

Enrollment and freeze fees are subject to indoor tanning tax

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Relying on guidance issued in connection with air transportation excise taxes, a Chief Counsel Advice (CCA) has concluded that enrollment and freeze fees are subject to the 10% excise tax on indoor tanning services.

Background. Under Code Sec. 5000B, which went into effect on July 1, 2010, recipients of any indoor tanning service must pay an excise tax equal to 10% of all amounts paid to the provider for such service, whether paid by insurance or otherwise. (Reg. § 49.5000B-1T(d)(1)) The person receiving the payment on which the tax is imposed generally must collect it from the payor and pay it over quarterly to the government. (Code Sec. 5000B(c)(2))

The tax is imposed at the time of payment for any indoor tanning services. (Reg. § 49.5000B-1T(b)(2))

If an indoor tanning services provider offers indoor tanning services (whether of a specified or unlimited amount, including “free” or reduced-rate indoor tanning services) bundled with other goods and services, the payment for the bundled services includes an amount paid for indoor tanning services. The tax applies to that portion of the amount paid to the provider that is reasonably attributable to indoor tanning services. (Reg. § 49.5000B-1T(d)(3))

Enrollment fees. Some indoor tanning services providers offer a monthly membership program through which customers receive a number of tanning sessions at a cost lower than would be charged for each session individually. Some charge customers an enrollment fee when they join a membership program.

Typically, the customer pays the enrollment fee before paying the first monthly membership charge. Depending on the individual provider, payment of an enrollment fee may offer one or more of the following benefits:

- Reduced prices for the monthly membership charge and for non-tanning goods or services purchased at the time of enrollment.
- If the enrollment fee is paid immediately, a credit of the enrollment fee to the monthly membership charge.
- The ability to pay for indoor tanning services through Electronic Funds Transfer.
- An inducement for a customer to not intermittently stop and restart monthly membership charges.

Freeze fees. Some indoor tanning service providers also impose freeze fees on their customers. Depending on the individual provider, payment of a freeze fee may offer one or more of the following benefits:

- Skipping one or more months of membership dues without being charged an enrollment fee when the customer restarts the monthly membership.
- Waiver of any required contract cancellation fee or preserving the customer's status within a membership plan or package, including not being subject to monthly fee increases during the freeze period.

Issue. The CCA noted that a taxable event occurs when an amount is paid for indoor tanning services. The issue, thus, was whether enrollment fees and freeze fees constitute an "amount paid" for purposes of Code Sec. 5000B. Relying on guidance issued in connection with air transportation excise taxes, the CCA concluded that they do. This guidance, issued in the form of revenue rulings, stands for the proposition that all amounts paid as a condition to receiving air transportation are subject to tax. Similarly, all amounts paid as a condition to receiving indoor tanning services are subject to tax. Thus, all amounts paid for indoor tanning services (subject to the bundle rules) to the indoor tanning services provider are taxable.

A customer who pays an enrollment fee receives some benefit in exchange, such as a discounted monthly charge. A payment in exchange for a discount for a service is no different than a payment directly for the service itself at a reduced rate. Thus, the enrollment fee also constitutes an amount paid for indoor tanning services and is subject to tax under Code Sec. 5000B.

Similarly, a customer receives certain benefits in exchange for paying a freeze fee, such as maintaining his status in a membership program when he restarts the program after the freeze period. Further, a freeze fee compensates the indoor tanning services provider for the lost monthly membership fee paid in exchange for indoor tanning services that the provider would have received during, and but for, the freeze. Thus, a freeze fee also constitutes an amount paid for indoor tanning services and is subject to tax under Code Sec. 5000B.

References: For excise tax on indoor tanning services, see Federal Tax Coordinator 2d ¶¶ W-6500 ; United States Tax Reporter ¶¶ 50,00B4