

ST 15-0072 (GIL) October 15, 2015 C.O.A.D

A coin-operated amusement device includes any "...device operated or operable by insertion of coins, tokens, chips or similar objects...which returns to the player thereof no money or property or right to receive money or property..." 35 ILCS 510/1. (This is a GIL).

October 15, 2015

Dear Xxxxx:

This letter is in response to your letter dated September 10, 2015, in which you request information. The Department issues two types of letter rulings. Private Letter Rulings ("PLRs") are issued by the Department in response to specific taxpayer inquiries concerning the application of a tax statute or rule to a particular fact situation. A PLR is binding on the Department, but only as to the taxpayer who is the subject of the request for ruling and only to the extent the facts recited in the PLR are correct and complete. Persons seeking PLRs must comply with the procedures for PLRs found in the Department's regulations at 2 Ill. Adm. Code 1200.110. The purpose of a General Information Letter ("GIL") is to direct taxpayers to Department regulations or other sources of information regarding the topic about which they have inquired. A GIL is not a statement of Department policy and is not binding on the Department. See 2 Ill. Adm. Code 1200.120. You may access our website at www.tax.illinois.gov to review regulations, letter rulings and other types of information relevant to your inquiry.

The nature of your inquiry and the information you have provided require that we respond with a GIL. In your letter you have stated and made inquiry as follows:

This letter constitutes a request for a General Information Letter ("GIL"), under Ill. Admin. Code tit. 2, § 1200.120, with respect to the proper taxability of a mobile point of sale device (described below) used within restaurants in Illinois.

STATEMENT OF FACTS

Our client the COMPANY is the manufacturer of a mobile point of sale (therein "Device") specifically designed for the casual dining restaurant industry to enhance the restaurant customer's satisfaction and increase food sales and restaurant efficiencies. The Device is a small XXX tablet, approximately Y inches by Z inches, with a touch screen interface placed at each table within a restaurant. The Device facilitates: order placement; order add-ons; dietary/nutritional

information; check out and payment; customer satisfaction surveys; and customer loyalty programs.

The Device provides detailed descriptions of certain menu items, and in some cases pictures and even videos of food preparations are available for customer viewing. The Device permits customers to place orders for certain food items and beverages, re-order beverages throughout the meal, call the water/waitress during the meal, scan coupons, and to pay their checks directly through the Device. The customer is given the option on the Device to pay the check by credit card, debit card, or even gift card. A picture of the Device and its intended use (e.g., ordering food through a mobile menu) is included on the next page.

The benefits of the Device to the casual dining industry include better customer education, increased food and beverage sales, quicker table turnovers, increased customer satisfaction, and greater guest loyalty. Guests have better control over the pace of their meals and are able to keep their payment cards secure. An average casual dining restaurant typically has 50 tables, and so on the average, each restaurant has 50 Devices.

The Device is accessible only to customers who are seated at tables in the restaurant and participating in a dining experience; the Devices are not accessible to the general public. At restaurants featuring the Devices, approximately XX% of the customers desiring to pay their bill with a credit card are using these Devices as part of their dining and payment experience. At the time of payment, the Device is programmed to seek information from the customers concerning the dining experience. This real time information is invaluable to the management and operations of the restaurant. At the time of payment, the Device is also programmed to allow customers to join and participate in loyalty programs that are designed to promote customer loyalty to the restaurant chain.

The Device allows restaurants the option to further enhance their customers' dining experience by allowing their customers, for a one time dining charge commonly referred to as the "Premium License Fee", to access software programs contained on the Device during the course of the customer's dining experience. The software comprises a separate section on the Device during the course of the customer's dining experience. The software comprises a separate section on the Device (the "Premium Content"). The Premium License Fee allows customers access to certain specialized software that is ancillary to the primary purposes of the Device and includes educational applications, puzzles, cartoons, videos, and a limited number of games.¹ The Premium License Fee is added at the end of the dining experience to the customer's bill. There are no individual charges for the various Premium Content items, and the customer may access as many Premium

¹ The customer only pays a license fee for the software access. The customer pays no fees for access to any puzzles, cartoons, videos, or games or other content on the device.

Content items and watch as many cartoons or play as many games as the customer may choose during his/her visit to the restaurant, all for the one time Premium License Fee.² On average, approximately YY% of the customers using the Device actually access Premium Content.

The COMPANY charges each restaurant a fair market service fee for each Device used in its restaurant. The COMPANY desires guidance from the Department as to whether or not the Device should be classified as a coin-operated amusement machine or redemption machine subject to the fees imposed on such machines in Illinois. This matter is of central importance to the COMPANY. The per-device annual privilege tax imposed on amusement and redemption machines would make it financially undesirable and largely impossible for restaurants to afford the Devices notwithstanding the benefits provided to their customers.

ISSUE

Based on the multifunctional nature of the Device, and given that its primary purpose is order placement and payment, does the Department consider the Device a coin-operated amusement machine or redemption machine subject to an annual privilege tax of \$30 per machine?

STATEMENT OF LAW

35 Ill. Comp. Stat. § 510/1 provides:

There is imposed, on the privilege of operating every coin-in-the-slot-operated amusement device, including a device operated or operable by insertion of coins, tokens, chips or similar objects, in this State which returns to the player thereof no money or property or right to receive money or property, and on the privilege of operating in this State a redemption machine as defined in Section 28-2 of the Criminal Code of 2012, an annual privilege tax of \$30 for each device for a period beginning on or after August 1 or of any year and prior to August 1 of the succeeding year.

720 Ill. Comp. Stat. § 5/28-2(a) provides in part:

(4) A redemption machine. For the purposes of this paragraph (4), a “redemption machine” is a single-player or multi-player amusement device involving a game, the object of which is throwing, rolling, bowling, shooting, placing, or propelling a ball or other object that is either physical or computer generated on a display or with lights into, upon, or against a

² In this respect, the Company’s Device is priced differently than the machines used by the Company’s competitors, as the competitors’ machines charge an additional fee each time the customer plays a game.

hole or other target that is either physical or computer generated on a display or with lights, or stopping, by physical, mechanical, or electronic means, a moving object that is either physical or computer generated on a display or with lights into, upon, or against a hole or other target that is either physical or computer generated on a display or with lights, provided that all of the following conditions are met:

- (A) The outcome of the game is predominantly determined by the skill of the player.
- (B) The award of the prize is based solely upon the player's achieving the object of the game or otherwise upon the player's score.
- (C) Only merchandise prizes are awarded.
- (D) The wholesale value of prizes awarded in lieu of tickets or tokens for single play of the device does not exceed \$25.
- (E) The redemption value of tickets, tokens, and other representations of value, which may be accumulated by players to redeem prizes of greater value, for a single play of the device does not exceed \$25.

III. Admin, Code tit. 86, § 460.105 provides in part:

(a) Coin-operated Amusement Devices – Taxable Devices

- (1) To be taxable, the device must be coin-operated, and it must be an amusement device. However, if an otherwise taxable amusement device is equipped to be operated by means of the insertion of coins, it is the Department's position that such device does not cease to be a taxable device because of the fact that the operator thereof has his customers pay the use of such device at the bar or in some other way which avoids the use of the coin receptacle.
- (2) The device cannot return money or property or the right to receive money or property to the player. For example, a crane game that offers players the right to receive merchandise contained in the machine is not subject to the tax.
- (3) An amusement device is a device which is played primarily for amusement or entertainment rather than for the purchase of some specific commodity or service....

(b) Explanations Redemption Machines

(1) Tax shall be imposed as required in Section 460.101 of the Part on the privilege of operating a redemption machine. For purposes of this Part, a redemption machine is a single-player or multi-player amusement device involving a game, the object of which is throwing, rolling, bowling, shooting, placing, or propelling a ball or other object into, upon, or against a hole or other target, provided that all the following conditions are met:

- (A) The outcome of the game is predominantly determined by the skill of the player.
- (B) The award of the prize is based solely upon the player's achieving the object of the game or otherwise upon the player's score.
- (C) Only merchandise prizes are awarded.
- (D) The wholesale value of prizes awarded in lieu of tickets or tokens for single play of the device does not exceed \$25.
- (E) The redemption value of tickets, tokens, and other representations of value, which may be accumulated by players to redeem prizes of greater value, for a single play of the device does not exceed \$25....

TAXPAYER'S POSITION

Illinois' Coin-Operated Amusement Device and Redemption Machine Tax Act³ ("the Act") imposes an annual privilege tax of \$30 on "the privilege of operating every coin-in-the-slot-operated amusement device, including a device operated or operable by insertion of coins, tokens, chips or similar objects, in this State which returns to the player thereof no money or property or right to receive money or property, and on the privilege of operating in this State a redemption machine as defined in Section 28-2 of the Criminal Code of 1961."

It is the COMPANY's position that its Device does not constitute a coin-operated amusement machine or redemption machine for the reasons set forth in this letter, and that consequently, the proprietors of restaurants in Illinois that use the

³ 35 Ill. Comp. Stat. § 510/1et seq.

COMPANY's Devices have no obligation to pay the annual tax based on use and operation of such machines.

First and most importantly, in order to be taxable, the device "must be an amusement device"⁴ that is "*primarily for amusement or entertainment* rather than the purchase of some specific commodity or service."⁵ The primary purpose and true object of the COMPANY's Device is the facilitation of ordering food and customer payment, not that of amusement. The Device is specifically designed for the restaurant industry for the purposes of increasing food sales, efficiency, and enhanced customer satisfaction. Industry statistics have shown that 80% of customers that are seated at tables with Device use it for ordering their meals and for payment at the end of the meal, and on average only YY% of such customers using the Device purchase premium content. Based on the stated functionality and use of the Device, it is self-evident that the Device is not intended primarily for the purposes of entertainment or amusement.

Second, the COMPANY's Device is not remotely similar to any amusement machines described in Ill. Admin. Code tit. 86, § 460.105(a)(3), such as coin-operated pinball machines, shuffleboards, hockey games, baseball games, horse racing games, gun games, pool games, mechanical pony rides, juke boxes, and fortune-telling machines. As noted in the regulations, these machines fit the definition of a coin-operated amusement device because they are both coin-operated and played primarily (and in most cases exclusively) for amusement or entertainment. In contrast, the Device is primarily designed and intended to facilitate order placement, order add-ons, checkout/payment, and customer satisfaction surveys. Moreover, unlike a "redemption machine," the COMPANY's Device does not award a prize "based solely on the player's achieving the object of the game or otherwise upon the player's score."⁶ In fact, the COMPANY's Device does not award a prize of any kind. In this manner, the COMPANY's Device is altogether distinguishable from a taxable redemption machine. The Device does not allow restaurant customers using the Device to: (1) win coupons exchangeable for prizes; (2) win free games on the Device; or (3) accumulate wins or losses.

Third, the method and manner of payment for the use of the Device differs materially from a coin-operated amusement machine or redemption machine. The restaurant's customers are able to access and use the Device during their meals; a one-time access fee is subsequently added to the customer's bill at the conclusion of the dining experience. The one-time access fee is paid after access and use of the premium content, at the end of the meal, either through the COMPANY's Device via a credit card or through the waiter. This payment method is

⁴ Ill. Admin. Code tit. 86, § 460.105(a)(1).

⁵ Ill. Admin. Code tit. 86, § 460.105(a)(3), (emphasis added).

⁶ 720 Ill. Comp. Stat. § 5/28-2(a)(4); Ill. Admin. Code tit. 86, § 460.105(b)(1).

distinguishable from an amusement device that requires payment via coin or similar token prior to any use of the machine. Moreover, a taxable amusement machine “must be coin-operated”.⁷ The COMPANY’s Device is not designed to accept the insertion of coins, tokens, chips or similar objects.

Lastly, the COMPANY submits to the Department that access to and use of the COMPANY’s Device is contrary to the spirit and meaning of the Illinois statutes pertaining to coin-operated amusement devices and redemption machines. The Illinois statutes are intended for machines accessible to the general public, like arcades and similar amusement centers. The COMPANY’s Devices are only accessible to and for use by customers of restaurants who have ordered food and are dining.

The Department’s determination as to whether the COMPANY’s Device is to be categorized as a coin-operated amusement machine or redemption machine should be based upon the plain language of the applicable statutes. Statutes that impose taxes are strictly construed against the taxing authority and should be interpreted in favor of the taxpayer.⁸ Numerous Illinois court cases have held that when the language of a statute is clear and unambiguous and conveys a clear and definite meaning, the statute must be given its plain and obvious meaning. For instance, *Kraft, Inc. v. Edgar*, 138 Ill. 2d 178, 189, (1990), specifically provides that “[l]egislative intent is best evidenced by the language used by the legislature, and where an enactment is clear and unambiguous a court is not at liberty to depart from the plain language and meaning of the statute by reading into it exceptions, limitations or conditions that the legislature did not express.” The primary consideration in the construction and interpretation of tax statutes is to ascertain and give effect to legislative intent, determined primarily from the language of the statute.⁹

In the instant matter, if the legislature had intended to impose a tax on the COMPANY’s Device as a “coin-operated amusement device” or “redemption machine”, it would have done so explicitly by using broader language in the applicable statute, such as “any device operated by any method of payment that provides any form of amusement, regardless of the primary purpose and true intent of the device”.

For each and all of the foregoing reasons, the COMPANY submits that its Device described above does not meet the definition or the spirit of a “coin-operated amusement device” or a “redemption machine” and is not subject to the annual per device tax imposed on operator of such machines.

CONCLUSION

⁷ Ill. Admin. Code tit. 86, § 460.105 (a)(1).

⁸ *Kankakee Cnty. Bd. of Review v. Prop. Tax Appeal Bd.*, 226 Ill. 2d 36, 52, (2007), (emphasis added).

⁹ *Kraft, Inc. v. Edgar*, 138 Ill. 2d 178, 189, (1990).

The COMPANY's Device does not meet the definition of a coin-operated amusement machine or redemption machine subject to any annual per device taxes in Illinois. The primary purpose of the COMPANY's Device is supported by the actual use of the Device as an integrated part of each restaurant's point of sale system designed to increase sales, improve efficiency, and enhance customer loyalty and satisfaction by providing functionality for the customers to view the menu, order food and pay for meals on demand. In summary, it is simply unreasonable to burden the Illinois restaurant industry with substantial operational taxes and fees on the COMPANY's Device which is specifically designed primarily to assist customers in ordering food and paying their bills, to increase restaurant sales, to conduct surveys, and to develop customer loyalty.

We request the Department review the facts presented in this request and provide a GIL with regard to the proper categorization of this emerging technology. Due to the significant impact that the Department's determination will have on the casual dining restaurant industry in Illinois, we respectfully request that the Department give thorough consideration to the issues and arguments provided herein.

If I may of further assistance, please do not hesitate to contact me at (312) 879-2021.

DEPARTMENT'S RESPONSE:

The Coin-Operated Amusement Device and Redemption Machine Tax Act imposes an annual privilege tax on the privilege of operating, in this State: 1) every coin-in-the-slot-operated amusement device that returns to the player no money or property or right to receive money or property; and 2) every redemption machine, as defined in 86 Ill. Adm. Code 460.105. 86 Ill. Adm. Code 460.101.

For an amusement device to be taxable, it must be coin-operated, and it must be an amusement device. The device cannot return money or property or the right to receive money or property to the player. An amusement device is a device which is played primarily for amusement or entertainment rather than for the purchase of some specific commodity or service. Every kind of coin-operated amusement device, which does not return money or property or the right to receive money or property to the player, is subject to the tax. 86 Ill. Adm. Code 460.105(a).

A "redemption machine" is a single-player or multi-player amusement device involving a game, the object of which is throwing, rolling, bowling, shooting, placing, or propelling a ball or other object that is either physical or computer generated on a display or with lights into, upon, or against a hole or other target that is either physical or computer generated on a display

or with lights, or stopping, by physical, mechanical, or electronic means, a moving object that is either physical or computer generated on a display or with lights into, upon, or against a hole or other target that is either physical or computer generated on a display or with lights, provided that all of the following conditions are met:

- A) The outcome of the game is predominantly determined by the skill of the player;
- B) The award of the prize is based solely upon the player's achieving the object of the game or otherwise upon the player's score;
- C) Only merchandise prizes are awarded;
- D) The wholesale value of prizes awarded in lieu of tickets or tokens for single play of the device does not exceed \$25, and
- E) The redemption value of tickets, tokens, and other representations of value, which may be accumulated by players to redeem prizes of greater value, for a single play of the device does not exceed \$25. 720 ILCS 5/28-2(a)(4).

Based on our understanding of the Device described in your letter, it does not appear to be an amusement device subject to the tax imposed by the Coin-Operated Amusement Device and Redemption Machine Tax Act because it is not played primarily for amusement or entertainment; rather, it appears to be primarily used for the purchase of a specific commodity, such as food, and service, such as order placement and order payment. The Device also does not appear to meet the definition of a redemption machine. The Department does express any opinion on any other issues relating to the devices.

I hope this information is helpful. If you require additional information, please visit our website at www.tax.illinois.gov or contact the Department's Taxpayer Information Division at (217) 782-3336.

Very truly yours,

Richard S. Wolters
Associate Counsel

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