



Many Paths, One Yoga Alliance

July 18, 2014

Ms. Patricia Gracyalny
Assistant General Counsel
Office of the General Counsel
Office of the Chief Financial Officer
Government of the District of Columbia
1350 Pennsylvania Ave, NW, Suite 203
Washington, D.C. 20004

Dear Ms. Gracyalny:

This letter is submitted on behalf of Yoga Alliance to the D.C. Office of the Chief Financial Officer in relation to its rulemaking to implement a sales tax on health club services, as authorized under the District of Columbia's Fiscal Year 2015 Budget ("Budget"). Yoga Alliance is the largest nonprofit association representing the Yoga community. We have over 50,000 Registered Yoga Teachers and 3,100 Registered Yoga Schools as members, including 14 Yoga schools located in D.C. and at least 363 Yoga teachers who reside or teach in the District. We appreciate the opportunity to provide our perspective on why we believe Yoga studios and teacher training schools are not "health clubs" under the Budget and should therefore be exempt from the sales tax for health club services.

As you know, the Budget imposes a 5.75 percent tax on the "sale of or charge for the services of a health club or a tanning studio." In turn, the Budget defines the term "health club" as "a fitness club, fitness center, or gym the purpose of which is physical exercise, including fitness and recreational sports facilities featuring exercise and other active physical fitness conditioning or recreational sports activities, including swimming, skating, or racquet sports, except not health resorts and spas where recreational facilities are combined with sleeping accommodations..." It is our view that, because Yoga is a system of well-being that may include a physical component, but whose purpose is not "physical exercise," the Office of the Chief Financial Officer should interpret this definition of "health club" to exclude Yoga businesses. Therefore, we contend, the regulations to implement the sales tax on "health clubs" should make clear that the sales tax does not apply to Yoga businesses.

I. Yoga Is A Comprehensive System For Mental, Emotional, Spiritual and Physical Well-Being. Its Purpose Is Not Physical Exercise.

Yoga was developed up to 5,000 years ago as a comprehensive system for well-being in every dimension of human experience: physical, mental, emotional and spiritual. The physical postures and breathing techniques are only a fraction of the overall discipline of Yoga. In fact, the word "Yoga" is derived from the Sanskrit term for "union." The "union" of Yoga is commonly understood to refer to the union of the mind, body and spirit, signifying that Yoga's physical aspect is only one part of this union.

The most commonly referenced text on Yoga, Patanjali's "Yoga Sutras," describes Yoga as an eight-fold or eight-limbed path. The first two limbs define ethical principles or observances and are often considered a precursor to the physical component of Yoga, "asana," which is the third limb. Breathing techniques, meditation and various stages of concentration comprise the fourth through seventh limbs. The final limb in the path of Yoga is "samadhi," often referred to as a state of bliss. Thus, "asana," the physical posture practice of Yoga, is only one of eight limbs of Yoga.

In the Yoga community, there are a variety of perspectives about the purpose of the practice. None of these perspectives emphasize physical exercise as its primary or its only goal. Today, over 20 million people in the United States¹ use various aspects of Yoga to help improve their quality of life in such diverse areas as wellness, stress relief, fitness, vitality, mental clarity, healing, peace of mind and spiritual growth.

II. New York Sales Tax Rules: Yoga Businesses Are Not Health Clubs

Regulators in another jurisdiction, the State of New York, have embraced the historical understanding among Yoga enthusiasts that Yoga's primary purpose is not physical exercise, but rather, comprehensive well-being. As you may know, New York City imposes a local sales tax on the receipts from "every sale of services by weight control salons, health salons, gymnasiums, Turkish and sauna bath and similar establishments and every charge for the use of such facilities."²

In an advisory opinion evaluating whether the receipts of a Yoga and Pilates company (referred to as "Company X") were subject to the sales tax under the law, the New York State Department of Tax and Finance concluded that, if the specific location offers only instruction in Yoga, it is not a "weight control salon, health salon, or gymnasium" and, therefore, such an establishment is exempt from the tax. The Department reasoned that a "gymnasium is commonly understood to be an indoor facility where sporting and/or exercise activities take place. Most of Company X's facilities provide Pilates classes, which constitute exercise activities."³ But Yoga is different, the Department asserted, because "instruction in yoga is not an exercise activity" and "because yoga generally includes within its teachings not simply physical exercise, but activities such as meditation, spiritual chanting, breathing techniques, and relaxation skills."⁴ Geoffrey Gloak, the Department's spokesperson, recounted that the Department "looked into the history and origins of yoga and found that it was more meditative and spiritual rather than fitness."⁵

¹ Yoga Journal 2012 study

² New York State Department of Taxation and Finance, Office on Counsel, Advisory Opinion Unit, NYT-G-12(1)S (July 24, 2012) available at: http://www.tax.ny.gov/pdf/guidances/sales/g12_1s.pdf.

³ Id.

⁴ Id.

⁵ Nikhita Venugopal, Yoga is Not Exercise, State Rules in Tax Decision, DNAinfo New York (July 26, 2012) available at: <http://www.dnainfo.com/new-york/20120726/new-york-city/yoga-exempt-from-sales-tax-because-its-not-exercise-state-rules>

Against this backdrop, New York now provides the following guidance on what are considered health and fitness clubs, which does not include Yoga: “*Health and fitness clubs* are generally facilities that provide customers or members with access to exercise equipment. Pilates, aerobics, and fitness studios, weight reducing salons, spas, gyms, saunas, Turkish baths, tanning salons, and similar businesses are examples of health and fitness clubs.”⁶

III. The Budget’s Legislative And Regulatory History Do Not Support The Media’s Characterization Of The Sales Tax As A “Yoga Tax”

We understand that there have been numerous references in the media to the new sales tax as the “Yoga tax.” However, to the best of our knowledge, the author of the legislation, Chairman Mendelson, never personally referred to the proposal as a tax on Yoga. For example, on June 2, 2014, a reporter on WAMU 88.5 AM radio referred to the provision as the yoga tax, but included a clip of Mendelson referring to it as “the so called gym tax.”⁷ Similarly, a Wall Street Journal article on the tax increase refers to it as a Yoga tax, but again Chairman Mendelson is quoted referring to the measure as “taxing fitness.”⁸ Additionally, the Washington Post editorial board suggested that the tax would apply to Yoga studios in its June 3, 2014 editorial without referencing the reasons for this presumption.⁹

It is true that members of the local Yoga community engaged in efforts to advocate against the tax because of the perceived conventional wisdom that the tax might apply to such businesses. However, when local studio owners formed a coalition to organize their advocacy efforts, it was explicitly called the “Don’t Tax Wellness” coalition, instead of “Don’t Tax Yoga.” The coalition was established in opposition to the entire wellness provision, on the grounds that lawmakers should not disincentivize activities promoting healthy living via additional taxation.

Despite the media’s characterization of the new sales tax on health clubs as the “Yoga tax,” there is no support for the assertion that the D.C. government intends for the new tax to apply to Yoga businesses. That view was not endorsed in the legislative record or the D.C. Tax Revision Commission’s recommendations to adopt the new sales tax. As you know, the Budget provision instituting a sales tax on “health clubs” was derived from a May 2014 report from the D.C. Tax Revision Commission offering a comprehensive set of tax recommendations to increase District revenues.¹⁰ The report offered draft legislative language¹¹ to implement the sales tax on “health clubs” that

⁶ New York State Department of Taxation and Finance, Taxpayer Guidance Division, Tax Bulletin TB-ST-329 (July 24, 2012) available at: http://www.tax.ny.gov/pdf/tg_bulletins/sales/b12_329s.pdf

⁷ Patrick Madden, D.C. Council Won't Nix Proposed Tax on Yoga And Gyms, Mendelson Says, available at: http://wamu.org/news/14/06/02/D.C._council_wont_nix_yoga_and_gym_tax_proposal_mendelson_says

⁸ <http://online.wsj.com/articles/washington-plan-to-tax-yoga-leads-to-political-posturing-1403577281>

⁹ http://www.washingtonpost.com/opinions/D.C.s-tax-reform-is-overdue--and-a-good-compromise/2014/06/03/a7c5ad8c-eb32-11e3-9f5c-9075d5508f0a_story.html

¹⁰ See D.C. Tax Revision Commission, <http://www.D.C.taxrevisioncommission.org/>

¹¹ See id. at 65 ((Z) The sale of or charge for the service of health clubs and tanning studios:

Chairman Mendelson adopted verbatim in his Budget legislation.¹² In turn, the Council's enacted Budget utilizes the exact same definition of "health club" as the draft versions of the Budget legislation. Neither the Tax Revenue Commission's report, nor the legislation introduced and ultimately enacted to implement the Commission's recommendation, contain evidence that Yoga businesses are considered to be "health clubs" subject to the sales tax.

The proposal to increase the taxes on health clubs did not receive a traditional review by the D.C. Council. This is because it was included, as Councilmember David Catania suggested, "[w]ithout a hearing and without public input." The closest it came to being considered and debated was during a legislative meeting on June 24, 2014. During this meeting, Councilmember Catania offered an amendment to strike the health club tax from the budget bill. In the midst of the debate over Councilmember Catania's amendment, Chairman Mendelson did not personally characterize the provision as the "Yoga tax," even though he referenced several news articles that did so.

In turn, Councilmember Catania, when introducing his amendment referred to the provision as: the "wellness tax;" a tax on "consumers who are trying to live healthier, better lives;" a tax on "gym memberships, etc.;" and a tax on "healthy activities." He did not refer to it as a Yoga tax, nor did he say that Yoga would be subject to the tax. Several other councilmembers also referred to the tax as a tax on fitness or gyms without characterizing it as a tax on Yoga. Indeed, besides Chairman Mendelson's references to news articles characterizing the measure as a "Yoga tax," the only other councilmember to reference Yoga was Councilmember Mary Cheh. Councilmember Cheh described the tax as a tax on "health club memberships;" but also mentioned that some have referred to it as the "Yoga tax." As such, there is no evidence in the regulatory or legislative history underlying the Budget indicating that its supporters intended for the tax to apply to Yoga businesses.

IV. Conclusion

In assessing the applicability of the sales tax to Yoga, we request that the Office of the Chief Financial Officer consider the Yoga Alliance's position that characterizing a Yoga business as a "health club" is inconsistent with Yoga teachings, persuasive precedent, and the regulatory and legislative history of the Budget itself. Yoga Alliance appreciates the opportunity to offer our perspective on the new sales tax and we stand

“(i) For the purposes of this paragraph “health clubs” include fitness and recreational sports facilities featuring exercise and other active physical fitness conditioning or recreational sports activities, including but not limited to: swimming, skating, or racquet sports; except health resorts and spas where recreational facilities are combined with sleeping accommodations; and

“(ii) For the purposes of this paragraph, “tanning studios” include sun tanning salons and spray tanning salons;”)

¹² See, e.g. Report on Bill 20-750, the “Fiscal Year 2015 Budget Support Act of 2014”

Committee Report, dated May 28, 2014 on pages 14, 103. Available at:
http://D.C.council.us/files/performance_oversight/FY_2015_Budget_Support_Act_Draft_Report.pdf

ready to provide further comments to your office as necessary during your forthcoming rulemaking to implement the sales tax.

Warm regards,

A handwritten signature in black ink, appearing to read "Richard Karpel". The signature is fluid and cursive, with the first name being more prominent.

Richard Karpel
President