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ETA 3104.2016

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**This Excise Tax Advisory is only valid for tax reporting periods through December 31, 2015. For tax reporting requirements beginning January 1, 2016, refer to RCW 82.04.050 or dor.wa.gov for current tax information.**

## **Physical Fitness Services – Specialized Exercise and Conditioning Activities**

The purpose of this excise tax advisory (ETA) is to clarify the distinction between physical fitness services, which are retail sales subject to retailing business & occupation (B&O) and retail sales taxes, and therapeutic activities and instructional lessons in physical fitness, which are subject to the service and other activities B&O tax. This ETA does not address the taxability of amusement and recreation services or instructional lessons in amusement and recreation services. Refer to ETA 3003.2009 for an explanation of the tax reporting responsibilities of persons providing Yoga, Tai Chi, and Qi Gong classes.

Physical fitness services are activities involving physical exertion for the purpose of improving or maintaining the general fitness, strength, flexibility, conditioning, and/or health of the participant. Physical fitness services do not include: (1) instructional lessons; and (2) certain therapeutic services provided by either licensed physical therapists (Chapter 18.74 RCW) or licensed occupational therapists (chapter 18.59 RCW).

### **Physical fitness services**

WAC 458-20-183 (Rule 183) explains that "physical fitness services" include, but are not limited to:

All exercise classes, whether aerobic, dance, water, jazzercise, etc., providing running tracks, weight lifting, weight training, use of exercise equipment, such as treadmills, bicycles, stair-masters and rowing machines, and providing personal trainers (i.e., a person who assesses an individual's workout needs and tailors a physical fitness workout program to meet those individual needs).

Physical fitness services also include but are not limited to:

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- Providing access to equipment or facilities at which a person can engage in physical fitness activities;
- Conducting an exercise class at which someone leads a group of persons through a physical fitness routine or regimen. These classes may or may not involve a specialized exercise or conditioning program such as Body Pump, Jazzercise, Pilates, Power Sculpting, and Neuromuscular Integrative Action (“Nia”); and
- Providing one-on-one personal training services to assess individual workout needs and/or tailor a physical workout program to meet those individual needs. Again, these services may or may not involve a specialized exercise or conditioning program.

In all three situations above, it is likely that some varying degree of instruction or guidance will be provided to the participant. As examples:

- A person who is working out in a weight room may ask an employee of the facility for tips on the proper use of a particular apparatus;
- A person leading an exercise class often demonstrates proper techniques for various movements used in the class; and
- Personal trainers demonstrate and provide guidance as to proper weight-lifting techniques.

In such cases, however, the instruction or guidance is not the primary focus. The primary focus is for the participant to improve or maintain his or her general fitness, strength, flexibility, conditioning, and/or health. Such instruction or guidance does not in itself result in that service being an "instructional lesson" subject to the service and other activities B&O tax.

### **Instructional lessons**

Rule 183 explains that physical fitness services "do not include instructional lessons such as those for self-defense, martial arts, and stress-management." Rule 183 further provides that:

"Instructional lessons" can be distinguished from "exercise classes" in that instruction in the activity is the primary focus in the former and exercise is the primary focus in the latter.

Instructional lessons for activities such as Body Pump and Pilates are generally characterized as teaching the participant how to perform certain activities, generally following a specific curriculum that includes the study of the underlying philosophy of the activity. The purpose of the instruction includes the participant obtaining certification as a physical fitness trainer or group fitness instructor, or mastery of the techniques and philosophy with possible advancement in levels of achievement usually associated with martial arts.

The primary purpose of the activity as instructional or physical fitness is the determining factor, not the label. For example, if techniques associated with a martial art or Body Pump are used in a physical fitness exercise context, the service is subject to retail sales tax. A Pilates “class,” for example, may be instructional (subject to the service and other activities B&O tax) if the class is taken by the participants as a part of a curriculum to gain certification as instructors. If the class or activity is primarily to improve flexibility, strength, or general fitness for the participant, the charge for participation is a retail sale.

**Physical or occupational therapy**

Therapeutic services of licensed physical therapists and occupational therapists include only physical therapy, as defined in RCW 18.74.010(3), and occupational therapy, as defined in RCW 18.59.020(2), when performed pursuant to a referral from an authorized health care practitioner or in consultation with an authorized health care practitioner. Charges by these practitioners for these therapeutic services are not retail sales, but are subject to the service and other activities B&O tax. The fact that a participant may receive some therapeutic benefit through participating in a physical fitness activity does not change the nature of a physical fitness service to physical therapy or occupational therapy. For example, physical fitness services provided by a health and fitness club are not physical therapy even if a member received a written prescription from a physician directing the member to exercise.

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