

Cite as Det. No. 04-0239E, 24 WTD 265 (2005)

BEFORE THE APPEALS DIVISION
DEPARTMENT OF REVENUE
STATE OF WASHINGTON

In the Matter of the Petition For Correction of)	<u>E X E C U T I V E</u>
Letter Ruling of:)	<u>D E T E R M I N A T I O N</u>
)	
)	No. 04-0239E
...)	
)	Registration No. . . .
)	. . . 2004 Taxpayer Information &
)	Education (TI&E) Letter Ruling
)	Docket No. . . .

RULE 183; RCW 82.04.050: RETAIL SALE – PHYSICAL FITNESS SERVICES – PILATES. The term “sale at retail” includes the sale of “physical fitness services.” Pilates is a “physical fitness service.”

Headnotes are provided as a convenience for the reader and are not in any way a part of the decision or in any way to be used in construing or interpreting this Determination.

DIRECTOR’S DESIGNEE: Jacqueline M. Danyo, Acting Assistant Director, Appeals Division

NATURE OF ACTION:

Chartoff, A.L.J. – A taxpayer that offers private and semi-private Pilates [classes] protests a Taxpayer Information & Education Division (TI&E) letter ruling that Pilates . . . is a physical fitness service, taxable as a retail service under RCW 82.04.050. We conclude that the taxpayer provides a physical fitness service.¹

ISSUES:

1. Is Pilates . . . a “physical fitness service,” taxable under the retailing classification pursuant to RCW 82.04.050?
2. Whether the Department must classify the taxpayer’s business as service because another taxpayer has been instructed to report under service?

¹ Identifying details regarding the taxpayer and the assessment have been redacted pursuant to RCW 82.32.410.

FINDINGS OF FACT:

The term, “Pilates,” describes a series of body conditioning exercises developed by Joseph Pilates in the early 20th century.² Joseph Pilates was a professional athlete with a special interest in physical conditioning. He developed a series of physical exercises that emphasize alignment and stabilization of the body using the body’s core abdominal and pelvic muscles. The exercises are thought to improve body alignment and correct muscular imbalances, as well as increase overall physical conditioning and functionality of the body.

The original Pilates series of exercises is performed on a mat on the floor. Pilates may also be performed on specialized machines which support the exerciser. The machines were originally developed to allow injured or weak exercisers to do the Pilates series when performing the exercises on the mat would be too difficult. A hallmark of Pilates is that it can be readily adapted for participants with physical limitations. Accordingly, Pilates has a reputation for being one of the safest exercise programs in practice today, and it is often recommended by doctors and physical therapists to persons with physical limitations or pain which prevents them from otherwise exercising. Pilates is especially popular in the dance field as a means of preventing injuries and recovering from injuries.

Pilates exercises require significant physical exertion and involve the stretching and strengthening of muscles. Special breathing patterns and techniques are also incorporated into the exercises. Pilates is commonly taught in group classes and in private sessions.

The taxpayer operates . . . a Pilates studio in . . . Washington, and . . . has extensive training in Pilates. . . . In addition, she completed a training program in rehabilitation and conditioning exercises using Pilates apparatus

[Taxpayer] offers private and semi-private Pilates [classes] to clients in the studio. The taxpayer’s clients are usually referred to her by doctors and physical therapists, and are seeking to recover from an injury or alleviate chronic pain. The clients begin in one-on-one exercise sessions which are tailored to the specific needs of the client.

The taxpayer leads the clients through the exercise routine, making corrections, and then adjusting the routine as the client improves. [Taxpayer] may work closely with the referring doctor or physical therapist to measure a client’s progress. Once the clients have achieved a certain level of mastery in the exercises, they may attend semi-private classes

In 1993 the Department instructed the taxpayer to report revenues from Pilates . . . under the retailing classification of the Business and Occupation (B&O) tax and to collect retail sales tax. The taxpayer has complied with this instruction. In 2003, the taxpayer again wrote to TI&E to ask about the taxability of Pilates activities. TI&E issued a letter to the taxpayer recommending

² General information regarding Pilates is taken from: Maria Junco, *Pilates Technique*, DANCE TEACHER NOW, 27, 27-30, (November/December 1988).

that the taxpayer continue to collect retail sales tax and pay retailing B&O tax. The taxpayer timely petitioned for review of TI&E's letter.

ANALYSIS:

1. Pilates . . . is a "physical fitness service," taxable under the retailing classification pursuant to RCW 82.04.050.

Washington's excise tax law requires persons who charge for services defined as retail sales to collect retail sales tax on the charges to their customers and remit the tax to the state. RCW 82.08.020; RCW 82.08.050; *see* Det. No. 02-0039, 21 WTD 318 (2002).

RCW 82.04.050 states that the term retail sale includes the following services:

(3) The term "sale at retail" or "retail sale" shall include the sale of or charge made for personal . . . services including amounts designated as . . . fees . . . and other service emoluments however designated, received by persons engaging in the following business activities:

...

(g) The following personal services: Physical fitness services . . .

WAC 458-20-183(2) (Rule 183) defines physical fitness services and provides, in part:

(l) "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).

In the present case, the taxpayer leads and instructs clients in Pilates exercises. We found above that Pilates is a type of physical exercise engaged in to build strength and flexibility, and to improve the conditioning and functionality of the body. Pilates classes are therefore exercise classes, and physical fitness services under Rule 183. To the extent the taxpayer assesses its clients' workout needs and tailors the Pilates routine to meet those needs, the taxpayer is providing personal training, which is also included in the definition of physical fitness services under Rule 183. Det. No. 99-174, 19 WTD 172 (2000).

The taxpayer does not dispute that Pilates is a physical fitness activity. However, the taxpayer contends it uses Pilates to provide a unique service that does not fit within the definition of "physical fitness service." The taxpayer represents that it exclusively serves clients who have suffered an injury, weakness, or chronic pain, and are often referred by a physician or physical therapist. The taxpayer tailors the Pilates exercises to meet the needs of these persons, thereby

assisting in their recovery and rehabilitation. The taxpayer contends that the primary goals of its clients are pain relief and recovery from injury.

We recognize that the taxpayer provides exercise tailored to the needs of clients with medical conditions with the object of relieving pain and improving physical condition. Ultimately, however, the service that the taxpayer provides is exercise, a physical fitness activity which is defined as a retail service. The law does not provide an exception for exercise tailored to treat specific physical infirmities. Similarly, there is no statutory authority for exempting from retail sales tax physical fitness services purchased as a result of a physician's prescription. Det. No. 02-0039, 21 WTD 318 (2002).

In conclusion, RCW 82.04.050 provides that physical fitness services are classified as retail services and that retail sales tax must be collected. Pilates is a physical fitness activity. . . . We find no legal support for concluding that the taxpayer does not provide a physical fitness service.

2. The Department is not required to classify the taxpayer's business activity as service simply because another taxpayer may have been allowed to report under service.

The taxpayer states that it knows of several Pilates businesses that have received instructions from the Department to report under service rather than retail. Consistent treatment of taxpayers is a legitimate concern, and we will briefly address it. However, we cannot discuss other taxpayers by name because of confidentiality requirements. *See* RCW 82.32.330; Det. No. 00-206E, 21 WTD 66 (2002).

Statutes and rules require interpretation and application to specific facts. If the taxpayer believes the Department may have given advice to some of the taxpayer's competitors inconsistent with TI&E's current instructions to the taxpayer, it may inform the Department of the names of the competitors so that consistent instructions can be provided. Even if the taxpayer's concern should prove to be correct, however, that does not mean the Department must perpetuate past errors by repeating them with respect to other taxpayers. *See, e.g.*, Det. No. 00-206E.

DECISION AND DISPOSITION:

The taxpayer's petition for correction is denied.

Dated this 29th day of October 2004