

DECISION OF MUNICIPAL TAX HEARING OFFICER

May 10, 2013

Taxpayer's Name
Taxpayer's Address

Taxpayer
MTHO #765

Dear Taxpayer,

We have reviewed the evidence submitted for redetermination by *Taxpayer* and the City of Tucson (Tax Collector or City). The review period covered was September 2008 through July 2012. Taxpayer's protest, Tax Collector's response, and our findings and ruling follow.

Taxpayer's Protest

Taxpayer operates a facility that offers yoga classes. Taxpayer was assessed City privilege tax under the amusement classification. Tax statutes should be strictly construed. Yoga is not an amusement and is not similar to a health club or a fitness center. Taxpayer is therefore not taxable under the amusement classification for its yoga classes.

Even if yoga classes were taxable, the City did not adequately notify Taxpayer that the new tax on health spas and similar establishments would apply to Taxpayer's yoga classes.

Tax Collector's Response

Taxpayer offers yoga classes along with classes on meditation and classes pertaining to the study of the tenants of yoga philosophy. The City believes that yoga classes are a health-related activity involving physical exercise. The other two classes did not involve physical exercise. Therefore only the yoga classes were taxed.

The City informed taxpayers of the change in the code by sending notices to licensed businesses and placing notices on its website. Several newspaper articles reported the change in the tax code. It is the business owner's responsibility to be aware of and comply with tax laws related to his business.

Discussion

Taxpayer offers yoga classes as well as classes on meditation and classes pertaining to the study of yoga philosophy. The issues presented by the parties are

- Whether Taxpayer's yoga class is taxable under the amusement classification, and
- Whether the City provided adequate notice to Taxpayer that its yoga classes were taxable.

Is Taxpayer's Activity Taxable under the Amusement Classification?

The Tax Collector contends that yoga classes involve physical exercise and Taxpayer is therefore charging for health-related instruction that is taxable under Tucson City Code (TCC) § 19-410(a)(2). TCC § 19-410(a)(2) provides:

(a) The tax rate shall be at an amount equal to two (2) percent of the gross income from the business activity upon every person engaging or continuing in the business of providing amusement that begins in the city or takes place entirely within the city, which includes the following type or nature of businesses:

(1) Operating or conducting theaters, movies, operas, shows of any type or nature, exhibitions, concerts, carnivals, circuses, amusement parks, menageries, fairs, races, contests, games, billiard or pool parlors, bowling alleys, skating rinks, tennis courts, golf courses, video games, pinball machines, public dances, dance halls, sports events, jukeboxes, batting and driving ranges, animal rides, or any other business charging admission for exhibition, amusement, or entertainment.

(2) Health spas, fitness centers, dance studios, or other persons who charge for the use of premises for sports, athletic, other health-related activities or instruction, whether on a per-event use, or for long-term usage, such as membership fees.

The code taxes amusements, which are defined to include specified types or nature of businesses. Paragraph (a)(2) specifically lists health spas, fitness centers, dance studios, sports events or athletic events and concludes with the general term "... other health-related activities or instruction."

Generally, where general words follow the enumeration of particular classes of persons or things, the general words should be construed as applicable only to persons or things of the same general nature or class as those enumerated. *Wilderness World v. Department of Revenue*, 182 Ariz. 196, 895 P.2d 108 (1995); *White v. Moore*, 46 Ariz. 48, 53-54, 46 P.2d 1077, 1079 (1935).

In *Wilderness World* the Arizona supreme court held that river rafting was not of the same kind or nature as the activities specifically listed in the statute: theaters, movies, operas, shows, exhibitions, concerts, carnivals, circuses, amusement parks, menageries, fairs, races, contests, games, pool parlors, bowling alleys, dances, and boxing and wrestling matches. The listed activities are mainly spectator events of short duration or participatory activities requiring no supervision. The court concluded that none of the listed activities resembled a river trip, which it characterized as a journey or expedition of extended duration covering hundreds of miles.

In *White v. Moore* the Arizona supreme court held that a privilege tax imposed on various classes of businesses including hotels, guest houses, dude ranches and resorts, rooming houses, apartment houses, automobile rental services, automobile storage garages, parking lots, tourist camps or any other business or occupation charging storage fees or rents did not tax a person renting for mercantile and office purposes. The court held that the phrase "any other business or occupation charging storage fees or rents" only embraced businesses of the same kind, class, or nature as the listed businesses and therefore the tax was not intended to reach the income derived from renting office and mercantile buildings.

The question therefore is whether yoga classes are of a similar type or nature of business as health spas, fitness centers, dance studios, sports events or athletic events. In determining whether an activity falls within the scope of the privilege tax, the statute imposing the tax must

be strongly construed against the government and in favor of the taxpayer. Any doubts as to its meaning are to be resolved against the tax authority. *Wilderness World, supra*; *Wenner v. Dayton-Hudson Corp.* 123 Ariz. 203, 598 P.2d 1022 (App. 1979). In addition, no clause, sentence, or word should be rendered superfluous, void, contradictory or insignificant. *State v. Superior Court for Maricopa County*, 113 Ariz. 248, 550 P.2d 626 (1976).

The City contends that yoga is considered a health-related activity because it has been promoted as an activity that develops strength, flexibility and balance in addition to a variety of other health benefits including but not exclusive to reducing blood pressure, reducing stress, decreasing cholesterol and triglycerides levels and relieving symptoms of asthma and arthritis.

We do not question that yoga offers health related benefits. The code, however, does not simply tax health-related activities or instruction. Giving meaning to the words in the code, the tax is imposed on health-related activities or instruction that are of the type or nature as health spas, fitness centers, dance studios or other establishments that charge for the use of premises for sports or athletic activities or instruction. The record here does not support a conclusion that the yoga classes offered by Taxpayer are of a similar type or nature as health spas, fitness centers, dance studios or other establishments that charge for the use of premises for sports or athletic activities or instruction.

The evidence in this case shows that the core aim of yoga is to engage in a spiritual practice. Yoga is historically practiced for its meditative and spiritual benefits. The style of yoga Taxpayer primarily teaches is hatha yoga. Hatha yoga is a less vigorous style of yoga that focuses on less movement and more precise alignment in poses. The ultimate aim of hatha yoga is spiritual purification and self-understanding leading to union with the divine. Traditional hatha yoga includes chanting, postures, breathing and meditation. While yoga may provide strength and endurance benefits, it does not mean yoga is of a similar type or nature as health spas, fitness centers, dance studios or other establishments that charge for the use of premises for sports or athletic activities or instruction.

The listed activities are not defined in the tax code. The following definitions from Webster's II New Riverside University Dictionary show that, unlike yoga, the listed activities are primarily aimed at physical activity.

- Health spa is defined as a business establishment with equipment and facilities to help customers lose weight.
- While fitness center is not defined, fit includes one who is physically sound, healthy.
- While dance studio is not defined, dance is defined to move rhythmically to music using improvised or prescribed gestures and steps; to leap or skip about excitedly.
- Athletic is defined as physically strong, relating to or appropriate to athletics or athlete, and an athlete is one who participates in competitive sports.
- Sports is defined as an active pastime, a specific diversion usually involving physical exercise and having a set form and body of rules.
- Yoga is defined as a Hindu discipline aimed at training the consciousness for a state of perfect spiritual insight and tranquility; a set of exercises practiced to promote control of the body and mind.

Based on the forgoing, the City's privilege tax assessment to Taxpayer is reversed except for the tax on the rental of real property. Because we hold that Taxpayer's yoga classes do not fall within the scope of the privilege tax under the amusement classification, it is not necessary to address Taxpayer's other arguments regarding vagueness and notice of the tax.

Findings of Fact

1. Taxpayer operates a facility that offers yoga classes, meditation classes and classes pertaining to the study of yoga philosophy.
2. Taxpayer did not pay a City privilege tax on its receipts for the three types of classes.
3. The Tax Collector conducted an audit assessment of Taxpayer for the period September 2008 through July 2012 and issued an assessment.
4. The Tax Collector determined that the yoga classes were a health-related activity involving physical exercise taxable under the amusement classification. The assessment included receipts for the yoga classes and for the rental of real property.
5. The assessment excluded receipts for meditation classes and classes relating to yoga philosophy.
6. Taxpayer timely protested the assessment stating that yoga classes are not of the same type or nature as the taxable activities listed under the amusement classification. Taxpayer consented to and paid the tax on the real property rental. That portion of the assessment is not at issue here.
7. Taxpayer contends that yoga does not fall within the amusement classification because:
 - a. Yoga is a spiritual and not a health-related activity. It is practiced for its meditative and spiritual benefits.
 - b. Yoga in general is a Hindu theistic philosophy teaching the suppression of all activity of body, mind and will in order that the self may realize the distinction from them and attain liberation.
 - c. The style of yoga Taxpayer primarily teaches is hatha yoga.
 - d. The ultimate aim of hatha yoga is spiritual purification and self-understanding leading to union with the divine. Traditional hatha yoga is a holistic experience that includes chanting, postures, breathing and meditation.
 - e. The activities listed in the tax code concentrate on physical activity to achieve a healthy body. The core aim of yoga is to engage in a spiritual practice rather than simply to engage in a physical fitness activity.
 - f. Even if the tax applies, it should not be collected for prior years because the language of the code is vague and the City did not provide adequate notice that the code applied to yoga studios.
8. The Tax Collector contends that yoga is a health-related activity subject to the amusement tax because yoga has been promoted as an activity that promotes strength, flexibility and balance as well as reducing blood pressure, stress, cholesterol and relieving symptoms of asthma and arthritis.

9. The Tax Collector attached a copy of a WebMD article relating to yoga in support of its contentions.
10. The WebMD article recognizes the health benefits of yoga and that there are a number of styles of yoga.
11. Under the Section Yoga and Strength, the article states that even less vigorous styles of yoga, such as Iyengar or Hatha, which focuses on less movement and more precise alignment in poses, can provide strength and endurance benefits.

Conclusions of Law

1. TCC § 19-410 taxes the business activity of providing amusements.
2. Amusements include businesses of a type or nature similar to health spas, fitness centers, dance studios, or other persons who charge for the use of premises for sports, athletic, or other health-related activities or instruction. TCC § 19-410(a)(2).
3. Statutes imposing taxes are to be strongly construed against the government and in favor of the taxpayer. Any doubts as to the meaning of the statute are to be resolved against the tax authority. *Wilderness World, supra*; *Wenner v. Dayton-Hudson Corp. supra*.
4. The Tucson City Code does not define the terms health spas, fitness centers, dance studios, sports or athletic events.
5. When construing a tax statute, words must be given their "plain and ordinary meaning." *Wilderness World, supra*.
6. The law will be given, whenever possible, such an effect that no clause, sentence, or word is rendered superfluous, void, contradictory or insignificant. *State v. Superior Court for Maricopa County, supra*.
7. Under the doctrine of *ejusdem generis*, "where general words follow the enumeration of particular classes of persons or things, the general words should be construed as applicable only to persons or things of the same general nature or class of those enumerated." *Wilderness World, supra*; *White v. Moore, supra*.
8. Even if yoga classes offer certain health related benefits, the activity has to be of the same type or nature as health spas, fitness centers, dance studios, sports events or athletic events.
9. The burden is on the City to show that Taxpayer's yoga classes are activities within the scope of the City privilege tax.
10. The City must show that the yoga classes offered by Taxpayer were of the same type or nature as the activities specifically listed in TCC § 19-410(a).
11. Based on the evidence in the record.
 - a. Taxpayer's yoga classes are not similar to health spas, fitness centers or dance studios.
 - b. Taxpayer's yoga classes are not similar to businesses that charge for the use of premises for sports or athletic activities or instruction.
12. Taxpayer's yoga classes are not taxable under TCC § 19-410.

13. Taxpayer's protest that its yoga classes are not taxable under TCC § 19-410 should be granted.
14. The City's privilege tax assessment to Taxpayer for the period September 2008 through July 2012 holding that Taxpayer's yoga classes are subject to the City privilege tax is reversed.

Ruling

Taxpayer's protest of an assessment made by the City of Tucson for the period September 2008 through July 2012 is granted.

The Tax Collector's Notice of Assessment to Taxpayer for the period September 2008 through July 2012 is reversed except for the tax on the rental of real property.

The Tax Collector shall remove from the assessment receipts related to Taxpayer's yoga classes.

The parties have timely rights of appeal to the Arizona Tax Court pursuant to Model City Tax Code Section -575.

Sincerely,

Hearing Officer

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c: *Tax Audit Administrator*
Municipal Tax Hearing Office