

TENNESSEE DEPARTMENT OF REVENUE
LETTER RULING # 24-13

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

Applicability of Tennessee sales and use tax to dues and initiation fees paid to a dining 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 the taxpayer's detriment.

FACTS

[REDACTED] (the "Taxpayer") has been doing business as a restaurant and lounge in [CITY] that has been open to the public. It is in the process of converting to a private dining club with live entertainment (a "Dining Club") that will be open only to members (the "Members"). The Dining Club will be a place where Members and their guests will come to eat, drink, and socialize with other

Members. The Dining Club will not provide any recreational or physical fitness amenities (no swimming pool, fitness center, tennis court, golf course, exercise rooms, pool tables, or arcade games). The Dining Club may have games and activities for Members and their guests, such as disco bingo, backgammon tournaments and poker nights.

Members will pay dues on a [PERIOD] basis and will pay for their food and beverage purchases through a credit card or bank account on file with the Dining Club. Certain Members will pay a higher initiation fee to be designated as founder members (the "Founder Members"). A Founder Member will be eligible for certain benefits not available to regular Members, including preferred table seating and reservations, special events and a food and beverage credit of [AMOUNT] per [PERIOD], to be applied against their [PERIOD] food and beverage purchases. Unused credits do not roll over to future periods, so that the Founder Member loses any unused credit at the end of the [PERIOD]. Applicable state and local taxes are applied to the sale of food and beverages to Members and Founder Members, and the Taxpayer remits the applicable tax collected to the Department. A Founder Member's credit is reduced by the amount of food and beverage purchased including the applicable state and local taxes.

RULINGS

1. Are dues and initiation fees paid to the Dining Club which does not provide certain recreational or sporting facilities subject to Tennessee sales tax?

Ruling: Yes. The live entertainment is a crucial element of the transaction, constituting an amusement, and therefore the dues and initiation fees are subject to sales tax.

2. Will the initiation fees or dues paid by Founder Members, which allow a credit toward food and beverage purchases, be subject to Tennessee sales and use tax?

Ruling: Yes. The total of the dues and initiation fees for Founder Members are subject to Tennessee sales and use tax.

ANALYSIS

Under the Retailer's Sales Tax Act, retail sales in Tennessee of tangible personal property and specifically enumerated services are subject to the sales tax, unless an exemption applies.¹ TENN. CODE ANN. § 67-6-212 (2022) extends the sales tax to a broad range of amusements and recreational activities. TENN. CODE ANN. § 67-6-212(a)(2) imposes the tax on the sales price of "tickets, fees or other charges made for admission to . . . places of amusement, sports, entertainment, exhibition, display, or other recreational events or activities." The Tennessee Department of Revenue promulgated TENN. COMP. R. & REGS. 1320-05-01-.117 ("Rule 117") to clarify that places of amusement, sports, entertainment, exhibition, display, or other recreational events or activities include establishments listed or described in Major Group 79 of the Standard Industrial Classification Manual. Within Major Group 79, Industry Group 792 includes establishments providing amusement or entertainment with bands, orchestras, and other entertainers.² Also within Major Group 79, Industry Group 799 includes

¹ Tennessee Retailer's 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 (2022 & Supp. 2023)).

² Major Group 79: Amusement and Recreation Services, SIC Manual, OSHA, <https://www.osha.gov/data/sic-manual/major-group-79> (last visited Dec. 10, 2024).

establishments engaged in miscellaneous amusement and recreation, such as bingo parlors, card rooms, and game parlors.³

Membership dues and fees allow customers exclusive access to food, beverages, live entertainment, games, and activities. Because the specific nature of the Taxpayer's offering includes access to live entertainment, games, and activities, the determinative inquiry is whether the membership dues and fees are a "fee or other charge" for admission to a place of amusement, entertainment, or other recreational events or activities pursuant to TENN. CODE ANN. § 67-6-212(a)(2).

When determining the applicability of TENN. CODE ANN. § 67-6-212(a), the Tennessee Supreme Court looks to the primary purpose of the transaction.⁴ The food and beverage sold by the Taxpayer are purchased by the Member; therefore, they are not the primary purpose behind purchasing a membership. What remains are the taxable offerings of access to live entertainment and other miscellaneous games and activities, as well as the amorphous concept of "exclusivity," the latter of which is not tangible personal property or an enumerated taxable service.

The exclusivity offered is analogous to that which is granted with a ticket purchased to an event. Only those who purchase a ticket will be allowed in the venue, and so the purchaser has the exclusive opportunity to socialize and interact with others who have also purchased tickets, as well as exclusive access to the food offered for sale within the venue. However, this exclusivity is not the reason for purchasing a ticket. Admission to the event is what drives the transaction. Admission to the live entertainment, games, and activities is the primary purpose behind the memberships. Accordingly, the membership dues and fees are subject to sales tax because they constitute a "fee or other charge" for admission to a place of amusement, entertainment, or other recreational events or activities.

Founder Members

The dues and fees charged to Founder Members are also subject to Tennessee sales and use tax. The benefits enjoyed by Founder Members are provided in addition to those of a Member and therefore include live music, games, and activities. The additional benefits, which include preferred table seating, access to special events, and a credit for food and beverage purchases enhance the entertainment value of the venue. For example, the preferred table seating allows the Founder Members to better enjoy the live entertainment. Additionally, given the nature of the Dining Club, the special events are categorized as amusement or entertainment that is in addition to events enjoyed by all Members. These additional benefits reinforce the conclusion that the primary purpose of membership in the Dining Club is admission to the live entertainment, games, and activities.

The credit for food and beverages does not alter the application of the sales and use tax to the dues and fees. While the right to a discount on a future purchase alone is a type of intangible property not subject to sales tax,⁵ as a part of a transaction that is subject to tax, the credit is not deducted from

³ Description for 7999: Amusement and Recreation Services, Not Elsewhere Classified, SIC Manual, OSHA, <https://www.osha.gov/sic-manual/7999> (last visited Dec. 10, 2024).

⁴ See *Carson Creek Vacation Resort, Inc. v. State, Dept. of Rev.*, 766 S.W.2d 783, 784 (Tenn. 1989) (holding that the primary purpose of campgrounds is recreation rather than lodging). See also *Smith v. Gerregano*, 2023 WL 6304439, No. M2022-00941-COA-R3-CV, *8 (Tenn. Ct. App. Sept. 28, 2023) (holding that the primary purpose of carriage rides is amusement, not transportation).

⁵ See *Barnes & Noble Superstores Inc. v. Huddleston*, 1996 WL 596955, No. 01A01-9604-CH-00149 (Tenn. Ct. App. Oct. 18, 1996) (holding that the sale of discount cards is not subject to sales tax).

the sales price.⁶ The dues and fees charged to Founder Members are thus subject to Tennessee sales tax, and the credit does not alter the taxability of the dues and fees.

APPROVED: David Gerregano
Commissioner of Revenue

DATE: December 20, 2024

⁶ "Sales price" is the measure of total consideration without any deduction for the value of exempt personal property given to the purchaser where taxable and exempt personal property have been bundled together and sold by the seller as a single product or merchandise. TENN. CODE ANN. § 67-6-102(87)(A)(vi) (Supp. 2023).