

5703-9-62

Physical Fitness Facilities.**(A) As used in this rule:**

- (1) "Physical fitness facility service" means all transactions by which a membership is granted, maintained, or renewed, including initiation fees, membership dues, renewal fees, monthly minimum fees, and other similar fees and dues, by a physical fitness facility such as an athletic club, health spa, or gymnasium, which entitles the member to use the facility for physical exercise. Physical fitness facility service includes facilities operated with a principal purpose of fostering or promoting participation in physical exercise. Physical fitness facility service does not include user fees.
- (2) "Membership" means the privilege, right, or entitlement to open use or the right to purchase the use of all or part of a facility over an extended period, at least one month, with or without time-of-day or day-of-week restrictions. Open use of the facility does not include the right to only attend instructor-led classes even if the amount of classes are unlimited in the month.
- (3) "Dues" means the fee or charge required for membership, affiliation, initiation, use, or subscription.
- (4) "Fees" means a charge fixed by a physical fitness facility for certain privileges or services.
- (5) "Initiation fee" means a payment as a condition precedent to becoming a member of an organization.
- (6) "User fee" is a one-time charge for a limited privilege or service.

(B) The following are instances, not inclusive, in which sales and use tax applies to the sale or use of:**(1) Membership dues or fees whether billed monthly or annually:**

A community center, organized and operated to promote social interaction, fellowship and community involvement, offers meeting rooms; a reading room; a cafeteria; a theater for musical and theatrical productions; and a physical fitness center with a pool, weight machines, exercise classes, and a gymnasium for the use by its members. General membership entitles the member to the use of most rooms and discounted admission to performances. For an additional fee, one can purchase a membership to the physical fitness facility. The general membership is not a membership to a physical fitness facility and is not subject to the tax. The additional membership fee is the sale of physical fitness facility

service and is subject to the tax. The entire membership fee is subject to the tax if there is no reasonable separation of charges for the general membership and the fitness membership.

(2) Unlimited membership, classes, lessons, or group sessions for at least one month:

A physical fitness facility sells a basic membership to all who want to frequent the facility. This fee will get the individual in the door. In addition, if an individual wants to participate in any one particular program, the individual will pay another monthly fee, which grants the open use of the program. All of these fees are considered membership fees to an organization that promotes and fosters physical exercise and subject to the tax

(3) Initiation fees, including a one-time equity contribution by a member toward a specific physical improvement to a physical fitness facility:

An applicant for membership into a physical fitness facility will pay an initiation deposit. Upon payment, the applicant is given the right to use the facility. The physical fitness facility treats this payment as an interest-free five-year loan that it accounts for as a long-term liability. If a member cancels its membership, the member is entitled to a refund of the initiation deposit over a period of time not to exceed five-years from the date of the member's original acceptance as a member of the facility. These payments classified as loans or equity transactions do not change their nature as fees or dues that are similar to an initiation fee. The amount is taxable.

(4) Renewal dues; and

(5) Monthly minimum fees.

(C) The following are instances, not inclusive, in which sales and use tax do not apply to the sale or use of:

(1) One-time use of a physical fitness facility:

A physical fitness facility charges separate fees for each court usage by the hour. This fee is a user fee and not a membership fee; the fee is not taxable.

A physical fitness facility charges a separate fee for each trainer-assisted workout. This fee is a user fee and not a membership fee; the fee is not taxable.

A self-defense school charges a one-time registration fee of \$100 for all applicants to the academy. Then, individuals may purchase a variety of ten-week sessions with two classes per week. Additionally, the individual may

utilize the academy's floor space and weight bags when classes are not in session. The registration fee grants patrons the right to purchase the use of the facility for physical exercise and meets the requirements of a membership fee. Tax should be charged on the registration fee. The fee for the specified number of classes is a "user fee" and not a membership, thus the charge for the classes is not subject to the tax.

(2) Specified number of classes, lessons, or group sessions for a particular activity; and

A gymnastics school charges a fee for twenty-six classes (two per week for thirteen weeks) that are payable in advance. This gymnastics school is not selling a membership, but rather a specific number of classes.

A physical fitness facility offers exercise classes five days a week, four classes per day. For a monthly fee, an individual can participate in any class they choose. This scenario does not qualify as a membership fee. This fee does not grant the member the right to open usage of the facility for a period of at least one month. Rather, the usage fee provides restricted use of the facility only during an organized instructor-led class.

(3) A facility that is operated with a primary purpose of making available to its patrons a facility or facilities for participation in social or fraternal activities.

A fraternal organization, organized and operated to foster social interaction and to provide community service, charges an initiation fee and an annual membership fee. The social hall of the organization has a weight room available for use by the members if they are so inclined. There is no additional charge for the incidental use of the weight room by a member. This organization is organized and operated for purposes other than fostering and promoting physical exercise. The incidental availability of fitness facilities for the occasional free use by members does not constitute the sale of a physical fitness service.

A fraternal organization, organized and operated to foster social interaction and to provide community service, charges an initiation fee and an annual membership fee. The social hall of the organization has a weight room available for use by the members if they are so inclined. The fraternal club charges a fee for each use of the weight room facility. A pay-for-play fee or user fee is not a membership. It is a fee for the one-time use of the facility. User fees are not to be the sale of physical fitness facility service and are not subject to the tax.

- (4) Any program that is not fundamentally for the purpose of fostering or promoting participation in physical exercise but may be offered at the same facility as a physical fitness facility service is not considered a physical fitness facility service, as long as, that program is billed separately by the physical fitness facility. Some examples of include, but are not limited to, lifeguard training, child care (including afterschool or early learning), adult literacy programs, English language learning, G.E.D. classes, substance abuse programs, Alzheimer's management, obesity intervention, first aid, injury rehabilitation, or college preparation classes.
- (D) Unless an exemption based on who purchases the product or who sells the product applies, a physical fitness facility is unable to claim an exemption on purchases of equipment or supplies used or consumed at the facility to provide the service.

Effective: 5/9/2020

Five Year Review (FYR) Dates: 05/09/2025

CERTIFIED ELECTRONICALLY

Certification

04/29/2020

Date

Promulgated Under: 119
Statutory Authority: 5703.05
Rule Amplifies: 5739.07(MM)