Ruling 92-05

Vermont Department of Taxes

Date: June 3, 1992

Written By: Gloria Hobson, Director, Business Taxes Division

Approved By: Joyce H. Errecart, Commissioner of Taxes

You have requested a formal ruling on the application of Vermont's sales and use tax and meals and rooms tax on charges made by a health and fitness club. This ruling relies on the representations contained in your letter of November 26, 1991.

You operate a full service club with two fitness areas with extensive equipment, two aerobic studios, an indoor swimming pool, whirlpool, tennis and racquetball courts. The club has certified instructors who work with members. You indicate many of your members regularly work-out on conditioning equipment or cardiovascular programs to increase their fitness and wellness.

You request a ruling on whether the following services provided by the club are subject to sales and use tax:

1. Dues of members who use the fitness facilities for rehab or for wellness, as prescribed by a doctor. Dues charged for a membership at [Company] and similar facilities are taxable as admission charges to a place of recreation or amusement which includes athletic facilities. 32 V.S.A. Section 9771 and Section 9701 (10). The statute does not provide any exemption from the sales and use tax on amusement charges for admission to athletic facilities based on the use of the athletic facilities for rehabilitation or general wellness.

2. The charges for various services offered by the club: tennis or swimming instruction; babysitting; massage; nutritional; counseling; fitness class instruction.

   If these charges are optional from the membership fees and separately stated, they are exempt from sales and use tax.

3. Charges to rent a permanent locker. If the charge is optional from the membership fees and separately stated, the charge is exempt from tax as rental of real property.

4. Charges to rent a racquet. This charge is subject to sales and use tax as a sale of tangible personal property. Under 32 V.S.A. Section 9701(6), sale is defined as transfer of title, possession or both, exchange or barter, rental, lease or license to use.

5. Fees for a tournament or round robin. These fees are subject to sales and use tax on amusement charges. The participants must pay the fee to participate in the tournament and an inseparable part of participation is the use of athletic facilities. The charge to use athletic facilities is taxable.

6. Hold fee on inactive memberships. You described in our telephone conversation the week of May 18, 1992 that a hold fee was in lieu of the monthly membership when a member is unable to use the club. This secures the membership so the member does not have to go through application and initiation fees again. This charge is taxable as the hold fee is essentially a reduced membership fee.

7. Towel rentals. Optional, separately stated charges for towel rentals are exempt from tax as a service rather than rental of tangible personal property. If the club buys the towels they rent to members, the club pays the sales and use tax on the purchase of the towels. Reg.1.9801(6)-1.

8. Restringing of racquets. The charge for restringing a racquet is exempt from tax. Restringing is a professional service where tangible personal property (the string) is transferred as part of the service and the value of the tangible personal property is inconsequential to the value of the service. No separate charge may be made for the tangible personal property. The person doing the restringing pays sales and use tax when the string is purchased.

9. Rental of tanning beds. The fees for rental of tanning beds are subject to sales and use tax on amusement charges.

10. Club rental charges to an outside group for a party or function. The charge to outside groups for admission to and use of the club's facilities is subject to sales and use tax on amusement charges.

11. Candy dispensed from a vending machine. Candy and confections are not subject to the meals tax. Reg. 1.9232.8(D)

12. Bottled juice dispensed from a vending machine. Bagels and fruit as self-service. All these items are subject to the meals tax. Food in individual portions and ready to eat that are sold from the portion of the club designed as an eating and drinking establishment are taxable. Vending machines and the coffee shop are considered eating and drinking establishments. 32 V.S.A. V.S.A. Section 9201(10) and Reg. 1.9232.8(D).

This ruling is issued solely to your firm and is limited to the facts presented as affected by current statutes and regulations. Other taxpayers may refer to this ruling 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.