



SC TECHNICAL ADVICE MEMORANDUM #90-7

TO: Mr. Marvin N. Davant, Director
Field Services Division

FROM: John P. McCormack, Manager
Tax Policy and Procedures Department

DATE: March 7, 1990

SUBJECT: Digital Display Machines
(C.O.D. Licenses)

REFERENCE: S.C. Code Ann. Section 12-21-2720 (Supp. 1988)
S.C. Code Ann. Section 12-21-2710 (Supp. 1988)

AUTHORITY: S.C. Ann. Section 12-3-170 (1976)
SC Revenue Procedure #87-3

SCOPE: A Technical Advice Memorandum is a temporary document issued to an individual within the Commission, upon request, and it applies only to the specific facts or circumstances related in the request. Technical Advice Memoranda have no precedential value and are not intended for general distribution.

Question:

Do digital display machines, which measure a person's blood pressure, pulse rate, stress level or "love" level, require C.O.D. licenses, pursuant to Code Section 12-21-2720?

Facts:

We have been requested to give advice on the licensing requirements of certain coin operated machines, available to the public, which give digital display readings. These machines require the operator to place an arm, finger or palm on the machine to produce a reading. The readings include measurements of blood pressure, stress level, pulse rate and "love" level.

Discussion:

The issue is whether or not the machines in question constitute "mechanical amusement devices", subject to license tax imposed by Code Section 12-21-2720?

Code Section 12-21-2720 reads, in part:

Every person who maintains for use or permits the use of, on any place or premises occupied by him, any of the machines or devices described below shall apply for and procure from the South Carolina Tax Commission a license for the privilege of making use of every such machine in South Carolina and shall pay for the license a tax of twenty-five dollars for each machine described in item (1) of the section...

(1) Any machine for the playing of music or kiddy rides operated by a slot or mechanical amusement devices and juke boxes wherein is deposited any coin or thing of value. (emphasis added)

It is an accepted practice in South Carolina to resort to the dictionary to determine the literal meaning of words used in statutes. For cases where this has been done, see Hay v. South Carolina Tax Commission, 273 SC 269, 255 SE2d 837 (1979); Fennell v. South Carolina Tax Commission, 233 SC 43, 103 SE2d 424 (1958); Etiwan Fertilizer Co. v. South Carolina Tax Commission, 217 SC 484, 60 SE2d 682 (1950).

Black's Law Dictionary, Fifth Edition, defines the term "amusement to mean: "Pastime, diversion, enjoyment. A pleasurable occupation of the senses or that which furnishes it."

The Second College Edition of the American Heritage Dictionary provides the following definitions:

"Amusement"	1. The state of being amused, entertained, or pleased. 2. Something that amuses.
"Pastime"	An activity that occupies one's spare time pleasantly.
"Diversion"	Something that distracts the mind and relaxes or entertains.
"Enjoyment"	1. The act or state of enjoying. 2. The use or possession of something beneficial or pleasurable. 3. Something that gives pleasure.

In summary, "amusement" is any activity that occupies one's spare time, distracts the mind, relaxes, entertains or gives pleasure.

Conclusion:

Digital display machines, which measure a person's "love" level, are mechanical amusement devices, and, therefore, are subject to the C.O.D. license tax provided under Code Section 12-21-2720.

Digital display machines, which measure blood pressure, pulse rate, or stress level, provide medical information and, therefore, are not mechanical amusement devices. Accordingly, such machines, are not subject to the license tax provided under Code Section 12-21-2720.