

Before the
Administrative Hearing Commission
State of Missouri

TATSON, LLC, d/b/a POWERHOUSE GYM)	
OF JOPLIN,)	
)	
Petitioner,)	
)	
vs.)	No. 13-0755 RS
)	
DIRECTOR OF REVENUE,)	
)	
Respondent.)	

DECISION

Tatson, LLC, d/b/a Powerhouse Gym of Joplin (“Powerhouse Gym”), is not liable for sales tax on the \$6,000 monthly fee it collected from Atlanta Fitness Holdings, Inc., d/b/a Custom Built (“Custom Built”).

Procedure

Powerhouse Gym filed a complaint on May 6, 2013, challenging the Director of Revenue’s (“the Director”) assessments of sales tax from October 1, 2008 to November 30, 2010 (“tax period”).

This Commission convened a hearing on the complaint on September 12, 2013. Powerhouse Gym was represented by Paul A. Boudreau of Brydon, Swearingen & England, P.C. Legal Counsel Benjamin C. Slawson represented the Director.

This case became ready for our decision on February 11, 2014, the date the last written argument was filed.

Findings of Fact

1. At all times relevant to this dispute, Powerhouse Gym was a recreational fitness facility doing business in Joplin, Missouri.

2. Powerhouse Gym owned and maintained various pieces of machinery and equipment that were available to and used by Powerhouse Gym patrons to exercise.

3. For the privilege of using the equipment and other exercise-related amenities at Powerhouse Gym, the clientele would purchase memberships or day passes to the facility.

4. A wholly unrelated business, known as Custom Built, was in the business of offering personal training services at all times relevant to this action.

5. Powerhouse Gym did not offer personal training services, so it entered into an agreement with Custom Built that Custom Built would come into the Powerhouse Gym facility to market and provide personal training services, and anything else it wished to sell, to the paid customers of Powerhouse Gym.

6. To engage in sales targeted at Powerhouse Gym's customers, Custom Built paid Powerhouse Gym a rental fee of \$6,000 per month to secure access to the facility during the gym's hours of operation, to market and sell goods and services to Powerhouse Gym's customers, and to use office space at Powerhouse Gym sufficient to conduct the financial, administrative, and private counseling tasks associated with its business.

7. Personal training was conducted by staff of Custom Built, who would assist the customers of Powerhouse Gym by providing instructions and advice on when, how long, and how often to use various pieces of fitness equipment that the Powerhouse Gym members had already paid to use.

8. Custom Built staff members did not use the Powerhouse Gym equipment for their personal fitness.

9. Powerhouse Gym provided access to its members and to its facility for the sale of taxable goods and services by Custom Built.

10. Powerhouse Gym reported its rental fee income from Custom Built to the state and federal governments and paid income tax on it.

Proceedings Before the Director

11. From November 14, 2011 to December 27, 2012, the Director conducted a sales and use tax audit of Powerhouse Gym and issued assessments.

12. On March 8, 2013, The Director issued final decisions on his assessments of unpaid sales and use tax directed to Powerhouse Gym. No appeal was taken with respect to the use tax assessments from this audit. The only issue before us concerns the sales tax assessment.

13. We summarize the amount of tax in controversy as follows.

Unpaid Sales Tax

Assessment numbers: (20130560597-) 5001 through 5026

Tax periods: monthly, October 1, 2008 through November 30, 2010

Gross receipts at issue: \$6,000.00 per month from Custom Built

Assessed tax at issue: \$469.50 per month/per assessment #5001 through 5026¹

Conclusions of Law

This Commission has jurisdiction over appeals from the Director's final decisions.² Powerhouse Gym has the burden to prove it is not liable for the full amounts that the Director assessed.³ Statutes imposing a tax are strictly construed against the taxing authority in favor of

¹ According to the letter of complaint, Powerhouse Gym is contesting the assessment of sales tax on \$6,000 worth of its monthly gross receipts the Director included in Assessment Numbers 5001 through 5026. Our review of those assessments indicates Powerhouse Gym was charged sales tax on \$6,000 in rental income on each of 26 assessments for a total of \$156,000, so the aggregate abatement sought is \$12,207.

² Section 621.050.1. Statutory references are to the 2000 Revised Statutes of Missouri, unless otherwise noted.

³ Sections 136.300.1 and 621.050.2.

the taxpayer.⁴ Our duty in a tax case is not merely to review the Director's decision, but to find the facts and to determine, by the application of existing law to those facts, the taxpayer's lawful tax liability for the period or transaction at issue.⁵ We may do whatever the law permits the Director to do, and we are bound to do what he must do.⁶

Taxability

Section 144.020.1 provides:⁷

A tax is hereby levied and imposed...upon all sellers for the privilege of engaging in the business of selling tangible personal property or rendering taxable service at retail in this state. The rate of tax shall be as follows:

* * *

(2) A tax equivalent to four percent of the amount paid for admission and seating accommodations, or fees paid to, or in any place of amusement, entertainment or recreation, games and athletic events[.]

“The primary rule of construction of statutes is to ascertain the lawmakers’ intent, from the words used if possible; and to put upon the language of the Legislature, honestly and faithfully, its plain and *rational* meaning and to promote its object[.]”⁸ The Supreme Court has held that § 144.020.1(2) plainly provides for the sales tax to be imposed: (1) on sums paid for admissions to places of amusement; (2) on amounts paid for seating accommodations in such places; and (3) on fees, other than for admission or seating, paid to or in places of amusement.⁹ This interpretation has been directly applied to fees paid to athletic and exercise or fitness clubs; thus,

⁴ Section 136.300.1.

⁵ *J.C. Nichols Co. v. Director of Revenue*, 796 S.W.2d 16, 20-21 (Mo. banc 1990).

⁶ *State Bd. of Regis'n for the Healing Arts v. Finch*, 514 S.W.2d 608, 614 (Mo. App., W.D. 1974).

⁷ RSMo Cum. Supp. 2013.

⁸ *Denton v. Soonattrukal*, 149 S.W.3d 517, 522 (Mo. App., S.D. 2004).

⁹ *Blue Springs Bowl v. Spradling*, 551 S.W.2d 596, 599 (Mo. banc 1977).

facilities such as Powerhouse Gym are required to collect and remit sales tax on the membership fees they charge to patrons.¹⁰

While the courts have consistently held that the provision imposing sales tax on receipts at places of amusement or exercise is broad enough to encompass such services as seating, spectator access, other fees not strictly for amusement,¹¹ and even personal training,¹² the taxable benefit at the heart of the taxable transaction has consistently inured to the benefit of the patron. Whether it is a seat, an opportunity to exercise, or admission to a place of amusement, the Missouri Supreme Court has consistently upheld the Director's assessment of sales tax for fees paid to and in places of amusement. However, to uphold the full measure of the assessments at issue here would fail to account for the balance of the plain language in the statute and to give it its rightful and intended effect.

The Director urges that Powerhouse Gym should pay sales tax on the \$6,000 per month it received from Custom Built during the tax period because these funds were fees paid to or in a place of amusement or recreation as identified in § 144.020.1(2). In support of this application, he argues that the statute makes the receipt of any benefit to Powerhouse Gym in exchange for a taxable fee irrelevant. We think that the subsection is not to be read so narrowly because, to construe it as the Director posits, such an interpretation relies upon the exclusion of the prefatory language that such taxes are imposed upon sellers for the privilege of selling tangible personal property or rendering taxable service at retail in this state. For purposes of the statute, Powerhouse Gym is neither selling nor renting tangible personal property, nor is it providing a service at retail to Custom Built.

¹⁰ See *Wilson's Total Fitness Center, Inc. v. Director of Revenue*, 38 S.W.3d 424, 426 (Mo. banc 2001).

¹¹ See *Eighty Hundred Clayton Corp. v. Director of Revenue*, 111 S.W.3d 409, 410 (Mo. banc 2003).

¹² *Michael Jaudes Fitness Edge, Inc. v. Director of Revenue*, 248 S.W.3d 606, 609 (Mo. banc 2008).

Powerhouse Gym provides taxable service to its customers by maintaining a suitable environment, which includes furnishing machines and equipment, for the benefit of being able to exercise during its normal hours of operation. Even though Powerhouse Gym did not provide personal training services, it chose to partner with Custom Built so that its customers might take advantage of additional services offered exclusively by Custom Built. Powerhouse Gym did not contribute any additional taxable service to its customers in exchange for the \$6,000 per month it received from Custom Built during the tax period. It merely allowed Custom Built the space and the opportunity to interact with Powerhouse Gym's customers to market and provide the additional service of personal training to them. Custom Built offered Powerhouse Gym's clientele the opportunity to add an additional service, for a fee, to their existing license to use Powerhouse Gym's facilities and equipment for their own personal benefit.

The Director correctly points out that Custom Built could not offer personal training services to Powerhouse Gym's members without the use of the equipment on site at Powerhouse's facility. However, patrons have already been charged a membership or daily fee for their use of the machines, and it is they and not Custom Built who are using the machines, irrespective of whether a personal trainer is paid to assist with proper form or technique. While the Director is correct that sales tax is imposed on membership fees and not on the recreational activity at Powerhouse Gym, the tax is imposed for the privilege of offering service at retail. Powerhouse Gym provides one type of service, to its members, for which it collects and remits sales tax, and Custom Built offers another type of service to those members.

Under the plain language and intent of § 144.020.1(2), it is Custom Built that is charging fees in a place of recreation or amusement, for the purpose of offering taxable service at retail. Therefore, it is Custom Built that is offering an ancillary and optional secondary service to Powerhouse Gym's customers, so it is Custom Built and not Powerhouse Gym that ought to be

responsible for paying sales tax on its receipts for that privilege. It is neither fair nor consistent with the legislative intent behind the statute to make Powerhouse Gym liable for an additional tax on a service it did not provide.

Summary

Powerhouse Gym is not liable for sales tax and interest for the tax period on fees that it collected from Custom Built for the license to provide taxable personal training services to the members of Powerhouse Gym.

SO ORDERED on May 15, 2014.

\s\ Sreenivasa Rao Dandamudi _____
SREENIVASA RAO DANDAMUDI
Commissioner