

# Municipal facilities providing fitness and recreational activities

The following information is intended to provide guidance on the taxability of fitness and recreational activities that occur at facilities operated by municipal corporations (such as a city, county, town or other local government entity). Often, these activities occur at facilities known as community centers.

Effective January 1, 2016, the taxability of certain fitness and recreational activities changed. Generally, when these activities occur at an “athletic or fitness facility” the charges are subject to retail sales tax. In addition, certain recreational services (such as golf, air hockey, billiard, pool, foosball, darts, batting cage activities, bowling, horseback riding, swimming, etc.) are retail sales whether these activities occur at an “athletic or fitness facility” or not.

## Common terms

- **Athletic or fitness facility (AFF):** means an indoor or outdoor facility or portion of a facility that is primarily used for: Exercise classes; strength and conditioning programs; personal training services; tennis, racquetball, handball, squash, or pickleball; yoga; boxing, kickboxing, wrestling, martial arts, or mixed martial arts training; or other activities requiring the use of exercise or strength training equipment, such as treadmills, elliptical machines, stair climbers, stationary cycles, rowing machines, pilates equipment, balls, climbing ropes, jump ropes, and weightlifting equipment.
  - Effective October, 19, 2017, the definition excludes yoga, boxing, kickboxing, wrestling, martial arts, and mixed martial arts.
- **Physical Fitness Activities:** activities that involve physical exertion for the purpose of improving or maintaining the general fitness, strength, flexibility, conditioning, or health of the participant.
- **Primarily used:** more than 50 percent of the time.
- **Recreational Services:** activities listed in RCW 82.04.050(15).

## Athletic or fitness facilities – taxability

The taxability of fitness and recreational activities is largely based on whether:

- The entire facility is an AFF – all charges subject to retail sales tax

- A portion of the facility is an AFF – charges from that area of the facility that is an AFF are subject to retail sales tax
- No portion of the facility is an AFF – charges are not subject to retail sales tax

## **Entire facility is an AFF**

An entire community center is an AFF if it is primarily used for AFF activities.

The term “primarily used” means more than 50 percent of the time. The Department will presume that the entire facility is an AFF when more than 50 percent of the revenues received by the facility are from activities listed in the definition for an AFF. Typically, this would occur when a facility contains a substantial fitness center and/or racquet center.

Only revenues from customers/users of the facility are used to determine if the facility is primarily an AFF. Other funding sources, such as tax revenues and grants that are used to subsidize the cost of operating the facility are not used in the determination.

## **A portion of the facility is an AFF**

If an entire facility is not considered an AFF, then you must determine whether any portion of the facility is an AFF. Typically, this test must be performed whenever there is a significant change in activities that could cause a portion of a facility to become an AFF. To determine if any portion of the facility is an AFF, answer the following questions:

1. Is there a separate area (e.g., a room) that is “primarily used” for any of the AFF activities listed in the definition of an AFF? If yes, then go to Question 2. If no, then the facility (or portion of the facility) is not considered an AFF.
2. Is there a separate charge for the use of this (room) area? If yes, then the separate area is considered an AFF and any charges to use the area is subject to retail sales tax. If no, then the portion of the facility is not an AFF.

The Department makes the following presumptions in determining if a room/area is an AFF:

1. In buildings, we will look at the entire room (area) to determine if a separate area should be considered an AFF and we will not split up rooms.

**For example:** City A has a neighborhood community center that is not an AFF as a whole. One room in the community center has a couple stationary bicycles in a corner. There is no charge for the use of the stationary bikes. The remainder of the room has no exercise equipment and is primarily used for dance classes and meetings. The Department will not view this room to be an AFF when there is no separate charge for use the exercise equipment.

For outdoor areas, we will look at the primary activity performed to determine if an outdoor area qualifies as an AFF.

**For example:** City X has a community center with an outdoor tennis court, an outdoor basketball court, and a softball field that are side by side. The use of any of the outdoor areas requires the payment of a fee. In this situation each area is a distinct area and the determination is made separately. The tennis court is an AFF, while the softball field and the basketball court are not AFFs.

2. The Department presumes the following rooms within a facility are not AFFs when the facility as a whole is not an AFF:

- Gymnasiums
- Multi-purpose rooms
- Classrooms
- Meeting rooms
- Pools
- Outdoor basketball courts
- Outdoor ball fields (soccer, football, baseball, etc.)

The local government is not required to retain records showing that these rooms are used 50 percent or less in AFF activities.

3. To determine if a room (area) is primarily used as an AFF, the schedule of room use for a charge will determine whether it is primarily used as an AFF. Idle or unscheduled time will not be part of the calculation.

## **Application of Sales Tax when a portion of a facility is considered to be an AFF**

When a room (or area) at a facility is determined to be an AFF then:

- Any charge to use that room/area is subject to retail sales tax; and

- All charges to engage in or receive instruction in physical fitness activities in the AFF portion of the facility are retail sales, except for the exclusions and exemptions outlined below.

“Physical fitness activities” means activities that involve physical exertion for the purpose of improving or maintaining the general fitness, strength, flexibility, conditioning, or health of the participant. Examples of physical fitness activities include, but are not limited to:

- All AFF activities
- Dance classes
- Gymnastics
- Sports leagues
- Climbing

## No Portion of the facility is an AFF

The following guidance applies to recreational services when no portion of the facility is an AFF.

- Charges by the facility for **retail** recreational services are subject to retail sales tax and the income from such charges is subject to business and occupation (B&O) tax under the Retailing classification.
- Income received by the facility for **non-retail** recreational services is subject to B&O tax under the Service and Other Activities classification. Retail sales tax does not apply on the charges to participants. This includes charges for activities that would otherwise be treated as AFF activities, such as Pilates, fitness classes, martial arts classes, etc.

## Exclusions from retail sales

Separately stated charges for the following activities that take place within an AFF or and portion of the facility that is an AFF are not retail sales (in these cases, service and other activities B&O tax would apply to the income):

- Use of an AFF for a purpose other than engaging or receiving instruction in a physical fitness activity. For example, a couple holds their wedding at the facility.
- Use of a discrete portion of an AFF, other than a pool, where that portion of the facility does not by itself, meet the definition of an athletic or fitness facility. Examples include use of the kitchen, auditorium, theaters, meeting areas, etc.

- Use of an AFF for advertising, massage, or nutritional consulting that does not require the customer to engage in physical fitness activities to receive the service. This exclusion does not include personal training services or instruction in a physical fitness activity.
- Physical therapy provided by a licensed physical therapist when prescribed by an authorized health care practitioner.
- Cover charges for dances. For example, a middle school holds a dance where there is a charge to attend. (See our web page on Opportunity to Dance.)

## **Exemption from retail sales tax (physical fitness classes)**

HB 1550 does not affect the retail sales tax exemption under RCW 82.08.0291 for physical fitness classes provided by local governments. This information is provided to help local governments apply the exemption appropriately.

In general, all charges by local governments to customers for the use of an AFF are retail sales subject to retail sales tax. However, physical fitness classes provided by local governments are exempt from retail sales tax.

Characteristics of a physical fitness class include:

- Group exercise (not one on one)
- Group instructor or leader provided
- Set days and times
- Limited number of participants
- Registration is in advance or before beginning class

Examples of physical fitness classes where retail sales tax does not apply include, but are not limited to:

- Aerobics
- Cross-fit
- Body pump
- Yoga
- Pilates
- Body step
- Martial arts
- Spin (stationary bike cycling)
- Water aerobics

- Zumba

Examples of activities that are not physical fitness classes include, but are not limited to:

- General use of pool (open swim)
- Athletic competitions
- Drop in basketball or volleyball
- League fees
- Use of exercise and strength training equipment
- Personal training services
- General use of gymnasium
- Use of running track
- Use of lockers

Retail sales tax applies to the activities listed above when provided at an athletic or fitness facility.

Examples of charges that are **not** subject to retail sales tax because they are not related to a “physical fitness activity” include, but are not limited to:

- Art classes
- Dog obedience classes
- Use of meeting rooms for a purpose other than engaging or receiving instruction in a physical fitness activity

Income received from fees for these activities is subject to B&O tax under the *service and other activities* classification.

## **Retail recreational services**

The retail sales tax exemption under RCW 82.08.0291 is not available for local governments that provide retail recreational services. Thus, local governments providing retail recreational services must collect retail sales tax.

## **Rental of rooms and facilities to third party contractors**

When a facility is an AFF or a portion of a facility is an AFF, municipalities must collect retail sales tax from the third party contractor who wants to rent a room or portion of the facility to provide physical fitness activities to its clients.

The following examples assume that the entire facility is considered an AFF and a separate charge is imposed for the rental of the area used for the activity:

- **Example 1:** A rock climbing instructor not employed by the municipality reserves two hours each week on the facility's climbing wall to teach a class on climbing techniques. The municipality must collect retail sales tax from the instructor because the class is considered a physical fitness activity and the entire facility is an AFF.
- **Example 2:** An art instructor rents a room at a community center to hold an art class. Although the community center is considered an AFF, it does not have to collect retail sales tax from the instructor because the rental of the room is for a purpose other than engaging in or receiving instruction in a physical fitness activity.
- **Example 3:** A volleyball instructor rents the gymnasium at a community center for a volleyball class. The community center must collect retail sales tax from the instructor because the class is considered a physical fitness activity and the community center is operating an AFF.

When a third party rents a room that is not an AFF, the community center does not have to collect sales tax. In this case, the income received by the community center is subject to B&O tax under the Service and Other Activities classification.

The following examples assume that the room or facility rented is not an AFF and a separate charge is imposed for rental of the area used for the activity:

- **Example 4:** A rock climbing instructor reserves two hours each week on the municipality's climbing wall to teach a class on climbing techniques. Although rock climbing is a physical fitness activity, the municipality does **not** have to collect retail sales tax from the instructor because the municipality is not an AFF. (In this case the instructor will need to collect retail sales tax from the students because the instructor is providing a retail recreational service.)
- **Example 5:** A dance instructor rents the gymnasium at a community center for a ballroom dance class. The community center does **not** have to collect retail sales tax from the instructor because the gymnasium is not an AFF.