rate of 5.5% of the sales price, a lower rate than the tax rate for tangible personal property, and what qualifies as food depends on its definition. See Tenn. Code Ann. §§ 67-6-102(36) and 67-6-228 (Supp. 2007). For more information, see Tennessee Department of Revenue Notice #07-14, available on the Department's website [www.state.tn.us/revenue](http://www.state.tn.us/revenue).