

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

TSB-A-10(46)S
Sales Tax
September 27, 2010

STATE OF NEW YORK
COMMISSIONER OF TAXATION AND FINANCE

ADVISORY OPINION

PETITION NO. S100805B

Petitioner, [REDACTED], requests an Advisory Opinion about whether personal training services are subject to the New York State and local sales taxes. We conclude that they are not.

Facts

Petitioner is a personal trainer and sole shareholder of [REDACTED] (“the Corporation”). Her personal training services consist of cardiovascular and isometric exercise and weight and resistance training. Petitioner trains clients under one or more of four scenarios: (1) in the gym located in her residential building, using cardio machines (e.g., treadmill) and weights; (2) in Petitioner’s apartment, using a physio ball, dynabands, and a gym mat; (3) in the client’s gym, using cardio machines and weights; or (4) online, where Petitioner supervises the client’s workout at the client’s personal residence using a webcam and the client uses whatever equipment is available at their residence or does isometric exercise.

Neither Petitioner nor the Corporation is associated with any weight control salon, health salon, or gymnasium, or has an ownership interest in any gym or similar establishment. Petitioner performs personal training services both within and outside of New York City. Petitioner bills her clients directly for her services, regardless of where the service is performed. Petitioner’s services do not include massage services.

Analysis

Petitioner’s services are not subject to New York State sales tax or the local sales taxes authorized to be imposed outside New York City by Article 29 of the Tax Law. Petitioner’s services consist of personal training in cardiovascular and isometric exercise and weight and resistance training. These services are not among the enumerated services taxed under Section 1105(c) of the Tax Law.

Furthermore, Petitioner’s services are not subject to the New York City sales tax imposed by section 11-2002(h) of the Administrative Code of the City of New York (“Administrative Code”). Section 1212-A(a)(2) of the Tax Law authorizes New York City to impose a local sales tax on “massage services and similar services, and 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” Section 11-2002(h) of the Administrative Code imposes tax on those services. In general, an establishment that provides “steam baths, saunas, rowing machines, shaking machines and other exercise equipment” and does not provide facilities for participatory sports activities (e.g., basketball courts, volleyball courts, etc.), is considered to be a “weight control salon” subject to the tax imposed by section 11-2202(h) of the Administrative Code. *Cf.* 20 NYCRR §527.11(b)(7)(ii); *The Paris Health Club, Inc.*, TSB-A-08(12)S; *MP Sports Club Upper East Side, LLC*, TSB-A-08(10)S.

Petitioner services do not constitute massage services or similar services. Petitioner does not operate, nor is she affiliated with, any weight control salon, gymnasium, or other establishment described in Tax Law section 1212-A(a)(2) or section 11-2002(h) of the Administrative Code. Petitioner’s charges to her

