
State of South Carolina
Department of Revenue
300A Outlet Pointe Blvd., Columbia, South Carolina 29210
P.O. Box 125, Columbia, South Carolina 29214

SC PRIVATE LETTER RULING #13-4

SUBJECT: Baseball and Softball Indoor Facility
(Admissions Tax)

REFERENCES: S.C. Code Ann. Section 12-21-2410 (2000)
S.C. Code Ann. Section 12-21-2420 (2000)

AUTHORITY: S. C. Code Ann. Section 12-4-320 (2000)
S. C. Code Ann. Section 1-23-10(4) (2005)
SC Revenue Procedure #09-3

SCOPE: A Private Letter Ruling is an advisory opinion issued to a specific taxpayer by the Department to apply principles of law to a specific set of facts or a particular tax situation. It is the Department's opinion limited to the specific facts set forth, and is binding on agency personnel only with respect to the person to whom it was issued and only until superseded or modified by a change in statute, regulation, court decision, or another Departmental advisory opinion, providing the representations made in the request reflect an accurate statement of the material facts and the transaction was carried out as proposed.

Questions:

1. Are daily fees or membership fees paid to 123 LLC d/b/a 456 Sports ("Taxpayer") for use of its indoor batting cages and pitching machines subject to the admissions tax under Code Section 12-21-2420?
2. Are charges for baseball and softball lessons (pitching, hitting, catching, fielding) provided at Taxpayer's indoor facility subject to admissions tax under Code Section 12-21-2420?

Conclusions:

1. Yes. Daily fees and membership fees paid to Taxpayer for the use of indoor batting cages and pitching machines are subject to the admissions tax under Code Section 12-21-2420.
2. No. Charges for baseball and softball lessons (pitching, hitting, catching, fielding) provided at Taxpayer's indoor facility which may include the use of the batting cage and the pitching machine are not subject to the admissions tax under Code Section 12-21-2420.

Facts:

123 LLC d/b/a 456 Sports (“Taxpayer”), operates a multi-use facility in Horry County, South Carolina. The facility includes a retail sales store selling sports apparel and equipment. The store also offers monogramming and embroidery of such apparel. Taxpayer also operates a premier indoor training facility for baseball and softball. The indoor training facility contains two full length batting cages that can be divided in half and four individual batting cages with state of the art pitching machines, full turf and pitching mounds. There is no charge to enter the facility. There are two different reasons why a person might enter the indoor training facility. First, a person or group of persons may wish to practice their baseball or softball skills by using the Taxpayer’s indoor facilities. A person can pay the daily fee and use the facilities only for that day or a person may buy a membership package for a period of one month, 6 months, or a year which allows the person the use of the indoor facilities for that time period.

Taxpayer’s location also provides another component other than the mere rental of batting cages and pitching machines for amusement. The Taxpayer has instructors on staff that offer baseball and softball lessons designed to improve a student’s mastery of the game. The taxpayer has three staff instructors who provide lessons to persons who wish to improve their baseball or softball skills. In connection with the lesson, the instructor may use the batting cages and the pitching machines to aid in instructing the students and improving their hitting and pitching skills.

Discussion:

Code Section 12-21-2420 imposes the admissions tax and provides in relevant part:

“There must be levied, assessed, collected, and paid upon paid admissions to places of amusement within this State a license tax of five percent. The license tax may be listed separately from the cost of admission on an admission ticket. ...”

Pursuant to Code Section 12-21-2410 for purposes of the admissions tax, the term “‘admission’ means the right or privilege to enter into or use a place or location”[emphasis added], while the term “‘place’ means any definite enclosure or location”.

The statute does not define the term “place of amusement”, however, the South Carolina Department of Revenue (“Department”), in SC Revenue Ruling #91-14, has previously considered whether baseball batting machines were places of amusement. In that revenue ruling, the Department looked to the dictionary to determine the meaning of the term “amusement”. The ruling determined that in summary, a “place of amusement: is any enclosure or location consisting of an activity that occupies one’s spare time, distracts the mind, relaxes, entertains or gives pleasure.” The ruling goes on to conclude that baseball batting machines are places of amusement.

In Beach v. Livingston, 248 S.C. 135, 149 S.E. 2d 328 (1966), the South Carolina Supreme Court considered whether the use of bowling lanes at a bowling alley was subject to the admissions tax when there was no charge to be admitted to the bowling alley and the only charge occurred when a person chose to actually use a lane to bowl a game. The Court focused on the definition of the term “admission” recognizing that the person was subject to admissions tax when he made use of the bowling facilities provided. “The word “use” is a verb and such means to employ for any purpose, to employ for attainment of such purpose or end, to convert to one’s service or to put to one’s use or benefit.” Esfeld Trucking, Inc. v. Metropolitan Ins. Co., 193 Kan. 7, 393 P. 2d 107 (1964).” The Court concluded that the term “use” in relation to the admissions tax was applicable to a person who avails himself of the facilities of a place of amusement, such as bowling alley. See also, SC AG. Op. 81-39 (1981). Therefore, when Taxpayer allows the mere use of the batting cages, the pitching machines and other baseball and softball facilities and equipment by third parties, the use of these facilities will be subject to the admissions tax.

Taxpayer’s location also provides another component other than the mere rental of batting cages and pitching machines for amusement. The Taxpayer has instructors on staff that offer baseball and softball lessons designed to improve a student’s mastery of the game. To the extent the pitching machines, batting cages, and other baseball and softball items and facilities are used in providing lessons to students as part of the lesson, the use of the pitching machines, baseball batting cages and other baseball and softball equipment and items is not subject to the admissions tax. In SC Revenue Ruling #05-14, the Department recognized the longstanding position of the Department that fees for lessons from an instructor which may use certain facilities and equipment in providing that instruction are not fees to enter or use a place of amusement and therefore are not subject to the admissions tax. Accordingly, the use of the baseball facilities and the equipment by the Taxpayer or its instructors in connection with providing instruction designed to teach or improve a person’s skill of those games will not be subject to the admissions tax.

SOUTH CAROLINA DEPARTMENT OF REVENUE

s/William M. Blume, Jr.

William M. Blume, Jr., Director

October 11 _____, 2013
Columbia, South Carolina

CAVEAT: This advisory opinion is issued to the taxpayer requesting it on the assumption that the taxpayer’s facts and circumstances, as stated, are correct. If the facts and circumstances given are not correct, or if they change, then the taxpayer requesting the advisory opinion may not rely on it. If the taxpayer relies on this advisory opinion, and the Department discovers, upon examination, that the facts and circumstances are different in any material respect from the facts and circumstances given in this advisory opinion, then the advisory opinion will not afford the taxpayer any protection. It should be noted that subsequent to the publication of this advisory opinion, changes in a statute, a regulation, or case law could void the advisory opinion.