

BEFORE THE TAX COMMISSION OF THE STATE OF IDAHO

In the Matter of the Protest of)	
)	DOCKET NO. 20425
[Redacted],)	
)	DECISION
Petitioner.)	
)	
)	
)	

On July 13, 2007, the staff of the Sales Tax Audit Bureau (Bureau) of the Idaho State Tax Commission (Commission) issued a Notice of Taxpayer Initiated Refund Determination to [Redacted] (taxpayer) denying a sales tax refund claim for the period of July 1, 2006, through September 30, 2006, in the total amount of \$469,376.

On July 25, 2007, the taxpayer filed a timely appeal and petition for redetermination. The Commission held an informal hearing with the taxpayer on October 11, 2007.

The taxpayer operates a private golf club [Redacted]. [Redacted]. [Redacted] the taxpayer had sold 182 memberships. The majority of these members paid an initial membership fee [Redacted] although one member paid [Redacted] and 19 members paid [Redacted]. At issue is the imposition of sales tax on these memberships.

The taxpayer did not collect sales tax from the members on these initial membership sales. The taxpayer remitted the tax on these memberships on January 31, 2007, when it filed an amended sales tax return for September 2006. On May 31, the taxpayer filed the refund claim which the Tax Commission denied.

Idaho Code § 63-3619 imposes a 6 percent sales tax on all retail sales in Idaho. Idaho Code § 63-3612 includes within the definition of sale any transaction in which consideration is exchanged for “the use of or the privilege of using tangible personal property or facilities for recreation.” The Idaho Supreme Court ruled that sales of initiation fees for private golf clubs are

taxable in *Crane Creek Country Club v. Idaho State Tax Commission*, 122 Idaho, 880 and 841 P.2d 410 (1992).

The taxpayer argues that the ruling in *Crane Creek* does not apply in this case because the membership fees are refundable. Under the current membership plan, the taxpayer intends to sell [Redacted] [Redacted] memberships. After those memberships are sold, a member will be allowed to sell his membership back to the club and receive 80 percent of the fee being charged at the time the membership is terminated.

In support of its contention that the fees are not taxable, the taxpayer cites the Florida Administrative Code and an administrative advisory opinion from the Utah State Tax Commission; however, the Commission will look to its own administrative rulings rather than similar precedents from other states. In a case with substantially similar facts, the Tax Commission has held that such fees are taxable even though they are refundable. See Idaho State Tax Commission Decision 16791; the WestLaw citation is 2003 WL 25467452 (Id.St.Tax.Com.). Although that ruling upheld the Commission's interpretation of the application of the Sales Tax Act to sales of refundable memberships, the Commission would like to respond to the specific issues raised by the taxpayer in this case.

The taxpayer also cites a Missouri case in support of its argument, *Old Warson Country Club v. Director of Revenue*, 933 S. W. 2d, 400, (1996). This case involved capital assessments charged to members. One third of the assessment was refundable to each member upon termination. The court held that such assessments were not fees paid to a place or in a place of recreation. The apparent reasoning of the *Old Warson* Court was that the assessments paid by equity members were not fees charged for recreation. This is a surprising ruling considering that members who did not pay the assessments were suspended from using club facilities and then

expelled. The court also held that the nonrefundable amounts paid by non-equity members were subject to tax. The Commission does not find this decision persuasive. Moreover, the holding in *Old Warson* is contradictory to decisions in other states.

The Oklahoma Supreme Court held that capital assessments charged by a golf club to its members were subject to tax because they were fees for the use of the club's facilities. *Oklahoma City Golf and Country Club v. Oklahoma Tax Commission*, 825 P.2d 267, (1992). This holding is similar to the holding in *Crane Creek* and contrary to the holding in *Old Warson*.

The Supreme Court of Tennessee has also ruled on a case similar to the present one. In that case, a golf club required members to make an initiation deposit for the purpose of capital improvements. The deposit was either refundable in 30 years or a specified sum thereof was returned if the membership was re-assigned before the expiration of the 30-year term. The Tennessee court ruled that the initiation deposits were a taxable "valuable contribution" required of a member to a sports or recreation club. *Nashville Golf & Athletic Club v. Joe B. Huddleston, Commissioner of Revenue, State of Tennessee*, 837 S.W.2d 49 (1992).

Finally, the case of *Akron Management Corporation, et. al., v. Zaino, Tax Commr.*, 94 Ohio St.3d 101, 760 N.E.2d 405 (2002), involved refundable memberships, which four different golf clubs classified as loans or equity transactions. The cases of the four clubs were consolidated on a common question of law. The Ohio Supreme Court, in finding such membership fees were taxable, stated:

Although the clubs involved here label the required payments as loans or equity transactions, these labels serve only to disguise their true nature as fees or dues that are similar to an initiation fee. An initiation fee, while not defined in the statute, in everyday application involves a payment as a condition precedent to becoming a member of an organization. The transactions at issue here serve the same function. At none of the four country clubs

may an applicant become a member until he or she makes the required payment, and the right to use club facilities inures as a result of these transactions. *Therefore, classification of these payments as anything other than transactions made to gain membership is nothing more than an attempted end run around the sales tax. Akron Management Corporation, et. al., v. Zaino, Tax Commr., at 408. (Emphasis added.)*

In the present case, the taxpayer charges new members a membership fee. Even though the fee may be partially refundable under the current membership plan, it is paid for the privilege of playing golf. Thus, the fees are consideration paid for the privilege of using a facility for recreation putting them within the definition of “sale” in Idaho Code § 63-3612.

The taxpayer raised one additional argument based on an Internal Revenue Service ruling, IRS Technical Advice Memorandum, 1997 WL 531369, (August 29, 1997). This ruling held that refundable membership fees were not gross income for the purposes of the federal income tax. This argument is also unpersuasive. There is no indication that the legislature has connected the definition of “sale” found in Idaho Code § 63-3612 to the definition of “income” in the Internal Revenue Code. The income tax treatment of a transaction has no effect on the imposition of sales tax.

The taxpayer’s attorney noted that at one point the Commission issued a Notice of Deficiency Determination that imposed a penalty for late payment on the amount remitted with the amended return for September 2006. The Commission does not believe that such a penalty is appropriate in this case. The Commission, therefore, will not assert a penalty on the amount at issue in this refund claim.

WHEREFORE, the Notice of Taxpayer Initiated Refund Determination dated July 13, 2007, is APPROVED, AFFIRMED, and MADE FINAL.

IT IS ORDERED and THIS DOES ORDER that the taxpayer’s refund claim is denied.

An explanation of the taxpayer's right to appeal this decision is enclosed with this decision.

DATED this _____ day of _____, 2007.

IDAHO STATE TAX COMMISSION

COMMISSIONER

CERTIFICATE OF SERVICE

I hereby certify that on this _____ day of _____, 2007, a copy of the within and foregoing DECISION was served by sending the same by United States mail, postage prepaid, in an envelope addressed to:

[Redacted]
[Redacted]

Receipt No.