

**TENNESSEE DEPARTMENT OF REVENUE
LETTER RULING # 01-09**

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

Application of the Tennessee Code Annotated Section 67-6-330(a)(3) amusement tax exemption to membership dues charged by a recreational club.

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

[TAXPAYER], a limited liability company, (LLC) (hereinafter the "Taxpayer") operates a for-profit golf driving range and training facility. Its facilities are open to both the general public and to members who pay membership fees for use of the facilities.

Taxpayer sells the memberships on an annual basis or a three-year package. The Taxpayer charges an initial initiation fee with monthly dues thereafter.

All members initially sign a contract for one year. The contract provides for the automatic renewal of the contract (at the conclusion of the one-year term) on a month-to-month basis until cancelled by the member with thirty (30) days written notice. Alternatively, the member is placed under a new annual or multi-annual term contract by the Taxpayer. Thus, despite the conclusion of the original term of the contract, the member remains under contract on a month-to-month basis with all provisions of the contract executed by the member remaining in force.

The Taxpayer allows for the addition of immediate family members to the contract in consideration for additional and incremental membership dues and fees assessed to the annual cost of the membership. These additional family members are specified in the member contract, as is the amount of the additional membership dues required by each addition.

The Taxpayer is concerned with the application of T.C.A. Section 67-6-330(a)(3) to certain aspects of its contracts with members. The specific fact scenarios assumed for purposes of the rulings¹ are as follows:

IA. New member A is required by Taxpayer's annual contract to pay Taxpayer base membership dues of \$[X (>\$150)] for the year. A elects to pay dues of \$[X] in advance in full.

IB. New member B is likewise required by Taxpayer's annual contract to pay Taxpayer base membership dues of \$[X] for the year. However, B elects to pay his dues on a monthly basis at the rate of \$[Y (X÷12, <\$150)] per month.

II. Automatic renewing member C, who previously held a one-year membership, now holds his membership on a month-to-month basis under the Taxpayer's contract automatic renewal provision. C would pay dues of \$[Y] per month (or 1/12 of the annual membership dues of \$[X]).

III. New member D is required by Taxpayer's annual contract to pay Taxpayer base membership dues of \$[X] for the year. D decides to add two members of his immediate family to the original membership in Taxpayer's recreational club. Taxpayer charges an additional \$[Z (>\$150)] per year dues for each additional immediate family member included in the (family) membership. D elects to pay dues in advance in full. D pays dues of \$[X+Z+Z] (\$[X] + \$[Z] + \$[Z]).

IV. New member E is likewise required by Taxpayer's annual contract to pay Taxpayer base membership dues of \$[X] for the year. E elects to pay dues monthly but decides to add two members of his immediate family to the original membership in

¹ These facts were either proffered by the Taxpayer as examples or devised by the department for purposes of illustrating the application of the tax and exemption statutes. In either event, these facts do not necessarily represent actual facts concerning the Taxpayer's dues structure.

It should also be noted that the Taxpayer did not specify the amount of its initiation fee. However, pursuant to TENN. COMP. R. & REGS. 1320-5-1-1.16(4), the amount of the initiation fee would also be includable as part of the membership dues or fees potentially exempt from the sales tax under T.C.A. Section 67-6-330(a)(3).

Taxpayer's recreational club. Taxpayer charges an additional \$[Z] per year dues for each additional immediate family member included in the membership, or \$[L (Z÷12, <\$150)] per month per additional member. The monthly dues for E's (3-person family) membership is \$[Y+L+L] (\$[Y] + \$[L] + \$[L]).

For greater ease of administration and an automation of the billing and accounting process, the Taxpayer has determined a preferred method of accounting for the T.C.A. Section 67-6-330(a)(3) amusement tax exemption since it has been unable to locate computer software which accommodates the literal wording of the exemption statute. Thus, Taxpayer's billing has become more of a manual process that is expensive and slow.

The Taxpayer would like to spread, or prorate, this \$150 exemption over the 12 months of an annual contract that is paid by a member in monthly installments (*Scenario IB.* above). If proration is permissible under the law, the Taxpayer would exempt \$12.50 of the member's monthly payment per month.

Regarding the dues paid during the month-to-month automatic renewal period (*Scenario II.* above), the Taxpayer would like to consider only a pro-rata portion of the law's annual exemption (i.e., 1/12 of \$150, or \$12.50) applicable to each monthly dues payment made by the member.

Regarding additional dues payments attributable to additional immediate family members included on a particular club membership when dues are paid in advance in full (*Scenario III.* above), the Taxpayer would like to consider each family member included in the family membership contract as eligible for the \$150 exemption.

Regarding additional dues payments attributable to additional immediate family members included on a particular club membership when dues are paid monthly (*Scenario IV.* above), the Taxpayer would like to prorate the \$150 exemption per member per year over the 12 months of the annual contract. In that event, the Taxpayer would exempt from each monthly payment received on a family membership contract \$12.50 per member included in the family membership per month.

QUESTIONS

1. When member dues are paid monthly under an annual membership contract, does T.C.A. Section 67-6-330(a)(3) permit the \$150 (amusement tax) exemption to be prorated over the 12 months of the contract term? (*Scenario IB.*)
2. During each month's term of the month-to-month automatic renewal, does T.C.A. Section 67-6-330(a)(3) permit proration of the \$150 (amusement tax) exemption so that only \$12.50 of each monthly payment is exempt from tax? (*Scenario II.*)
3. When additional family members are added to the contract and dues are paid in full in advance on an annual contract, does the T.C.A. Section 67-6-330(a)(3)

amusement tax exemption apply to the additional payments made for additional members under the contract?² (*Scenario III.*)

4. When additional family members are added to the contract and dues are paid monthly, does the T.C.A. Section 67-6-330(a)(3) amusement tax exemption permit each \$150 exemption per member per annum to be prorated over the 12 months of the contract term? (*Scenario IV.*)

RULINGS

1. No.
2. No.
3. Yes. The T.C.A. Section 67-6-330(a)(3) amusement tax exemption applies to the additional payments made for additional members under the membership contract in these circumstances.³
4. No.

ANALYSIS

T.C.A. Section 67-6-212(a)(1) levies a tax on the gross receipts or gross proceeds of each sale at retail of dues or fees to recreation clubs. Although the section heading, or "catchline," of T.C.A. Section 67-6-212 is entitled "Amusement tax," the tax is in reality a sales tax on the sale of tangible personal property at retail. However, the tax base is stated to be the "gross receipts or gross proceeds" of each (amusement or recreational activity) sale at retail.

The Department of Revenue has issued a rule, TENN. COMP. R. & REGS. 1320-5-1-1.15, relative to the tax on amusements and recreational activities. Such rule states that "(t)he sales and use tax shall also apply to actual or accrued gross receipts from: (1) Dues and fees to membership sports and recreation clubs; . . ."

T.C.A. Section 67-6-330 provides for an exemption from the sales tax upon admission, dues or fees imposed by T.C.A. Section 67-6-212. Subsection (a)(3) of T.C.A. Section 67-6-330 provides that the following is exempt:

The first one hundred fifty dollars (\$150) per member per annum of membership dues or fees of a recreation club or community service organization, and, if more

² This issue could also be stated in the alternative: Does the amusement tax exemption apply to each individual member included under the Taxpayer's membership contracts, permitting multiple exemptions under a contract? Or rather, does the exemption apply only once to each of the Taxpayer's membership contracts, regardless of the number of family members under the membership contracts?

³ In other words, the amusement tax exemption applies to each individual member included under the Taxpayer's membership contracts.

than one (1) year's dues are paid in advance, such exemption shall be granted so that the one hundred fifty dollar (\$150) exemption shall be applied to each year's dues or fees . . .

Since the Taxpayer operates a golf driving range and training facility for which it charges dues, the sales tax levied by T.C.A. Section 67-6-212(a)(1) obviously applies to the dues represented by Taxpayer's membership contracts.

Such tax clearly applies to the "gross receipts and gross proceeds" of the Taxpayer's membership contracts by virtue of the language in the taxing statute. Thus, it is the gross amount paid or agreed to be paid by a particular member to the Taxpayer under a given contract that constitutes the tax base for the sales tax imposed by such statute. This gross contract amount is the amount that must be reported as subject to tax.

There are various contractual arrangements between the Taxpayer and its customers regarding the payment of dues over time. Therefore, the Taxpayer has asked several questions about the applicability of the \$150 exemption afforded by T.C.A. Section 67-6-330(a)(3) under the various scenarios presented above in the FACTS.

1. Considering first the amusement (sales) tax, apart from the amusement tax exemption, the Taxpayer could not "prorate" its payment of tax to the Department simply because a particular member's full contract amount was not paid in advance by the member.

Tax is due based on the taxable sale of recreational memberships. The tax is payable on the gross contract amount paid or agreed to be paid and must be paid the calendar month following the execution of the contract, without the possibility of proration. (See T.C.A. Section 67-6-504.)

The amusement tax exemption (T.C.A. 67-6-330) is derived from the amusement (sales) tax itself and flows from such tax. Therefore, since the tax cannot be prorated, the exemption afforded by T.C.A. Section 67-6-330(a)(3) (applicable to \$150 per member per annum of recreation club membership dues) cannot be prorated among payments made by the Taxpayer's members to the Taxpayer. (The Taxpayer's tax liabilities - and thus its exemption(s) from those liabilities - are not related to the payments made by members to the Taxpayer under their respective contracts.)

In *Scenario IA.*, new member A contracted with Taxpayer to pay annual membership dues of \$[X] and paid dues in advance. The Taxpayer would be required to collect and pay \$[T] in sales tax. (([X] contract amount - \$150 exemption amount) x .0825 current tax rate.) Taxpayer must report the \$[X] total sales contract amount on the 20th day of the month following the date on which the contract was entered and tax would be due and payable on the first of that month. (See T.C.A. Section 67-6-504(a).)

In *Scenario IB.*, new member B likewise contracted with Taxpayer to pay annual membership dues of \$[X], but agreed to pay dues on a monthly basis (\$[Y]/month). The

Taxpayer would be required to report the same taxable amount (\$[X]) and pay the same amount in sales tax as new member A (i.e., \$[T]). The full sales tax is payable by the Taxpayer during the month following the execution of the membership contract even though Taxpayer only receives \$[Y] from the member B during the first month of the contract.

The timing of Member B's payments under the contract is not relevant to the tax payable by Taxpayer under T.C.A. Section 67-6-212, since tax is based on the gross sales contract amount. Neither is the timing of Member B's payments relevant to application of the exemption under T.C.A. Section 67-6-330(a)(3) and proration of the exemption is not allowed under the exemption statute.

2. The \$150 amusement (sales) exemption allowed under Tennessee Code Annotated Section 67-6-330(a)(3) applies to "annual" dues and membership fees paid by members of recreational clubs and dues measured in years. This can be seen from the plain language of the exemption statute itself.

For example, only the first \$150 per member "per annum of membership dues or fees" are exempt from tax under Tennessee Code Annotated Section 67-6-330(a)(3). Additionally, if more than "one (1) year's dues" are paid in advance by a member, the sales tax exemption is granted so that the (annual) \$150 exemption shall be applied to "each year's dues . . ." *Id.*

Under general principles of law, each monthly (renewal) term that results from the Taxpayer's month-to-month automatic renewal provision is a separate contract for the payment of dues. No monthly term can be considered as part of a larger "annual" or yearly contract since a member could cancel during the year by providing a 30-day written notice to the Taxpayer.

Therefore, the Tennessee Code Annotated Section 67-6-330(a)(3) tax exemption does not apply to the Taxpayer's monthly (month-to-month) renewal contracts that result from the automatic renewal provision in the initial contract.

Neither does the tax exemption allowed under Tennessee Code Annotated Section 67-6-330(a)(3) permit the Taxpayer to prorate the \$150 exemption so that only \$12.50 of each monthly payment would be exempt. Exemptions from taxation must be strictly and narrowly construed against the taxpayer and in favor of the taxing authority. Tennessee Com. Whse., Inc. v. Woods, 603 S.W.2d 130 (Tenn. 1980). Additionally, as has already been discussed in the analysis of Question 1. above, the timing of a particular member's payments is not relevant to the tax payable by a taxpayer or the application of the exemption allowed under Tennessee Code Annotated Section 67-6-330(a)(3).

In *Scenario II.*, new member C is automatically set up on a month-to-month renewal of the original annual contract. Taxpayer would be required to collect and pay \$[U] in sales tax for each month during which the month-to-month automatic renewal provision is

applicable. ($(\$[Y] \text{ monthly contract amount} - \$0 \text{ exemption amount allowable}) \times .0825$ current tax rate.)

3. When additional family members are added to a recreational dues contract, the gross contract amount is obviously increased. Since the amusement (sales) tax base is the gross contract amount, the increased tax base caused by the addition of family members to a contract allows additional room for exemption to the extent the statutory exemption permits it.

T.C.A. Section 67-6-330(a)(3) expressly allows an exemption for the first \$150 per member per annum. If several family members are included within a single annual contract, an exemption is allowed for each club member eligible to use the Taxpayer's recreational facilities under the annual membership contract.

In *Scenario III.*, new member D adds two members of his immediate family to the original membership contract with the Taxpayer. In reality, D and his two family members are each dues-paying members eligible to use Taxpayer's club and each club member is entitled to a \$150 exemption under the statute. In these circumstances, Taxpayer would be required to collect and pay $\$[V]$ in sales tax. ($(\$[X] \text{ contract amount} - [3 \text{ members} \times \$150 \text{ exemption amount/member}]) \times .0825$ current tax rate.)

4. The same principles and reasoning used in the ANALYSIS of Questions 1. and 3. can be used to apply the amusement tax exemption statute to *Scenario IV.*, where additional family members are added to a membership contract of the Taxpayer and dues are paid monthly. Additional dues-paying family members are each entitled to a separate \$150 exemption under T.C.A. Section 657-6-330(a)(3) but proration of exemptions is not permitted under the statute.

In *Scenario IV.*, three family members are included in the membership contract with Taxpayer but the contract is paid in monthly installments during its annual term. In these circumstances, like those presented in *Scenario III.* and analyzed in 3. above, the Taxpayer would be required to collect and pay $\$[V]$ in sales tax. ($(\$[X] \text{ contract amount} - [3 \text{ members} \times \$150 \text{ exemption amount/member}]) \times .0825$ current tax rate.) The exemption statute would not allow for proration of the exemptions permitted for each club member, as further explained in 1. above.

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APPROVED: Ruth E. Johnson
Commissioner

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