

**TENNESSEE DEPARTMENT OF REVENUE
LETTER RULING # 21-02**

Letter rulings are binding on the Department only with respect to the individual taxpayer being addressed in the ruling. This ruling is based on the particular facts and circumstances presented and is an interpretation of the law at a specific point in time. The law may have changed since this ruling was issued, possibly rendering it obsolete. The presentation of this ruling in a redacted form is provided solely for informational purposes and is not intended as a statement of Departmental policy. Taxpayers should consult with a tax professional before relying on any aspect of this ruling.

SUBJECT

The application of Tennessee sales and use tax to fees and dues charged for membership in a professional membership organization.

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] (the "Taxpayer") is a business league exempt from federal income taxation under Internal Revenue Code § 501(a) as an organization described in § 501(c)(6). The Taxpayer is a not-for-profit professional membership association for the [REDACTED] profession and is the [REDACTED]. The Taxpayer is headquartered in [CITY, STATE]. The Taxpayer provides its members with certifications,

resources, tools, academic research, publications, professional development courses, and networking opportunities.

The Taxpayer's primary membership is the [REDACTED] (the "Individual Membership"). The Individual Membership costs [AMOUNT] per year, plus a one-time [AMOUNT] application fee. The Individual Membership provides members with connections to the global community of [INDUSTRY] professionals, discounts on certification exam fees and professional development opportunities, and advance access to conferences and seminars. More specifically, the Individual Membership includes the following: certification status tracking, the ability to download a free copy of the [TAXPAYER'S PUBLISHED] Guide, access to more than [NUMBER] electronic tools and templates,¹ discounts on certifications, access to free on-demand webinars, access to virtual and in-person events, access to the Taxpayer's online job board, access to the Taxpayer's online publications, and exclusive rewards and discounts.²

Individual Members primarily interact with the Taxpayer through an online dashboard, which allows a member to access and update profile information, view a list of upcoming events and webinars, take e-learning courses, search webinars using keywords, register for webinars, conduct research, access links to information about certifications as well as see an overview of active applications for certifications. Through the dashboard a member can sign up for a [USER] profile, which can be linked to their [REDACTED] member account. Members are not required to utilize any of the Taxpayer's products and services, and, according to the Taxpayer, many members do not utilize the dashboard or online materials.

The Taxpayer also offers a free [REDACTED] membership³ that permits a user access to the Taxpayer's global community and gives the user the ability to track certification status through the Taxpayer's online dashboard. [FREE MEMBERS] can also access the [TAXPAYER'S ONLINE] store to purchase various books, the [TAXPAYER'S PUBLISHED] Guide, exam preparation materials, e-learning courses, and virtual events, all at regular price. [FREE MEMBERS] cannot access the more than [NUMBER] electronic tools and templates, the online job board, or online publications; these items are only available to paying members.

RULING

Is the Taxpayer's sale of an Individual Membership subject to Tennessee sales and use tax?

Ruling: No. The Taxpayer's sale of an Individual Membership is not subject to Tennessee sales and use tax.

¹ The electronic tools and templates are in Excel, PowerPoint, or Microsoft Project format.

² [LINKS TO TAXPAYER'S WEBSITE]

³ The Taxpayer also offers [OTHER MEMBERSHIP] options. At the Taxpayer's request, this ruling only addresses the taxability of the Individual Membership and is not applicable to the Taxpayer's other membership offerings.

ANALYSIS

Under the Retailer's Sales Tax Act (the "Act"),⁴ retail sales in Tennessee of tangible personal property and specifically enumerated services are subject to the sales tax, unless an exemption applies. Included among the things taxable under the Act are certain membership fees and dues.⁵ Professional memberships, however, are not listed as taxable on a stand-alone basis, as a service, or as an amusement.⁶

The Taxpayer is a not-for-profit professional membership organization. As part of the Individual Membership that the Taxpayer offers, the purchaser receives access to some nontaxable services and some taxable items such as the [TAXPAYER'S PUBLISHED] Guide, e-learning courses, and pre-recorded on-demand webinars.⁷ These benefits to membership, however, do not necessarily result in the membership fees becoming taxable.

Under the facts presented, members receive access to a variety of benefits most of which are not taxable. The added benefits are not essential⁸ to the membership sales. In fact, members may or may not take advantage of these items. The [TAXPAYER'S PUBLISHED] Guide, e-learning courses, and pre-recorded on-demand webinars offered with an Individual Membership are better classified as incidental to the sale of the Individual Membership and, as such, do not alter the taxability of the Individual Membership sales. Accordingly, the Taxpayer's Individual Membership is not subject to the Tennessee sales and use tax.

APPROVED: David Gerregano
Commissioner of Revenue

DATE: 2/9/2021

⁴ Tennessee Retailers' Sales Tax Act, Ch. 3, §§ 1-18, 1947 Tenn. Pub. Acts Ch. 22, §§ 2254 (codified as amended at TENN. CODE ANN. §§ 67-6-101 to -907 (2018 & Supp. 2020)).

⁵ TENN. CODE ANN. § 67-6-212.

⁶ TENN. CODE ANN. §§ 67-6-205 and 67-6-212.

⁷ Note that while live instruction is not subject to sales tax, the *separate sale* of a pre-recorded video that is accessed by subscribers or consumers in this state, whether members or nonmembers, is subject to sales tax as the sale of access to a specified digital product. This is true even if the pre-recorded video is of an online course that was previously livestreamed. Subscribers or consumers are in this state if their residential or primary business street address is in this state.

⁸ See, e.g., *Thomas Nelson, Inc. v. Olsen*, 723 S.W.2d 621, 624 (Tenn. 1987) (holding that a transaction involving the sale of non-taxable intangible advertising concepts was nevertheless subject to sales tax on the entire amount of the transaction because advertising models, which were tangible personal property, were an "essential," "crucial," and "necessary" element of the transaction).