

BEFORE THE IOWA DEPARTMENT OF REVENUE
HOOVER STATE OFFICE BUILDING
DES MOINES, IOWA

IN THE MATTER OF

THE TICE GROUP, INC.
d/b/a Club Pilates
140 Jordan Creek Pkwy, Ste. 140
West Des Moines, IA 50266

SALES AND USE TAX

DECLARATORY ORDER

DOCKET NO. 2019-300-2-0020

Pursuant to a Petition for Declaratory Order (hereinafter referred to as “Petition”) filed with the Iowa Department of Revenue (hereinafter referred to as “Department”) by THE TICE GROUP, INC. (hereinafter referred to as “Tice” or “Petitioner”), doing business as Club Pilates, on January 15, 2019, and in accordance with Iowa Code section 17A.9 and Iowa Administrative Code rule 701—7.24(17A), “Declaratory order-in general,” the Director issues the following order.

I. FACTS

The findings of fact are based on the Petition, further communications with Tice, and additional undisputed facts relevant to this Order.

Club Pilates Franchise, LLC is a Pilates instruction and fitness franchise that owns and operates over 450 Pilates instruction studios across the United States and Canada.¹ Tice is the franchisee of a Club Pilates studio that it operates in West Des Moines, Iowa (hereinafter referred to as “Studio”). Tice’s Studio offers group and individual instruction on a per-class basis or monthly membership basis. One fifty-minute Pilates class without a membership costs \$25,

¹ More information about Club Pilates Franchise LLC can be found on its website, <https://www.clubpilates.com/>.

while varying monthly subscription levels offer different pricing at progressively reduced per-class rates.

Tice's Studio offers its members Pilates classes that range in difficulty from beginner to advanced. Each class is taught by a certified Pilates instructor. Club Pilates offers a certification course for prospective instructors that requires, among other things, a minimum of 450 hours of both online and in-studio training, self-practice, and various assignments. Tice's Studio only offers access to its facilities during classes or individual sessions taught by its instructors; the Studio does not offer any services outside of these scheduled classes or individual sessions, and its members cannot freely use the premises or equipment to exercise absent instruction and supervision.

Tice currently does not collect Iowa sales tax on the sales price of its membership or class fees.

II. ISSUE PRESENTED

Tice presents one issue for consideration: Whether its Studio's membership and class fees are subject to Iowa sales tax.

II. ANALYSIS AND CONCLUSIONS

A. Standard of Review

i. Declaratory Orders under the Iowa Administrative Procedure Act

The function of a declaratory order is to provide "reliable advice from an agency as to the applicability of unclear law." Arthur Earl Bonfield, *The Iowa Administrative Procedure Act: Background, Construction, Applicability, Public Access to Agency Law, The Rulemaking Process*, 60 Iowa L. Rev. 731, 805 (1975). Iowa Code section 17A.9 contemplates declaratory orders by administrative agencies on a disclosed set of facts. *City of Des Moines v. P.E.R.B.*, 275

N.W.2d 753, 758 (Iowa 1979). A declaratory order enables the public to secure definitive binding advice as to the applicability of agency-enforced law to a particular set of facts. *Bonfield*, *supra*, at 822–23.

It is not the function of a declaratory order to resolve issues involving factual analysis “too complicated to handle outside of an actual adjudication.” *Id.* at 807. A declaratory order is not a “contested case” as defined in Iowa Code section 17A.2(5); namely, it is not an evidentiary hearing, which is a separate administrative remedy set forth in Iowa Code chapter 17A and in the Department’s rules. *See* Iowa Admin. Code r. 701—7.41(17A). Consequently, for the purposes of any declaratory order, the Director views the issues raised in the petition as questions of law applicable to future factual situations as disclosed in the petition. This view is consistent with Iowa Administrative Code rule 701—7.41(17A) concerning the issuance of declaratory orders.

ii. Statutory Construction and Interpretation of Tax Statutes

“When engaging in statutory interpretation,” the Department “first examine[s] the language of the statute and determine[s] whether it is ambiguous.” *Kay-Decker v. Iowa State Bd. of Tax Review*, 857 N.W.2d 216, 223 (Iowa 2014) (citing *Rolfe State Bank v. Gunderson*, 794 N.W.2d 561, 564 (Iowa 2011)). “Generally, we presume words used in a statute have their ordinary and commonly understood meaning.” *Kay-Decker*, 857 N.W.2d at 223 (quoting *McGill v. Fish*, 790 N.W.2d 113, 119 (Iowa 2010)). “Legislative intent is expressed by what the legislature has said, not what it could or might have said. When a statute’s language is clear, we look no further for meaning than its express terms. Intent may be expressed by the omission, as well as the inclusion of statutory terms . . .” *Hawkeye Land Co. v. Iowa Utils. Bd.*, 847 N.W.2d 199, 210 (Iowa 2014) (quoting *State v. Beach*, 630 N.W.2d 598, 600 (Iowa 2001) (internal citations omitted)).

In addition to applying the general principles of statutory construction, “[s]tatutes which impose taxes are construed liberally in favor of the taxpayer and strictly against the taxing body. It must appear from the language of a statute that the tax assessed against the taxpayer was clearly intended.” *Iowa Auto Dealers Ass’n v. Iowa Dep’t of Revenue*, 301 N.W.2d 760, 762 (Iowa 1981). However, the Department construes tax exemption statutes narrowly in favor of taxation. *See Dial Corp. v. Iowa Dep’t of Revenue*, 634 N.W.2d 643, 646 (Iowa 2001) (“Tax exemption statutes are construed strictly, with all doubts resolved in favor of taxation.”); *see also Sherwin-Williams Co. v. Iowa Dep’t of Revenue*, 789 N.W.2d 417, 424 (Iowa 2010).

B. Discussion

Iowa Code section 423.2(6)(v) imposes Iowa sales tax on the gross receipts from “all commercial recreation” services. Iowa Administrative Code rule 701—26.24 defines “recreation” to include “all activities pursued for pleasure, including sports, games and activities which promote physical fitness,” excluding tickets to admissions separately taxable in Iowa Code section 423.2.

Rule 26.24, however, distinguishes between “commercial recreation” and “instruction in recreational activities”: “If a person provides both facilities for recreation and instruction in recreational activities, charges for instruction in the recreational activities shall not be subject to tax” if the instruction meets the following conditions:

1. The instruction charges are contracted for separately, separately billed, and reasonable in amount when compared to the taxable charges of providing facilities for recreation. . . .
2. The persons receiving the instruction must be under the guidance and direction of a person training them in how to perform the recreational activity. If the persons receiving what purports to be “instruction” are allowed any substantial amount of time to pursue recreational activities, no instruction is taking place. The instruction should be received in what would ordinarily be thought of as a “class” with a fixed time and place for meeting. . . .

3. The “instruction” must impart to the learner a level of knowledge or skill in the recreational activity which would not be known to the ordinary person engaging in the recreational activity without instruction. Also, the person providing the instruction must have received some special training in the recreational activity taught if charges for that person’s instruction are to be exempt from tax.

Iowa Admin. Code r. 701—26.24. Stated differently, any “instruction” that meets the above criteria is excluded from the definition of taxable “recreational activities” and is not subject to Iowa sales tax.

While providing access to a Pilates studio and equipment without instructional services may constitute commercial recreation, the services offered at Tice’s studio meet the requirements of nontaxable “instruction in commercial recreation.” First, the only fees charged to members are for specifically scheduled classes or individual instructional sessions; members are not permitted to freely use the premises or equipment as desired such as in a gym setting. Therefore, the Director finds that the membership and class fees are separately itemized and contracted for. Further, because the Studio does not offer memberships outside of its scheduled classes and individual sessions, the reasonableness of the class and membership fees is irrelevant.

Second, as stated above, Tice does not offer any services or access to its facilities absent instruction. Unlike a typical gym, where members may generally use the facilities as and when desired, the Studio only offers group and individual classes. Members must sign up for a specific time to engage in exercise and are supervised and instructed for the duration of every session. The Director therefore finds that the services offered by Tice are offered in the setting of a “class” at a fixed time and place.

Finally, Pilates is a specialized exercise regime and all instructors at Tice’s Studio require specialized training and certification. According to the Mayo Clinic:

Pilates is a method of exercise that consists of low-impact flexibility and muscular strength and endurance movements. Pilates emphasizes proper postural alignment, core strength and muscle balance. Pilates is named for its creator, Joseph Pilates, who developed the exercises in the 1920s.

A Pilates routine generally includes exercises that promote core strength and stability, muscle control and endurance, including exercises that stress proper posture and movement patterns and balanced flexibility and strength. . . .

Because it's essential to maintain the correct form to get the most benefit—and to avoid injuries—*beginners should start out under the supervision of an experienced Pilates instructor.*

Pilates for beginners: Explore the core, Mayo Clinic, <https://www.mayoclinic.org/healthy-lifestyle/fitness/in-depth/pilates-for-beginners/art-20047673> (last visited Feb. 4, 2019) (emphasis added). The Mayo Clinic specifically advises readers to seek out an instructor who has completed a comprehensive Pilates training program that includes an apprenticeship. *Id.*

Tice's Studio offers to its members four "levels" of Pilates instruction that range in difficulty—"Foundation," "Progression," "Evolution," and "Mastery"—and progression requires months of continued training. Additionally, all of the Studio's instructors are required to undergo extensive training in Pilates instruction before they are permitted to engage in in-studio apprentice training, and candidates must eventually complete Club Pilates's 450-plus-hour certification program. The Director finds that the Pilates instruction offered by the Studio involves specialized knowledge not otherwise known by persons engaging in exercise, and that the Studio's instructors receive ample specialized training in the field of Pilates instruction.

The Director concludes that the Pilates instruction offered at Tice's Studio meets the requirements provided in rule 26.24 and constitutes nontaxable instruction in commercial recreation. Because the Studio *only* offers instructional classes and sessions, none of the services as described in the Petition constitute taxable recreational activity. Therefore, Tice need not collect Iowa sales tax on sales of the Pilates services offered at its West Des Moines Studio.

ORDER

THEREFORE, based on the facts presented, foregoing reasoning, and applicable provisions of the law, the Director finds that the services offered by Petitioner at its Studio constitute nontaxable instruction in commercial recreation and are therefore not subject to Iowa sales tax.

Issued at Des Moines, Iowa this 13th day of February, 2019.

IOWA DEPARTMENT OF REVENUE

By 
Adam Humes, Director

CERTIFICATE OF SERVICE

I certify that on this 13th day of February, 2019, I caused a true and correct copy of the Declaratory Order of the Director of Revenue to be forwarded by U.S. Mail to the following person:

Chandler Tice
105 Orchard Trl.
Norwalk, IA 50211


Hollie Welch, Executive Secretary