ALABAMA TAX TRIBUNAL

WARRIOR RANCH TRAINING CENTER,	§	
Taxpayer,	§	DOCKET NO. COUNTY 19-102-LP
v.	§	
	§	
TUSCALOOSA COUNTY SPECIAL TAX BOARD.	§	

OPINION AND PRELIMINARY ORDER

This appeal involves a final assessment of of sales tax entered by the Tuscaloosa County Special Tax Board (the "Tax Board") against Warrior Ranch Training Center (the "Taxpayer"), for the period March 1, 2015, through March 31, 2019. A hearing was conducted on November 13, 2019. Brad Strange and John Brasfield represented the Taxpayer. Kim Ingram represented the Tax Board.

FACTS AND PROCEDURAL HISTORY

The Taxpayer operates a public shooting range in Tuscaloosa County, Alabama, and offers its members and the public "training instruction and a safe place to practice [firearms'] skills" for individuals at "every skill level." The Taxpayer also offers ranges for skeet shooting and target practice and maintains an on-site custom repair shop and store where it sells firearms, ammunition, and shooting supplies.

In addition to offering several forms of "membership" for specified monthly or annual fees, the Taxpayer also charges the public a variety of fees for various levels of access to its shooting ranges. Those access fees include "Day Range Passes," the "Range Time – Rifle," the "Range Time – Pistol," and the "Bob White Range" fees. The Taxpayer's membership fees and access fees are

collectively referred to as "Range Fees."

Around April, 2019, the Tax Board audited the Taxpayer's sales for the period beginning March 1, 2015, to March 31, 2019. During the course of the audit, the Taxpayer provided sales reports to the auditor for January 2017 through March 2019 but could not provide sales reports for the months prior to January 2017. As a result, the Tax Board applied an average error rate to the amount of sales tax due by the Taxpayer for the months prior to January 2017.[1]

According to the Tax Board, the audit revealed that the Taxpayer had never reported taxable sales or remitted sales tax to the County since opening in 2015. The audit also revealed that that the Taxpayer was not treating certain items, including the Range Fees, as taxable items. The Tax Board determined that the gross receipts from the Range Fees and other tangible items were subject to the gross receipts sales tax, and a Preliminary Assessment was issued to the Taxpayer in the total amount of $15,598.63.

The Taxpayer objected to the Preliminary Assessment. Following a hearing, the Tax Board made some adjustments to its Preliminary Assessment. On May 20, 2019, the Tax Board issued a Final Assessment in which it noted that the Taxpayer agreed to pay the amount assessed on the sale of tangible items but contested the amount owed on the Range Fees. The Final Assessment stated that the Taxpayer owed the Tax Board $13,945.46 in taxes and interest. The Taxpayer timely appealed the taxes assessed on the Range Fees to the Tax Tribunal.

[1]The Taxpayer did not dispute the Tax Board's application of the error rate to determine the sales tax due.

DISCUSSION

On appeal, the Taxpayer argues that its Range Fees are not subject to the gross receipts sales tax under § 40-23-2(2), Ala. Code 1975. That statute levies a gross receipts sales tax on any taxpayer "engaged … within this state in the business of conducting or operating places of amusement or entertainment" that are open to the public and provides a long and varied list of places where gross sales receipts are subject to the tax.[2] The statute also includes a "catchall" provision that covers "any other place at which any exhibition, display, amusement, or entertainment is offered to the public or place or places where an admission fee is charged." § 40-23-2(2), Ala. Code 1975.

The Administrative Law Division, the predecessor of the Tax Tribunal, stated that only those proceeds derived from that part of a taxpayer's business that is open or offered to the public are subject to the tax. *See generally, 2MC, Inc. v. State of Alabama*, Docket S. 07-587 (Admin. Law Div. 3/11/2008). Gross receipts derived from providing private professional lessons or instructions are not subject to the tax, even if the person or entity giving the private lessons or instructions also operated a public place of amusement or entertainment that was subject to the § 40-23-2(2), Ala. Code 1975, tax. *See Garrison v. State of Alabama*, Docket S. 07-124 (Admin. Law Div. 5/1/2007) (holding that although the Taxpayer's business included several taxable activities, golf lessons, which are a professional service and are not provided for entertainment or amusement within the purview of §40-23-2(2), Ala. Code 1975, would not be taxable).

[2] Tuscaloosa County levies a sales tax parallel to Ala. Code § 40-23-2(2).

The Taxpayer argues that its Range Fees are not subject to the gross receipts sales tax because the overall purpose of its business is to provide private firearms and safety lessons. In support of its argument, the Taxpayer relies on the Administrative Law Division's decision in *Sips N Strokes, Inc. 522 Cahaba Park Circle Birmingham, AL 35242 v. State of Alabama,* Docket S. 12-377 (Admin. Law Div. 12/16/2013).

In that case, the taxpayer was an art studio that allowed customers to pay one of its trained instructors a fee for step-by-step guidance in creating their own works of art while also allowing them to eat, drink, and socialize with one another. Despite the fun, casual atmosphere of the studio, the taxpayer contended that the primary function of its business was to teach its customers how to paint.

The Revenue Department audited the taxpayer and assessed it for the gross receipts sales tax under § 40-23-2(2), Ala. Code 1975, on the basis that the taxpayer " '[did] not operate as an art studio that teaches actual art techniques but as a place to go for an entertaining day or evening out with friends.' " *Sips N Strokes*, Docket S. 12-377 at 3 (quoting Dept. Ex. 1 at 4, 5). The taxpayer appealed. The Administrative Law Division ruled in favor of the taxpayer and held as follows:

> I have no doubt that most of the Taxpayer's customers enjoy themselves during a class with [the owner] or one of her instructors. And that enjoyment may certainly be heightened if the customer chooses to have a cocktail or another adult beverage during the class. The evidence is convincing, however, that the Taxpayer's primary purpose is to teach its customers how to paint, and not to provide them with entertainment or amusement. In substance, [the Taxpayer is] providing professional services by teaching the customers how to paint a picture, and also 'about brush sizes and various painting techniques, including bottling, dabbing, shading, rubbing, smoothing, perspective, and positive and negative space.' Taxpayer's Notice of Appeal at 2. The fact that the customers are allowed to partake of food and their favorite beverage while attending the class may make the experience more enjoyable, but that fact does not change the Taxpayer's providing of professional art lessons into a place of amusement or entertaining within the purview of § 40-23-2(2).

Sips N Strokes, Docket S. 12-377 at 5-6.

Like the taxpayer in *Sips N Strokes*, here, the Taxpayer contends that, because the primary purpose of its shooting range is to provide professional firearms and safety lessons, it is not a "place of amusement or entertainment" and, thus, its Range Fees are not subject to the gross receipts sales tax in § 40-23-2(2), Ala. Code 1975. During the hearing, the Taxpayer's owner, Henry Malinverni, stated that customers can pay a fee for specific private classes in which they can learn how to safely handle and shoot a variety of firearms. Mr. Malinverni also emphasized that that instruction is not limited to customers who pay for private lessons. According to Mr. Malinverni, even customers who have not signed up for one of his classes may still receive some form of guidance and instruction while using the Taxpayer's shooting ranges because he has officers on his staff that have been certified by the NRA who monitor the shooting ranges to make sure that everyone is being safe.

However, unlike the taxpayer in *Sips N Strokes*, whose entire gross sales receipts were derived exclusively from the private art lessons it provided, the Taxpayer's Range Fees are separate from the fees collected by the Taxpayer for its firearms and safety lessons, and, thus, may still be subject to the gross receipts sales tax.

The Tax Board contends that the "Range Time – Rifle" fee, along with the "Day Range Passes," the "Range Time – Pistol," and the "Bob White Range" fees are admissions fees charged by the Taxpayer for use of its shooting ranges. As a result, it argues that the Taxpayer is a "place where an admission fee is charged" under the "catchall" provision of § 40-23-2(2), Ala. Code 1975, and, thus, its Range Fees are subject to the gross receipts sales tax. The Tax Board also contends that, because the monthly and annual memberships offered by the Taxpayer do not offer any benefits other than admission to the Taxpayer's facilities, they are, in effect, "lump-sum admissions fees" and, thus,

are also subject to the statute's "catchall" provision.

Section 40-23-2(2), Ala. Code 1975, does not define the term "admission fee." It is well settled, however, that when a term is not defined in a statute, "the commonly accepted definition of the term should be applied." *Bean Dredging, L.L.C. v. Alabama Dep't of Revenue*, 855 So.2d 513, 517 (Ala. 2003). The term "admission" is commonly defined as "the act or process of admitting." *Merriam-Webster's Collegiate Dictionary*, 11th ed. 2020. Applying this definition to the "Day Range Passes," the "Range Time-Rifle," "Range Time-Pistol," and "Bob White Range" fees, the Taxpayer charged a fee as part of "the act or process of admitting" daily shooters upon each visit. Thus, that fee is an "admission fee" subject to sales tax under § 40-23-2(2), Ala. Code 1975.

However, I disagree with the Tax Board's conclusion that the Taxpayer's annual memberships are "lump-sum admissions fees" that are also subject to the tax. The distinction between a lump-sum amount paid for the privilege of using a Taxpayer's public facility and membership dues was explained in the context of "private" golf courses by the Administrative Law Division in *State of Alabama v. Craft Development Corp., d/b/a Cotton Creek Clubs*, S. 91-142 (Admin. Law Div. Order on Rehearing 11/22/91):

> [A] lump-sum annual green fee is not the same as private club dues. Green fees paid to play on a public course, whether on a per play basis or on an annual lump-sum basis, are derived from the operation of the public course and are taxable. Private club membership dues are derived from membership in the private club, not for use of the golf course, and are not taxable even though one of the benefits of membership is open access to a [golf] course.

(Emphasis added.)

The evidence presented in this case suggests that the annual and family memberships offered by the Taxpayer entitle members to more than just access to the Taxpayer's shooting ranges. During

the hearing, screenshots of the Taxpayer's website were offered into evidence. Those screenshots revealed that the Taxpayer's annual and family memberships not only entitle a member to unlimited use of the Taxpayer's shooting range but also entitle the member to: a "Tee Time" option to reserve a table/lane prior to arrival; a 10% discount off ammunition, firearms, and custom work in the Taxpayer's shop; a 10% discount at two local restaurants; $10 firearms transfer fees; and one class. *See* Tax Board's Exhibit B. Mr. Malinverni testified that the monthly membership offers no benefits over a daily fee, although it is cheaper if a person shoots more than three times in a month. Under these circumstances, the Taxpayer's annual and family memberships are membership dues and not "lump-sum admissions fees." Thus, the gross receipts derived from them are not taxable under § 40-23-2(2), Ala. Code 1975. The monthly fee, however, is taxable.

For the foregoing reasons, the final assessment is affirmed, less the penalties waived, as to the gross receipts derived from the "Day Range Passes," the "Range Time-Rifle," "Range Time-Pistol," and "Bob White Range" fees and the monthly membership dues. The final assessment is voided as to the gross receipts derived from the Taxpayer's annual and family memberships.

The Tax Board is directed to recompute the Taxpayer's County sales tax liabilities by removing the Taxpayer's annual and family membership dues receipts from the taxable measure. It should then notify the Tax Tribunal of the adjusted amounts due.

This Opinion and Preliminary Order is not an appealable Order. The Final Order, when entered, may be appealed to circuit court within 30 days, pursuant to § 40-2B-2(m), Ala. Code 1975.

Entered September 8, 2020.

/s/ Leslie H. Pitman
LESLIE H. PITMAN
Associate Tax Tribunal Judge

lhp:dr
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