

Doron F. Eghbali TAX Law

Getting Tanned and Getting Burned with Tanning Tax

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As part of the health care overhaul, Congress, seeking to fund such behemoth piece of legislation, imposed 10% taxes on tanning. However, as with any bureaucratic move of such magnitude in its infancy, the taxing poses some unresolved challenges and nuances to businesses. Let us further explore this rather interesting subject matter.

1. WHAT IS TAXABLE AND WHAT IS NOT? NOT CLEAR ENTIRELY

The law makes some interesting and rather strange distinctions between what is taxable and what is not. For instance:

- **Spray Tans:** Probably, not taxable at Health Clubs or Tanning Salons.
- **Ultraviolet Tans:** Probably, taxable even at Health Clubs.
- **Free Tans:** Not Clear yet, depending on facts and circumstances. Free tans COULD be taxable.
- **Tanning at Health Clubs:** Tanning NOT taxable at Qualified Health Clubs if as part of regular membership fees. If tanning is an UPGRADE, then TAXABLE.

2. WHAT ARE *SOME* OF THE UNCERTAINTIES AND CHALLENGES?

Relatively, the most vexing problem facing businesses is how they should enforce the law. The IRS in June sent out some guidelines. However, the guidelines leave so many questions unanswered and still pose challenges to business. For example:

- **QUALIFIED HEALTH CLUBS AND COMPETITIVE ADVANTAGE:** The list provided above makes it clear tanning salons should usually expect to tax their customers while Qualified Health Clubs *generally* are exempt from taxation. Hence, the question arises whether Tanning Salons could jusadd some treadmills and become converted into qualified health cares in the eyes of the IRS. The answer is probably in the negative. In fact, the IRS recently clarified tanning salons CANNOT seek a fitness-center exemption by "allowing users access to exercise classes or pieces of exercise equipment." Unfortunately, it makes it much harder for tanning facilities or other business providing tanning to draw in business to compete with Qualified Health Clubs exempt from much of the taxation.
- **ENFORCEMENT OF THE TANNING TAX LAWS:** This is hard for businesses to keep track of what is taxable and what is not taxable. The reason is many tanning facilities offer both sprayed and ultraviolet tanning as part of their regular membership services. It is hard to know what a particular client received and keep track of what is taxable and what is not. In fact, for an audit, a business owner might be expected to produce the receipts.

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