

**TENNESSEE DEPARTMENT OF REVENUE  
LETTER RULING #00-05**

**WARNING**

**Letter rulings are binding on the Department only with respect to the individual taxpayer being addressed in the ruling. This presentation of the ruling in a redacted form is informational only. Rulings are made in response to particular facts presented and are not intended necessarily as statements of Department policy**

**SUBJECT**

Sales tax on receipts of recreation facility owned by a municipality.

**SCOPE**

This letter ruling is an interpretation and application of the tax law as it relates to a specific set of existing facts furnished to the department by the taxpayer. The rulings herein are binding upon the Department and are applicable only to the individual taxpayer being addressed.

This letter ruling may be revoked or modified by the Commissioner at any time.

Such revocation or modification shall be effective retroactively unless the following conditions are met, in which case the revocation shall be prospective only:

- (A) The taxpayer must not have misstated or omitted material facts involved in the transaction;
- (B) Facts that develop later must not be materially different from the facts upon which the ruling was based;
- (C) The applicable law must not have been changed or amended;
- (D) The ruling must have been issued originally with respect to a prospective or proposed transaction; and
- (E) The taxpayer directly involved must have acted in good faith in relying upon the ruling; and a retroactive revocation of the ruling must inure to the taxpayer's detriment.

**FACTS**

[TENNESSEE MUNICIPALITY] is in the process of constructing a family recreation center; it is scheduled to open in [MONTH], [YEAR].

The [FACILITY] will provide swimming pools, a walking track, racquetball courts, weight training equipment, cardiovascular equipment, an aerobics area, and similar fitness and recreational activities. Fitness and nutritional counselors will be available. Meeting rooms

will be available for rent. According to the brochure provided along with the ruling request, fees will be collected from the users of the facility in several ways. Yearly memberships, which can be “full”, “pool”, “fitness/gym/free weights”, or “track” memberships (presumably, the memberships other than “full” memberships entitle a member who is not a “full” member to the use of a part of the facility), can be paid for annually or quarterly. Additionally, the entire facility can be used on a “general” daily-fee basis, or a daily fee can be paid for either the indoor facility or the outdoor pool. Racquetball courts are available on an hourly basis, with a discount given to full members. Meeting rooms are available for an hourly fee plus a “set-up fee.”

This facility is being constructed primarily with the proceeds of a bond issue, backed by taxpayer revenue. The facility will be controlled by the [TENNESSEE MUNICIPALITY]; the [TENNESSEE MUNICIPALITY] will set policies. All monies will be accounted for and controlled by the [TENNESSEE MUNICIPALITY]. All employees will be employees of the [TENNESSEE MUNICIPALITY].

### **QUESTION**

Are any of the receipts of the facility subject to sales tax?

### **RULING**

No.

### **ANALYSIS**

#### **I. Amusement Activities**

Sales tax is due on a broad class of activities generally referred to as “amusements.” These activities are included in the definition of “retail sale.” T.C.A. §67-6-102(24)(G). The tax on amusements is levied by T.C.A. §67-6-212. The activities provided by the facility are clearly “amusements” under the statutes. See also TENN. COMP. R. & REGS. 1320-5-1-1.15, 1320-5-1-1.16, 1320-5-1-1.22, and 1320-5-1-1.23.

However, the following exemption from the tax is found in T.C.A. §67-6-330(a)(13):

Gross proceeds derived from admissions to amusement or recreational activities or facilities conducted, produced and controlled by municipalities or counties.

The receipts for amusement activities by the facility are exempt from tax under this exemption.

#### **II. Meeting Room Rental**

“Retail sale” includes the service of providing “any rooms, lodgings, or accommodations furnished to transients by any hotel, inn, tourist court, tourist camp, tourist cabin, motel, or any place in which rooms, lodgings or accommodations are furnished to transients for a consideration.” T.C.A. § 67-6-102(24)(F)(i). The tax is levied on such accommodations by T.C.A. § 67-6-205.

The meaning of the word transient is crucial to the resolution of this question. Webster’s Third New International Dictionary Unabridged (1971) defines a transient as one who “passes through or by a place with only a brief stay or sojourn”, such as a “transient guest or boarder.”

While Tennessee courts have not defined transient, the courts of other states have, in interpreting various statutes, defined transient by contrasting it with resident. See e.g., Town of New Haven v. Town of Middlebury, 21 A. 608, 63 Vt. 399; Reckling v. McKinstry, 185 F.2d 842, 843, (Circuit Ct. D. South Carolina 1911); Bourque v. Morris, 460 A.2d 1251, 1253, 190 Conn. 364 (Conn. 1983) (citing C.J.S. Inns, Hotels, and Eating Places, § 5, p. 794). A transient is therefore someone who resides elsewhere and enters a hotel, motel, or similar business for temporary lodging.

It appears unlikely that the legislature intended to impose the sales tax on the rental of banquet rooms or meeting rooms of this sort, which would almost always be made to local residents and not transients. If so, it could easily have written a statute accomplishing that purpose. A statute cannot be extended beyond the clear import of the language used, and its scope cannot be enlarged by analogy so as to embrace matters or persons not specifically pointed out. United Inter-Mountain Tel. Co. v. Moyers, 221 Tenn. 246, 426 S.W.2d 177 (1968); see generally 23 Tenn. Juris, Taxation, § 3. A tax statute must be construed liberally in favor of the taxpayer and most strictly against the taxing authority. All questions of doubt will be resolved against the state. Union Carbide Corp. v. Alexander, 679 S.W.2d 938 (Tenn. 1984). This statute must not be extended beyond its plain terms--that the tax applies only to the furnishing of lodging rooms to transient guests. The taxpayer is not engaged in furnishing lodging rooms. Its furnishing of meeting rooms is not within the purview of the taxing statute.

### III. Counselors

The brochure included with the ruling request indicates in the list that certified professional fitness and nutritional counselors were provided. The schedule of fees in the brochure does not indicate if a separate fee is charged for their services. However, even assuming a fee is charged for the services provided by these counselors, the services are not subject to tax pursuant to the following analysis.

In Ryder Truck Rental, Inc. v. Huddleston, 1994 Tenn. App. LEXIS 444, the Court of Appeals made the following statement with respect to sales taxation of services:

The applicable statute, Tennessee Code Annotated section 67-6-205, imposes sales taxes on "all services taxable under this part." Tenn. Code Ann. § 67-6-205(1989). The sales tax does not apply to all services; it applies only to those services specifically enumerated by the statute.

The services provided by these counselors do not appear in the list of taxable services found in T.C.A. § 67-6-102(24)(F); therefore, they are not subject to tax.

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DATE: 1/27/00