

STATE OF NEW YORK
COMMISSIONER OF TAXATION AND FINANCE

ADVISORY OPINION

The Department of Taxation and Finance received a Petition for an Advisory Opinion from [REDACTED] [hereinafter “Petitioner”] of [REDACTED]. Petitioner asks whether its receipts from services provided at its health and fitness facilities are subject to New York City sales tax. We conclude that Petitioner’s services are subject to New York City local sales tax.

Facts

Petitioner operates a national health and wellness business. Petitioner has one New York City facility and anticipates opening additional New York City locations. Petitioner’s facilities offer cardio machines, strength machines, free weights, training areas, stretching areas, workout workshops and online weight loss programs. The current New York City location has swimming pools and basketball courts, and two of the anticipated facilities also will have swimming pools. A membership to any New York City location will allow access to all of Petitioner’s facilities in the New York City area.

Analysis

Tax Law § 1212-A(a)(2) authorizes New York City to impose certain local taxes, and Administrative Code § 11-2002(a) specifically 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 New York City facility, which offers cardio machines, strength machines, free weights, training areas, stretching areas, workout workshops and online weight loss programs, provides activities directed toward the improvement of health and bodily appearance. Accordingly, it constitutes a “weight control salon, health salon or gymnasium” for purposes of the New York City local sales tax. *See* NYC Admin. Code § 11-2002(a).

Petitioner further asks whether the presence of a pool and basketball court at its New York City facility would qualify for an exemption from the New York City local sales tax. It does not. Prior to 2008, Administrative Code § 11-2002(f)(1), which imposed tax on admissions to places of amusement, exempted “charges to a patron for admission to, or use of, facilities for sporting activities in which such patron is to be a participant, such as bowling alleys and swimming pools.” The Tax Appeals Tribunal determined that the participatory sports exemption applied to former Administrative Code § 11-2002, which specifically included charges by weight control salons, health salons, gymnasiums, Turkish and sauna baths. *Matter of Prospect Park Health and Racquet Associates*, Tax Appeals Tribunal (July 22, 1997). As such, under the

former Administrative Code, a gymnasium with participatory sports was exempt from the New York City local sales tax.

However, in 2008, the Administrative Code was amended and expressly excluded the participatory sports exemption. Administrative Code § 11-2001(a)(3) now reads “notwithstanding any contrary provision of this section or other law, this section: ... does not omit from the tax described in paragraph one of subdivision (f) of section eleven hundred five of the tax law charges to a patron for admission to, or use of, facilities for sporting activities in which such patron is to be a participant, such as bowling alleys and swimming pools.”

Accordingly, since the 2008 amendments expressly removed the participatory sports exemption from the tax on admission charges, the New York City Administrative Code no longer exempts facilities with participatory sports from the tax on weight control salons, health salons, gymnasiums and similar facilities. Therefore, Petitioner’s charges are subject to New York City local sales tax.

DATED: November 3, 2020

/S/
DEBORAH R. LIEBMAN
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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.