

WEST VIRGINIA
SECRETARY OF STATE
KEN HECHLER
ADMINISTRATIVE LAW DIVISION

Form #2

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1992 MAY -1 PM 3:05

NOTICE OF A COMMENT PERIOD ON A PROPOSED RULE

AGENCY: State Tax Division TITLE NUMBER: 110

RULE TYPE: Interpretive; CITE AUTHORITY WV Code § 11-10-5

AMENDMENT TO AN EXISTING RULE: YES NO X

IF YES, SERIES NUMBER OF RULE BEING AMENDED: _____

TITLE OF RULE BEING AMENDED: _____

IF NO, SERIES NUMBER OF NEW RULE BEING PROPOSED: 15(I)3 15C

TITLE OF RULE BEING PROPOSED: Personalized Fitness Programs

IN LIEU OF A PUBLIC HEARING, A COMMENT PERIOD HAS BEEN ESTABLISHED DURING WHICH ANY INTERESTED PERSON MAY SEND COMMENTS CONCERNING THESE PROPOSED RULES. THIS COMMENT PERIOD WILL END ON June 1, 1992 AT 5:00 p.m.

ONLY WRITTEN COMMENTS WILL BE ACCEPTED AND ARE TO BE MAILED TO THE FOLLOWING ADDRESS.

Legal Division

Dept. of Tax and Revenue

P.O. Box 1005

Charleston, WV 25324-1005

THE ISSUES TO BE HEARD SHALL BE LIMITED TO THIS PROPOSED RULE.

James H. Paige III
James H. Paige III
State Tax Commissioner

ATTACH A **BRIEF** SUMMARY OF YOUR PROPOSAL

2.70



State of West Virginia
Department of Tax and Revenue

GASTON CAPERTON
GOVERNOR

Tax Division
P. O. Box 2389
Charleston, WV 25328-2389

JAMES H. PAIGE III
SECRETARY

May 1, 1992

To Whom It May Concern: _____

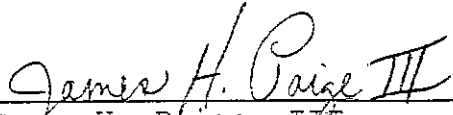
Title of Rule: _____ Personalized Fitness Programs

Title Number: _____ 1110 _____

Series Number: _____ 15(I)3 _____

Pursuant to West Virginia Code § 5F-2-2(a), the undersigned hereby consents to the filing of the foregoing rule.

Signed this 1st day of May, 1992.


James H. Paige, III
Secretary, Tax and Revenue

APPENDIX B

FISCAL NOTE FOR PROPOSED RULES

Rule Title: Personalized Fitness Programs
 Type of Rule: Legislative ☒ Interpretive ☐ Procedural
 Agency: State Tax Division Address State Capitol
Charleston, WV

1. Effect of Proposed Rule	ANNUAL		FISCAL YEAR		
	Increase	Decrease	Current	Next	Thereafter
Estimated Total Cost	\$	\$	\$	\$	\$
Personal Services	0	0	0	0	0
Current Expense	0	0	0	0	0
Repairs and Alterations	0	0	0	0	0
Equipment	0	0	0	0	0
Other	0	0	0	0	0

2. Explanation of above estimates:

The fiscal impact of this rule should not vary from that envisioned by the Legislature when it enacted the exemption from Consumers Sales and Service Tax for certain personalized fitness programs. W. Va. Code § 11-15-9(oo).

3. Objectives of these rules:

This interpretive rule explains and clarifies the exemption from Consumers Sales and Service Tax for charges for membership and services provided by health and fitness organizations relating to personalized fitness programs.

4. Explanation of Overall Economic Impact of Proposed Rule.

A. Economic Impact on State Government.

There is not sufficient information available to determine the economic impact of this rule.

B. Economic Impact on Political Subdivisions: Specific Industries; Specific groups of citizens.

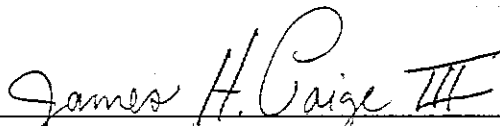
There is not sufficient information available to determine the economic impact of this rule.

C. Economic Impact on Citizens/Public at Large.

People who have memberships or utilize health and fitness organizations will be exempt on the charges relating to personalized fitness programs.

Date: May 1, 1992

Signature of Agency Head or Authorized Representative



James H. Paige, III
State Tax Commissioner

PROPOSED
WEST VIRGINIA INTERPRETIVE RULE
DEPARTMENT OF TAX AND REVENUE
TITLE 110
SERIES 15(I)3
1992

FILED
MAY -1 PM 3:08
MAY 12 1992
CLERK

PERSONALIZED FITNESS PROGRAMS EXEMPTION

§110-15(I)3-1. General.

1.1 Type of Rule. -- This rule is an interpretive rule as defined in W.Va. Code §29A-1-2.

1.2 Scope. -- This interpretive rule explains and clarifies the exemption from consumers sales tax provided in W.Va. Code §11-15-9(cc), as added by Com. Sub. for Senate Bill No. 348 (1992), exempting charges for memberships or services provided by health and fitness organizations relating to personalized fitness programs.

1.3 Authority. -- This interpretive rule is promulgated under authority of W.Va. Code §11-10-5.

1.4 Filing Date. -- This interpretive rule was filed in the State Register for public comment on May 1, 1992.

1.5 Effective Date. --

1.6 Citation. -- This proposed interpretive rule may be cited as Proposed 110 C.S.R. 15(I)3, §____ (1992).

§110-15(I)3-2. Interpretive Note.

This interpretive rule shall be read in pari materia with the Consumers Sales and Service Tax and Use Tax legislative regulations (110 C.S.R. 15, § 1 et seq.) previously promulgated by the Tax Commissioner pursuant to authority granted by the Legislature in W.Va. Code §64-7-6. The definitions, policies and procedures provided in 110 C.S.R. 15, §1 et seq. are equally applicable to this interpretive rule. Should there be any inconsistency between the promulgated legislative rules and this interpretive rule, the legislative rules shall control, except to the extent the legislative rules do not reflect an amendment to the consumers sales and use tax laws which is addressed in this or another interpretive rule promulgated by the Tax Commissioner as provided in article 3, chapter 29A of the West Virginia Code.

§110-15(I)3-3. Definitions. -- Unless a specific definition is provided in this section, terms used in this rule are defined as provided in legislative rule 110 C.S.R. 15, §1 et seq., unless the context in which the term is used clearly requires a different meaning. The following terms shall have the meaning ascribed herein, and shall apply in the singular as well as in the plural.

3.1 "Health and fitness" means the physical health and fitness of individuals but does not include mental health and fitness or spiritual health and fitness.

3.2 "Health and fitness organization" means a business established and operated for the primary purpose of providing facilities, equipment and programs to members, or to both members and nonmembers, to maintain or improve the health and fitness of the participant through rigorous physical exercise using the facilities and equipment of the organization.

3.3 "Personalized fitness program" means a physical exercise regimen specifically developed and tailored for the participant by a personal fitness trainer, which (1) takes into consideration the participant's age, health, physical condition, and fitness goals, (2) provides a number of one-on-one work out sessions, at least in the beginning of the personalized fitness program, and (3) requires review and assessment, by the personalized fitness trainer, of the participant's progress and design of a new regimen at least every eight to ten weeks, all for the purpose of maintaining or improving an individual's physical health and fitness.

3.4 "Personalized fitness trainer" means an individual certified as a personalized fitness trainer by the National Academy of Sports Medicine (NASM), the American College of Sports Medicine (ACSM), the IDEA Foundation, the Aerobic and Fitness Association of America, or a similar type organization and who has a current cardiopulmonary resuscitation (CPR) certification.

§110-15(I)3-4. Applicability of Consumers Sales Tax.

4.1 General Rule. -- The consumers sales and service tax is imposed upon the sale of tangible personal property or selected services. All sales are presumed to be taxable unless the sale is either excepted or exempt from the tax.

4.2 Personalized Fitness Program Exemption. -- Charges for memberships or services provided by a health and fitness organization that are related to and in furtherance of a

personalized fitness program are exempt from consumers sales tax beginning June 5, 1992.

4.2.1 This exemption does not apply to charges for participation in a general exercise programs.

4.2.2 This exemption does not apply to charges for memberships or services provided by golf courses, country clubs, weight loss programs, equestrian clubs, swim clubs, tennis clubs, gymnastic clubs, dance studios, martial arts centers, or by any other similar kind of organization.

4.2.3 This exemption does not apply to sales of tangible personal property, whether or not such property is used in a personalized fitness program. To illustrate, this exemption does not apply to sales of equipment, sweatsuits, lotions or "workout" video cassettes, etc.

4.2.4 This exemption does not apply to any portion of a membership fee or charge, or service fee or charge, made by a health and fitness organization that is not reasonably related to participation in a personalized fitness program, as above defined. To illustrate, this exemption does not apply to fees or charges for participation in a general exercise program offered by a health and fitness organization.

4.2.5 Fees or charges for services not reasonably related to a participant's personalized fitness program may be exempt for some other reason, however. To illustrate, the charge for a therapeutic massage at a health club is exempt from consumers sales tax because the masseuse is rendering a "personal service", as defined in the consumers sales tax law.

4.3 Purchases by Health and Fitness Organizations Taxable. -- Purchases of tangible personal property or taxable services by a health and fitness organization for use or consumption in providing personalized fitness programs are subject to consumers sales and use taxes except as otherwise provided by law.

4.4 Method of Claiming Personalized Fitness Program Exemption. -- A health and fitness organization is not required to obtain an exemption certificate or any other proof of exemption from an individual participating in a personalized fitness program with respect to charges for services relating to his or her participation in that program.

4.5 Health and Fitness Organizations Required to Keep Accurate Record. -- A health and fitness organization is required

to keep accurate books and records to support the accuracy of the gross receipts it claims are exempt from consumers sales tax and the basis for the exemption(s) claimed.

4.6 Effective Date of Exemption. -- Exemption 11-15-9(oo) takes effect June 5, 1992, and applies to dues, fees or charges collected on or after that date for participation after June 4, 1992, in a personalized fitness program. Consumers sales tax collected prior to June 5, 1992, on dues, fees or other charges for participation in a personalized fitness program are not subject to refund even if the personalized fitness program to which they relate ends after June 4, 1992.