

New York State Department of Taxation and Finance
Office of Counsel
Advisory Opinion Unit

TSB-A-14(18)S
Sales Tax
July 9, 2014

STATE OF NEW YORK
COMMISSIONER OF TAXATION AND FINANCE

ADVISORY OPINION

PETITION NO. S121106A

The Department of Taxation and Finance received a Petition for Advisory Opinion from [REDACTED]. Petitioner asks whether its receipts from what it terms “mind body” classes given at facilities located in New York City are subject to the local sales tax imposed by New York City.

We conclude that Petitioner’s New York City facilities are in the category of “weight control salons, health salons, gymnasiums or similar facilities” for the purposes of § 11-2002(a) of the Administrative Code of the City of New York (Administrative Code). Therefore, all of Petitioner’s receipts from the services offered at these locations, including yoga and other mind body classes provided at these facilities, are subject to New York City sales tax.

Facts

Petitioner operates several facilities in New York City. These facilities provide instruction in yoga as well as a variety of classes that are included as part of a general “mind body” category. All of Petitioner’s mind body classes, including yoga, have a meditation, savasana, and breathing component to them. These elements are mandatory program components of each of the branded proprietary mind body classes, and there is oversight and training to ensure the consistent instruction and delivery of these elements in every class. Some of the mind body classes include components supported by body movement props such as a ballet barre, stretch bands, yoga blocks, small rubber core balls, or small hand held rubber coated weights.

Analysis

New York State does not impose sales tax on fees from the classes offered by Petitioner because instruction in these types of classes is not one of the services subject to sales tax in Tax Law § 1105(c) of the Tax Law. However, New York City is authorized by Tax Law § 1212-A(a)(2) to enact a local law imposing sales tax on:

the receipts from every sale of the following services: beauty, barbering, hair restoring, manicuring, pedicuring, electrolysis, massage services, and similar services, and every sale of services by weight control salons, health salons, gymnasiums, turkish and sauna baths and similar establishments and every charge for the use of such facilities, whether or not any tangible personal property is transferred in conjunction therewith [emphasis added].

New York City imposes local sales tax pursuant to this authority in Administrative Code § 11-2002. Subdivision (a) provides, in part:

There are hereby imposed and there shall be paid sales taxes at the rate of four and one-half percent on receipts from . . . every sale of services by weight control salons, health salons, gymnasiums, turkish and sauna bath and similar establishments and every charge for the use of such facilities, whether or not any tangible personal property is transferred in conjunction therewith;

In order to determine whether the receipts from Petitioner's mind body classes are subject to New York City sales tax, we must consider the type of facilities Petitioner operates. If Petitioner's facilities are weight control salons, health salons, gymnasiums or similar establishments, all of Petitioner's charges at these facilities are subject to New York City sales tax. The Tax Appeals Tribunal has determined that the tax applies to establishments that "provide activities directed at the improvement of bodily appearance and not those which offer participatory sports and athletic facilities." See *Matter of Prospect Park Health and Racquet Associates*, Tax Appeals Tribunal, July 22, 1997; *Health and Fitness Clubs*, TB-ST-329, July 24, 2012. Some examples of participatory sports are swimming and racquetball.

If Petitioner's services at its facilities consisted solely of classes teaching yoga, those facilities would not be considered weight control salons or similar facilities for New York City sales tax purposes because a yoga-only facility is not considered to be a weight control salon, gymnasium, or similar facility. See TB-ST-329, *supra*, and *Application of State and Local Sales Tax to Facilities that Provide Yoga Instruction*, NYT-G-12(1), July 24, 2012. While Petitioner's mind body classes incorporate elements of yoga (meditation, savasana, and breathing), classes are advertised in a brochure found on Petitioner's website as increasing stamina and building strength, providing chiseled abs and toned legs or sculpting or toning the participant's entire body. It appears that the purpose of Petitioner's mind body classes is to improve bodily appearance. If the facilities in which these classes are given do not otherwise offer participatory sporting activities, those facilities would be considered to be weight control salons, gymnasiums or similar facilities for purposes of the New York City sales tax, and all Petitioner's receipts from those facilities would be subject to New York City sales tax.

DATED: July 9, 2014

/S/

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NOTE: An Advisory Opinion is issued at the request of a person or entity. It is limited to the facts set forth therein and is binding on the Department only with respect to the person or entity to whom it is issued and only if the person or entity fully and accurately describes all relevant facts. An Advisory Opinion is based on the law, regulations, and Department policies in effect as of the date the Opinion is issued or for the specific time period at issue in the Opinion. The information provided in this document does not cover every situation and is not intended to replace the law or change its meaning.