



SC REVENUE RULING #92-1

SUBJECT: Membership Fees to Health Clubs, Spas, Etc.
(Admissions Tax)

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EFFECTIVE DATE: July 1, 1991

REFERENCE: SC Revenue Ruling #90-7
SC Information Letter #91-17
SC Information Letter #91-10
S.C. Code Ann. Section 12-21-2410 (1976)
S.C. Code Ann. Section 12-21-2420 (Supp. 1991)

AUTHORITY: S.C. Code Ann. Section 12-4-320 (Supp. 1991)
SC Revenue Procedure #87-3

SCOPE: A Revenue Ruling is the Commission's official interpretation of how tax law is to be applied to a specific set of facts. A Revenue Ruling is public information and remains a permanent document until superceded by a Regulation or is rescinded by a subsequent Revenue Ruling.

Question:

What guidelines can the Commission provide that will assist in determining whether fees paid to a for-profit physical fitness center are subject to the admissions tax?

Facts:

Physical fitness centers offer a variety of health, exercise and recreational facilities and activities to participants. These health and exercise centers, health spas, athletic clubs and the like, offer weightlifting, aerobics, indoor running tracks, exercise machines, and more.

Individuals obtain the right or privilege to enter into and use these facilities by paying fees or dues. Some facilities have membership contracts; others provide admission by charging a

monthly fee or a charge per visit. Additionally, some fitness centers charge an additional fee per visit for the use of optional facilities, such as saunas or tanning beds.

Discussion:

Code Section 12-21-2420 imposes the admissions tax and reads, in part:

There shall be levied, assessed, collected and paid upon all paid admissions to all places of amusement within this State a license tax of five percent...

The General Assembly amended this code section on June 28, 1991, by adding the following exemption:

(14)...admissions to a physical fitness center subject to the provisions of Chapter 79 of Title 44, the Physical Fitness Services Act, that provides only the following activities or facilities:

- (a) aerobics or calisthenics,
- (b) weightlifting equipment,
- (c) exercise equipment,
- (d) running exercise,
- (e) racquetball,
- (f) swimming pools for aerobics and lap swimming, and
- (g) other similar items approved by the commission.

The entire admission charge of a physical fitness center which provides any other activity or facilities is subject to the tax imposed by this article.

In other words, admissions fees are exempt from the admissions tax when the following criteria are met: (1) admissions fees are paid to a physical fitness center, (2) the physical fitness center is subject to the Physical Fitness Services Act and (3) the physical fitness center provides only aerobic or calisthenic activities, weightlifting or exercise equipment, running tracks, racquetball, swimming pools for aerobics and lap swimming or other similar items approved by the Tax Commission. The statute further provides that the entire charge for admission is subject to the admissions tax if the physical fitness center provides any activity or facility that is not provided for in the statute or approved by the Tax Commission.

Exemption Requirements:

For a better understanding of the exemption requirements, the criteria listed above must be more fully explained.

1. What is a physical fitness center?

The Commission has determined that a physical fitness center is a place whose purpose and use is to provide its members facilities and activities to be used for the enhancement of health and fitness. A physical fitness center's purpose is a question of fact to be determined by an

examination of all the facts and circumstances. Factors which may be taken into account include: advertising, actual participation and usage of various activities and facilities, the type and nature of the activities and facilities, membership rules and regulations, and the entity's charter and bylaws. Examples of physical fitness centers are aerobic centers, weight control centers, and weightlifting gymnasiums. Sports bars, even if they contain some exercise equipment, and skating rinks are not physical fitness centers.

2. Who is subject to the Physical Fitness Services Act?

The provisions of the Physical Fitness Services Act are contained in Chapter 79 of Title 44. Under this Act, any for-profit person or organization which offers physical fitness services, as defined in the Act, is governed by the Physical Fitness Services Act. "Physical fitness services" as defined in Code Section 44-79-20(1) means:

facilities or services for the development of physical fitness through exercise or weight control. The term includes the facilities and services of health or exercise centers, clubs, studios, or classes; health spas; weight control centers, clinics, or studios; figure salons; tanning centers; and athletic or sport clubs. It does not include rehabilitative therapy administered by a licensed physical therapist.

Also, Code Section 44-79-110 provides that the State of South Carolina and its political subdivisions and any not-for-profit corporations are exempt from the terms of the Physical Fitness Services Act. Therefore, charges to any member of these entities will not be allowed the admissions tax exemption provided in Code Section 12-24-2120(14), however, certain charges by not-for-profit corporations for use of their physical fitness facilities and activities may be exempt from admissions tax pursuant to Code Section 12-21-2420(4). Code Section 12-21-2420(4) provides an exemption from admissions tax "on admissions charged by any eleemosynary and nonprofit corporation or organization organized exclusively for religious, charitable, scientific, or educational purposes...." This section also provides an exemption for "...any charge made to any member of a nonprofit organization or corporation for the use of the facilities of the organization or corporation of which he is a member."

3. What activities or facilities can be provided?

Admissions fees to a qualifying physical fitness center are exempt if the center only provides one or more of the activities or facilities specifically listed in the law. The list includes: aerobic or calisthenic activities, weightlifting or exercise equipment, running tracks, racquetball and swimming pools used for aerobics and lap swimming and other similar items approved by the Commission. In addition, activities or facilities which support or are incidental to these activities will not cause an otherwise tax exempt physical fitness center to be taxable. Now that the exemption requirements have been set forth, we must consider what activities or facilities are similar to those listed in the exemption statute. In addition, the Commission must also review what activities or facilities are support or incidental.

Similar Activities and Facilities:

What facilities and activities are similar to those specifically listed as exempt in Code Section 12-21-2420(14) and must be approved by the Commission as such?

In determining what facilities and activities are deemed "similar" to those specifically exempt, the Commission focused upon the type of medical and scientific criteria that is traditionally used to categorize physical fitness activities, such as aerobic value, the purpose of the activity, and the likeness in manner of play to an exempt activity. Based upon these criteria, handball and squash are activities which are "similar" to racquetball, an exempt activity.

Support Activities:

What facilities and activities only provide support to one or more of the activities or facilities listed in the exemption statute?

The guidelines to be used in determining whether activities and facilities are support activities or facilities are as follows: the support facility or activity (1) directly contributes to the physical fitness center's daily operation of exempt facilities or activities, or (2) assists members in the use of the exempt facilities or activities provided. Examples of support activities or facilities include locker rooms, reception or waiting areas, refreshment rooms and child care facilities.

Incidental Activities:

What facilities and activities are incidental to one or more of the activities or facilities listed in the exemption statute?

In determining whether an activity or facility provided by a physical fitness center is incidental and should not cause an otherwise exempt physical fitness center to lose its exemption, the following criteria provide guidance. Any activity or facility offered is considered "incidental" if (1) it is insignificant to the operation of physical fitness center in providing an activity or facility listed as exempt in the statute, or (2) when the activity, facility or item is considered by itself, it will not subject fees to the admissions tax. For instance, a basketball goal located outside the parking lot of a weightlifting gym is "incidental" to the fitness center's purpose of weightlifting. The existence of a tanning bed and sauna in an otherwise exempt physical fitness center whose purpose is to provide aerobics, exercise equipment and a pool for lap swimming will not cause the center to lose its exemption. The tanning bed and sauna are "incidental" to fitness center's purpose because admission to these facilities are not currently subject to the admissions tax.

Conclusion:

The guidelines provided by the Commission in determining the applicability of Code Section 12-21-2424(14) to fees charged by health clubs, spas, gyms and the like, are as follows:

Exempt Physical Fitness Centers -

Fees paid to a for-profit health club, spa, etc. are exempt from the admissions tax if:

1. The entity is a physical fitness center;
2. The physical fitness center is subject to the provisions of Chapter 79 of Title 44, the Physical Fitness Services Act; and,
3. The physical fitness center only provides one or more of the following activities or facilities:

Aerobics or calisthenics
Weightlifting equipment
Exercise equipment (such as free weights, life cycles, treadmills and stair climbers)
Running tracks
Racquetball
Swimming pools for aerobics and lap swimming
Squash
Handball

Activities or facilities which support or are incidental to one or more of the activities or facilities listed above will not cause an otherwise exempt facility to lose the exemption provided in Code Section 12-21-2420(14). (See page 4 for a discussion of support or incidental activities.)

Non-Exempt Physical Fitness Centers -

Fees paid to a for-profit health club, spa, etc. are subject to the admissions tax if:

1. The entity is not a physical fitness center; or,
2. The physical fitness center is not subject to the provisions of Chapter 79 of Title 44, the Physical Fitness Services Act; or,
3. The physical fitness center is subject to the provisions of Chapter 79 of Title 44 but provides any activity or facility in addition to the activities or facilities listed above as exempt which has not been approved by the Commission as similar, or is not a support or incidental activity or facility.

NOTE: Health clubs, spas, etc. that fall within the provisions of Code Section 12-21-2420(14) as outlined in this document should file an application for exemption, Form L-2068 with the License and Registration Section of the Commission. Questions concerning admissions tax exemption or registration should be directed to the License and Registration Section at 803-737-4872.

Health clubs, spas, etc. that do not clearly fall within the provisions of this document may file an application for exemption, Form L-2068, along with a written statement explaining why the exemption should be granted. The statement must identify (1) why the entity is a physical fitness center, (2) the facilities or activities offered that are not specifically listed in the exemption statute or this ruling and (3) why the facilities or activities not specifically exempt are "similar", "support", or "incidental", as determined in this document. An admissions tax exemption which is initially denied may be appealed.

Special Provision for Certain Membership Contracts:

Taxable membership fees paid pursuant to a binding, written contract, executed prior to July 1, 1991, which does not permit any increase in fees or charges are exempt from admissions tax.

SOUTH CAROLINA TAX COMMISSION

s/A. Crawford Clarkson, Jr.
A. Crawford Clarkson, Jr., Chairman

s/T. R. McConnell
T. R. McConnell, Commissioner

s/James M. Waddell, Jr.
James M. Waddell, Jr., Commissioner

Columbia, South Carolina
March 11, 1992