

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

TSB-A-14(13)S  
Sales Tax  
July 2, 2014

STATE OF NEW YORK  
COMMISSIONER OF TAXATION AND FINANCE

ADVISORY OPINION

PETITION NO. S120910B

The Department of Taxation and Finance received a Petition for Advisory Opinion from [REDACTED]. Petitioner asks whether its facility constitutes a “weight control salon, health salon, or gymnasium” for the purposes of § 11-2002(a) of the Administrative Code of the City of New York (Administrative Code), or if it is an athletic club for the purposes of § 1105(f)(2) of the Tax Law.

We conclude that Petitioner’s facility is not an athletic club for the purposes of § 1105(f)(2) of the Tax Law, but is a “weight control salon, health salon, or gymnasium” for the purposes of the Administrative Code.

**Facts**

Petitioner operates a private gym known as [REDACTED] in New York City. Members pay a membership fee that entitles them to the use of cardiovascular and weight training equipment, including treadmills, elliptical cross-trainers, bikes, stair climbers, free weights, bench presses, and other machines. Petitioner also provides access to a room on a separate floor, which consists of an approximately 30’ x 30’ area that includes a basketball hoop, boxing bags and a “wall” for racquet sports. Petitioner asserts that this area could be used for a half-court pick-up basketball game, but not at the same time as the wall or boxing bags were in use.

Petitioner’s members do not control any social or athletic activities, selection of members or club management, or possess any proprietary interest in Petitioner. The number of members is restricted solely due to the physical size of the facility. Memberships are available to the general public on a first-come, first-served basis. Petitioner charges fees to its patrons entitling them to use its facility for activities intended to improve physical well-being and overall fitness. There also are personal training services offered for which a fee is charged, and lockers to rent.

**Analysis**

Petitioner asks the following questions:

**Q.** 1. Is Petitioner’s facility an “athletic club” for State and local sales tax purposes?

**A.** Tax Law § 1105(f)(2) imposes sales tax on the dues paid to any “social or athletic club in this state if the dues of an active annual member, exclusive of the initiation fee, are in excess of ten dollars per year, and on the initiation fee alone, regardless of the amount of dues, if such

initiation fee is in excess of ten dollars.” Tax Law § 1101(d)(13) defines a social or athletic club as any “club or organization of which a material purpose or activity is social or athletic.” Tax Law § 1101(d)(6) defines dues as any “membership fee including any assessment, irrespective of the purpose for which made, and any charges for social or sports privileges or facilities, except charges for sports privileges or facilities offered to members’ guests which would otherwise be exempt if paid directly by such guests.” Sales and Use Tax Regulation § 527.11(b)(5) defines a club or organization as

“...any entity which is composed of persons associated for a common objective or common activities . . . . Significant factors, any one of which may indicate that an entity is a club or organization are: an organizational structure under which the membership controls social or athletic activities, tournaments, dances, elections, committees, participation in the selection of members and management of the club or organization, or possession by the members of a proprietary interest in the organization.”

Petitioner’s customers do not control any of the facility’s social or athletic activities, do not participate in the management of the facility or in the selection of other participants, and do not possess any proprietary interest in Petitioner or its facility. The number of participants is restricted solely because of the physical size of the facility. Therefore, Petitioner’s facility is not a social or athletic club as defined in Tax Law § 1101(d)(13). *See* 20 NYCRR §§ 527.11(b)(5) & (7). Accordingly, Petitioner’s charges are not subject to tax as dues paid to a social or athletic club under § 1105(f)(2) of the Tax Law.

**Q.** 2. If not an athletic club, is Petitioner’s facility a “weight control salon, health salon, or gymnasium” for the purposes of § 11-2002(a) of the Administrative Code?

**A.** Petitioner offers a variety of exercise equipment as well as personal training services at its facility. These activities generally are not among the services enumerated as taxable under § 1105(c) of the New York State Tax Law. However, § 11-2002(a) of the Administrative Code imposes a local sales tax on the 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.” Petitioner’s charges are subject to the New York City local sales tax if its facility falls within the meaning of one of these terms.

A gymnasium is commonly understood to be an indoor facility where sporting and/or exercise activities take place. The New York State Tax Appeals Tribunal determined that weight control salons, gymnasiums or similar establishments are establishments “which 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 Racquet Associates*, Tax Appeals Tribunal (July 22, 1997); TB-ST-329, *Health and Fitness Clubs*, July 24, 2012.

Petitioner’s facts show that it offers the general amenities of a gymnasium. Petitioner’s facility offers access to a large variety of exercise equipment and weights, all with an emphasis

on using these for exercise, plus access to a relatively small space that contains a basketball hoop, boxing bags and a wall for racquet sports. In contrast, the facilities at issue in *Prospect Park* included an Olympic-size pool and a “separate area dedicated to boxing” at one location, and an “extensive amount of space” – 15,000 square feet out of a total area of 64,000 square feet -- “dedicated to racquet sports” at another location. At the latter facility, patrons were observed playing golf, handball, racquetball, tennis and squash. See *Matter of Prospect Park Health Racquet Associates, supra*. In our view, Petitioner’s small 30’ x 30’ area with a basketball hoop, boxing bags and wall for racquet sports is not an area where participatory sports may be engaged in regularly by its members as contemplated by the Tribunal in *Prospect Park*. Accordingly, we conclude that Petitioner’s facility is a weight control salon, health salon, or gymnasium. Any charges by Petitioner for any services, including membership fees and fees for personal training services, therefore, are subject to the New York City local sales tax. See TSB-A-08(11)S. In addition, fees paid by members to rent lockers where they can store personal items are subject to State and local sales taxes pursuant to § 1105(c)(4) of the Tax Law. See TSB-A-08(11)S.

DATED: July 2, 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.