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# THE CrossFit JOURNAL

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## Taxing Our Patience

Washington state CrossFit affiliates not considered “instructional,” burdened with confusing tax. Maureen O’Hagan reports.

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By Maureen O’Hagan

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All: Mike Warkentin/CrossFit Journal

CrossFit Bellevue owner Leilani M. Cerrillo looked around one day and realized something: her clients were paying sales tax and her neighbors’ clients weren’t.

The gymnastics studio next door? Not subject to Washington state sales tax.

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The cheerleading school? Not taxed. But Cerrillo's box? Taxed.

"I don't see why my people are being charged sales tax and those people are not," she said. "I think there's a lot of gray area."

No one ever accused the taxman of being logical. In fact, if you bore into state sales-tax rules that apply to physical-fitness activities, things quickly get confusing. Washington's system is so unclear that while some box owners just buck up and pay, others aren't forking over a dime; some are getting away with it and others are being penalized.

"It seems like the primary driver is what kind of advice you're getting from your tax expert," said Thomas Crubaugh, Director of Finance and Risk Management for CrossFit Inc. "That's kind of random."

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The stated position of the Washington Department of Revenue (DOR) is that CrossFit affiliates must collect sales tax on everything: dues for group classes, personal training and actual retail goods like T-shirts.

So why are some affiliates paying the tax while others aren't? The non-payers aren't eager to say.

"We are not interested in bringing any additional attention to ourselves regarding this matter," one affiliate wrote in an email to the *Journal* after successfully fighting back scrutiny from the DOR.

Meanwhile, other affiliates are paying penalties. Laurie Bowler of Rainier CrossFit said her gym's 2008 tax returns were audited last year. They had to pay the state US\$7,500—about half of which went toward four years of penalties.

The sales-tax mishmash began long before there were CrossFit affiliates to complain about it. In 1993, the state legislature tossed out a well-planned (though controversial) funding scheme for a new state health plan and replaced it with what *The Seattle Times* called a "drastic and haphazard" makeover that included a slew of taxes, including both sin taxes and taxes on "personal services." You know, services—things like massage parlors, tattoos, dates arranged by escort services, Turkish steam baths and ... physical-fitness services.

Putting aside for the moment the idea that fitness is being taxed to pay for health care, the question remains: how do you explain things like the gymnastics loophole? Or, for that matter, the boxes that aren't paying?



**Washington state CrossFit affiliates are caught up in a tax situation that is confusing, arbitrary and inconsistent.**

Under Washington's jury-rigged system, if the "primary purpose" of the fitness activity is instruction, it's not subject to the sales tax. If it's primarily about fitness, then it is. The *CrossFit Journal* recently asked a DOR spokesman for more specifics. See if you can follow:

Tennis lessons? Not subject to sales tax.

Membership at a tennis club? Taxable. And if there's a separate fee to use the tennis courts, that's taxed, too.

How about tae kwon do? Nope.

Mixed martial arts? No.

Playing in a baseball league? Depends. (Is it a nonprofit?)

Membership at a Globo Gym? Taxed.

Personal training at a Globo Gym? Taxed.

Perfectly clear, right? We thought so. And we didn't even mention the loophole that really irritates box owners: yoga.

It used to be that yoga classes were considered to be subject to sales tax. But in 2009, studio owners faced down DOR auditors and convinced them they should be exempt. Their main argument wasn't that they were instructional, per se. Instead, they argued that the primary purpose of yoga isn't fitness.

You can stop your snickering now. The argument worked.

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"Yoga originated as an Eastern philosophy and discipline approximately 5000 years ago," a [2009 Excise Tax Advisory reads](#). "In addition to physical postures ('asana'), traditional Yoga classes typically emphasize significant breath regulation ('pranayama') and meditation ('dhyana') components as well as significant discussion of the historical and philosophical origins of Yoga."

The advisory goes on to state that though there may be physical benefits from yoga, "Those benefits are not the primary focus of the class."

So, if you're working out to try to get fit, it's taxed. But if you're doing it to breathe, or to meditate, it's not?

"I'm deeply annoyed," said Jesse Ward of Lynnwood CrossFit. "They're some kind of quasi-religious thing, so it becomes OK? They're ostensibly doing exactly the same thing we're doing, which is trying to help people live a healthier life."

Maybe the yoga people are onto something. People say CrossFit's a cult—shouldn't that count for something?

"No, I don't think so," said Mike Gowrylow, a spokesman for the DOR.

"It sounds like a good, positive activity to me," he added. "(But) it's a taxable activity."

In truth, said Diane Yetter, founder of the national Sales Tax Institute, "A lot of what it comes down to is who had the best lobbyist."

And Washington isn't outside the norm in all of this, according to Yetter. It's true that some states have no sales tax at all. But as the country has moved from a manufacturing economy to more of a service economy, an increasing number of jurisdictions are beginning to tax things that haven't been traditional revenue drivers. Today, she said, some states tax just about every product or service under the sun.

Washington has no state income tax, so sales tax is an obvious funding source. The base sales-tax rate is 6.5 percent, which puts it around the middle nationwide. (Some cities, including Seattle, tack on additional percentage points, as well.)

Recently, there has been talk in Washington state about fighting the sales tax on services. Crubaugh is working on a strategy that he hopes will benefit affiliates broadly. The affiliates who have already figured out a sales-tax loophole aren't happy, he said, because they don't want to jeopardize their situation, but he thinks educating the DOR about the CrossFit model might help. It appears the state thinks CrossFit is just like a Globo Gym, where the client gets minimal, if any, instruction.

"Perhaps in some boxes' case, that may be true," he said. "But with most CrossFits, there is significant instruction going on. You work on skills."



***CrossFit believes the program's significant instructional component places it outside the reach of Washington state sales taxes.***

Meanwhile, others, including Cerrillo, are working with lawyers and accountants to appeal their tax bill directly. She says it's unfair to her customers.

"I think it's made the difference in whether people have signed up or not," she said.

It's also a matter of principle. Before opening CrossFit Bellevue, Cerrillo worked for years in retail.

"I know retail," she said. "You walk into a store and purchase something and walk out with it. That's not what I do in my gym."



#### **About the Author**

*Maureen O'Hagan is a Seattle-based journalist who is the recipient of numerous national writing and reporting awards. Skeptical by nature, she tried CrossFit for a newspaper story in 2009. Now she's hooked.*