

June 5, 2015

[Taxpayer Representative]
[Address]
[Address]
[Address]

Re: Formal Ruling 15-02

Dear [Taxpayer Representative]:

This is a formal ruling for your company, [Taxpayer], doing business as [dba Name] regarding the applicability of sales tax to your customer charges. This ruling is based upon representations in your letter of [Date].

RULING

Based upon the facts presented, your charges for fitness class instruction are not subject to Vermont sales and use tax.

FACTS

Your letter describes the following facts:

You are the sole proprietor of [Taxpayer], which operates a franchise of [dba Name] in [Location], Vermont. You charge your customers per class for fitness instruction provided at your business location. You do not provide equipment to your customers other than that used during instruction. Your business is not a full service club and is not open during times when fitness instruction is not being provided.

You do not state whether customers may use your space or equipment, or both, during times when instruction is being provided to other customers. You do not state whether customers must pay a membership charge or other charge in addition to the per-class charge.

You have asked for a ruling that the fitness class instruction, as described, is not subject to Vermont sales and use tax.

DISCUSSION

Vermont's sales and use tax includes a tax on admission to places of amusement. 32 V.S.A. § 9771(4). This tax applies to charges for the use of health clubs and athletic facilities, including gymnasiums. Vermont Sales and Use Tax Regulations ("Reg.") § 1.9771(4)-1.D.2. This tax, however, specifically does not apply to charges for classes or instruction in athletics or recreation, or instruction in the use of athletic or recreational equipment, or to charges that incidentally allow access to a recreational facility, solely for the purpose of the instruction. Reg. § 1.9771(4)-1.E.1. But if the price of the instruction includes use of the facility before or after the class, the charge must be allocated between the cost of the class and the cost of access to the facility. Id. In addition, if the instruction is included in a charge for access to a facility, the entire charge is taxable. Id. The regulation relating to nontaxable charges for athletic instruction reads:

E. The following non-exclusive list is illustrative of charges that are not taxable as amusement charges:

1. Charges for classes or instruction in athletics or recreation, or in the use of athletic or recreational equipment, that may allow access to a recreational facility solely for the purpose of the instruction. If the class includes access to the recreational facility beyond the scope of that required for the class or instruction, however – for example, continued access to a ski area or golf course for the remainder of the day after completion of the class or instruction – the charge must be allocated between the non-taxable instruction and the taxable charge for

use of the facility. If charges for admission to a place of amusement include optional access to classes or instruction, the full charge is taxable. For example, a gym membership charge is fully taxable even though a member may choose to take aerobics or other instruction at no additional cost to the member. If the gym offers classes or instruction for an optional cost above the charge for membership, and such cost is separately stated and charged, the additional fee is not taxable;

Id. As you note, the Department has issued two Formal Rulings in similar cases in which it ruled that the sales tax does not apply to charges made solely for athletic instruction. Vt. Dept. of Taxes Formal Rulings 92-05 (June 3, 1992) and 2011-15 (November 29, 2011).

As a result, your charges solely for fitness class instruction are not subject to sales tax. The tax would apply, however, if the class charge covered access to the facility or equipment at times other than class time.

GENERAL PROVISIONS

This ruling will be made public after deletion of the parties' names and any information which may identify the parties. A copy of this ruling showing the proposed deletions is attached, and you may request within 30 days that the Commissioner delete any further information that might identify the parties. The final discretion as to deletions rests with the Commissioner.

This ruling is issued solely to the taxpayer and is limited to the facts presented, as affected by current statutes and regulations. Other taxpayers may refer to this ruling, when redacted to protect confidentiality, to determine the department's general approach, but the Department will not be bound by this ruling in the case of any other taxpayer or in the case of any change in the relevant statutes or regulations.

You have the right to appeal this ruling within 30 days. 3 V.S.A. §§ 808, 815.

Emily Bergquist

Date

Approved:

Mary N. Peterson
Commissioner of Taxes

Date