

January 31, 2020
Pennsylvania Sales and Use Tax
Letter Ruling No. SUT-20-001
Pennsylvania Sales and Use Tax
Taxation of Membership Fee

ISSUE

Is the charge for membership in a professional association subject to the Commonwealth's sales tax where the member receives both services and taxable tangible personal property in exchange for the membership fee?

CONCLUSION

Yes. The taxability of a membership fee depends upon what a member receives in exchange for the membership. If a member does not receive any taxable tangible personal property or taxable services in exchange for the fee, then the fee is not taxable. However, if a member receives taxable tangible personal property or taxable services in exchange for the membership fee, then the fee is taxable.

FACTS

In your letter, you request guidance regarding the taxation of a membership fee in Taxpayer's association. You explain that Taxpayer, a business league exempt from federal income tax pursuant to section 501(c)(6) of the Internal Revenue Code of 1986, is a not-for-profit professional membership association. You further explain that an individual membership in Taxpayer's association provides members with connections to the global community of industry professionals, discounts on certification exam fees and professional development opportunities, and advanced access to conferences and seminars. You also explain that included in the annual membership fee is a downloadable copy of Taxpayer's published guide, more than 1,000 tools and templates, certification status tracking, discounts on career-advancing certifications, job boards, and access to Taxpayer's publications.

According to Taxpayer's website, a member of Taxpayer's association can access the following with a paid membership:

- a downloadable copy of the Taxpayer's published guide;

- reduced prices on globally recognized certifications and free professional development units;
- virtual and in-person events and on-demand webinars;
- pre-made project plans, deliverable templates and checklists;
- local chapters and online communities; and
- industry publications, among other benefits.

DISCUSSION

The Tax Reform Code of 1971 (“TRC”) imposes a sales tax of six percent of the purchase price on each separate sale at retail of tangible personal property and certain enumerated taxable services within Pennsylvania. 72 P.S. § 7202(a).

“Sale at retail” is defined, in part, as:

Any transfer, for a consideration, of the ownership, custody or possession of tangible personal property, including the grant of a license to use or consume whether such transfer be absolute or conditional and by whatsoever means the same shall have been effected.

72 P.S. § 7201(k)(1).

“Tangible personal property” is defined, in part, as “[c]orporeal personal property including, but not limited to, goods, wares, merchandise,” 72 P.S. § 7201(m)(1). Tangible personal property also includes:

[T]he following, whether electronically or digitally delivered, streamed or accessed and whether purchased singly, by subscription or in any other manner, including maintenance and updates:

- (i) video;
- (ii) photographs;
- (iii) books;
- (iv) any other otherwise taxable printed matter;
- (v) applications, commonly known as apps;
- (vi) games;
- (vii) music;
- (viii) any other audio, including satellite radio service;
- (ix) canned software, notwithstanding the function performed, including support, except separately invoiced help desk or call center support; or
- (x) any other otherwise taxable tangible personal property electronically or digitally delivered, streamed or accessed.

72 P.S. § 7201(m)(2).

While this office generally agrees with your assertion that a membership fee in and of itself is not taxable – as a membership fee is not an enumerated taxable service – it is this office’s opinion that the analysis cannot stop at how the taxpayer labels the charge or fee. If the membership fee includes the transfer of taxable tangible personal property, in addition to nontaxable services, the entire charge for the membership is subject to tax. *See Downs Racing, LP v. Commonwealth*, 196 A.3d 603, 611 (Pa. 2018) (finding the entire invoiced amount which included taxable tangible personal property and nontaxable labor subject to sales tax because a vendor failed to separately state nontaxable charges for the cost of labor to operate equipment).

Regarding your question, Taxpayer’s members receive nontaxable services (networking opportunities, discounts on certifications, and certification tracking), as well as taxable tangible personal property (Taxpayer’s published guide, tools and templates, on demand webinars, and publications) in exchange for the membership fee charged by Taxpayer. Since the member is receiving both nontaxable services and taxable tangible personal property, the entire charge for the membership is subject to the sales tax if the member is located in the Commonwealth.

Finally, in your letter you rely on the “essence of the transaction” test for support that Taxpayer’s membership fees are not taxable. Please note that our Supreme Court has specifically refused to adopt the “essence of the transaction” test in multiple court cases. *See Downs Racing*, 196 A.3d at 609 (stating “this Court has never endorsed the test, notwithstanding that the Commonwealth Court has used it on multiple occasions”); *Dechert LLP v. Commonwealth*, 998 A.2d 575, 583 (Pa. 2010) (stating that “we do not, however, find it necessary to adopt the essence of the transaction test, or any other similar test, in order to resolve the issue presently before this Court.”). As such, this office will not apply the “essence of the transaction” test in determining whether a charge for a membership fee that includes the transfer of taxable tangible personal property is taxable.