

**TENNESSEE DEPARTMENT OF REVENUE
LETTER RULING # 95-19A**

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 T.C.A. § 67-6-330(a)(19) to health and fitness club created as an adjunct to a golf club.

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], [ADDRESS], Tennessee [ZIP], is a private club organized as a non-profit corporation providing to its members numerous social, recreational and health activities such as tennis, golf, swimming, racquetball, weight training, cardiovascular

exercise, dining and other social events. The taxpayer is considering splitting its organization into two separate and distinct, non-profit entities. Under the plan, a new non-profit corporation would be formed for the purpose of conducting a health and fitness club as defined by the provisions of T.C.A. § 67-6-330(a)(19). Membership fees and dues for this club would be comparable to other clubs within the community of the same membership size, physical plant and social stature. The original corporation would continue as a golf club. All new members of the golf club would be required to purchase a membership in the health club. In addition to the initiation fee and dues payable to the health club by each new golf club member, an additional and separate initiation fee and dues structure would be established for the golf club and apply only to its members. Persons could choose to join the health club alone without also joining the golf club. The health club membership fee will be the same for both golf club members and non-members.

Both the golf club and health club corporations would maintain their own payrolls, books, and accounts. Health club membership dues and initiation fees would in all cases be paid directly and solely to the health club corporation.

QUESTION

Based upon the foregoing, would the initiation fees and dues collected by the newly-formed health club corporation be exempt from sales tax pursuant to T.C.A. § 67-6-330 (a)(19)?

RULING

Assuming the specific statutory requirements of T.C.A. § 67-6-330 (a)(19) are met, health club dues and initiation fees paid to the health club would be exempt under the cited exemption statute. Golf club dues and initiation fees paid by golf club members to the golf club would be subject to sales tax.

ANALYSIS

T.C.A. § 67-6-212 provides in relevant part as follows:

(a) There is levied a tax at a rate equal to the rate of tax levied on the sale of tangible personal property at retail by the provisions of T.C.A. § 67-6-202 of the gross receipts or gross proceeds of each sale at retail of the following:

(1) Dues or fees to membership sports and recreation clubs, including free or complimentary dues or fees, when such are made in connection with a valuable contribution to any such establishment or organization, which shall have the value equivalent to the charge that would otherwise have been made,

including any fees paid for the use of facilities or services rendered at a health spa or club or any similar facility or business;

T.C.A. § 67-6-330(a)(19) provides an exemption to the tax imposed above as follows:

(19) Dues, membership application fees, admission fees, contributions or rental charges for equipment paid to any corporation or enterprise which offers on a regular, full-time basis services or facilities for the development or preservation of physical fitness through exercise or athletics; provided, that such corporation or enterprise claiming this exemption, in order to qualify for such exemption, must:

(A) Have at least one (1) full-time employee certified in administering health assessments, or at least one (1) full-time employee licensed by the state that represents a medical and/or paramedical discipline;

(B) Be open at least seventy (70) hours per week;

(C) Permit participation by each member each day in operation;

(D) Have at least fifteen thousand square feet (15,000 sq. ft.) in use for physical fitness purposes; and

(E) Offer three (3) or more of the following programs and/or activities:

(i) Health assessments which include blood chemistry and urinalysis;

(ii) Racquetball;

(iii) Exercise equipment;

(iv) Track or swimming; and

(v) Aerobics.

Before any corporation or enterprise can be exempted under this subdivision, the department of revenue shall, based upon information supplied by the person claiming such exemption, approve such exemption. The exemption provided in this subdivision shall not apply, however, to establishments listed under Industry 7992 and Industry 7997 of the Standard Industrial Classification Index of 1987, prepared by the office of management and budget of the federal government.

Assuming as stated in the facts that the health club corporation to be established meets the requirements of T.C.A. § 67-6-330(a)(19), then the dues and/or initiation fees paid to the health club for membership will be exempt under the cited provision. Golf club membership dues and initiation fees will remain taxable. Although membership in the health club is mandatory for golf club members, the health club dues and initiation fees are paid solely to the health club and cannot be considered as the gross receipts of the golf club subject to tax under T.C.A. § 67-6-212.

Steven Thomas
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APPROVED: Ruth Johnson, Commissioner

DATE: 6/29/95