



SC REVENUE RULING #91-14

SUBJECT: Coin Activated Baseball Batting Machines
(Admissions Tax and C.O.D. License)

TAX ANALYST: Deana West

EFFECTIVE DATE: With respect to conclusion 1, the effective date is
March 14, 1990.

With respect to conclusion 2, the effective date is
August 31, 1991.

SUPERSEDES: SC Technical Advice Memorandum #90-8

REFERENCE: S.C. Code Ann. Section 12-21-2420 (Supp. 1990)
S.C. Code Ann. Section 12-21-2720 (As Amended 1991)
SC Revenue Ruling #90-9

AUTHORITY: S.C. Code Ann. Section 12-4-320 (Enacted June 1991)
SC Revenue Procedure #87-3

SCOPE: A Revenue Ruling is the Commission's official interpretation of how tax law is to be applied to a specific set of facts. A Revenue Ruling is public information and remains a permanent document until superseded by a Regulation or is rescinded by a subsequent Revenue Ruling.

Questions:

1. Are coin activated baseball batting machines subject to the admissions tax imposed under Code Section 12-21-2420?
2. Are coin activated baseball batting machines subject to the C.O.D. license tax imposed under Code Sections 12-21-2720(1) or (2)?

Facts:

Baseball batting machines exist whereby a participant pays to enter a batting cage equipped with a mechanical pitching device. Some of these batting machines require prepurchased tokens or

coins to activate the pitching device, and others allow the participant to deposit their own coins to activate the device. After activating the device, the player uses a bat to attempt to hit the pitches.

Discussion:

The first issue regarding the applicability of the admissions tax to baseball batting machines requiring tokens or coins has been previously addressed in South Carolina Technical Advice Memorandum #90-8. The discussion below reviews the Commission's continuing policy regarding this issue.

Code Section 12-21-2420 reads, in part:

There shall be levied, assessed, collected and paid upon all paid admissions to all places of amusement within this State a license tax of...four percent...

* * * * *

The tax imposed by this Section shall be paid by the person or persons paying such admission price...

Code Section 12-21-2410 defines various terms found in the article and reads, in part:

For the purpose of this article and unless otherwise required by the context:

- (1) The word "admission" means the right or privilege to enter into or use a place or location;
- (2) The word "place" means any definite enclosure or location; and
- (3) The word "person" means individual, partnership, corporation, association or organization of any kind whatsoever.

The statute, however, does not define the term "amusement".

One of the primary rules of statutory construction is that words used in a statute should be taken in their ordinary and popular meaning, unless there is something in the statute which requires a different interpretation. Hughes v. Edwards, 265 SC 529, 220 SE2d 231 (1975); Investors Premium Corp. v. South Carolina Tax Commission, 260 SC 13, 193 SE2d 642 (1973). Also, where the terms of a statute are clear and unambiguous and leave no room for construction, they must be applied according to their literal meaning. Mitchell v. Mitchell, 266 SC 196, 222 SE2d 217 (1976); Green v. Zimmerman, 269 SC 535, 238 SE2d 323 (1977).

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, 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 statute taxes charges to "use" a place of amusement, as well as charges to enter a place of amusement. This is seen in Beach v. Livingston, 248 SC 135, 149 SE2d 328 (1966), whereby the Supreme Court held that the admissions tax applied to charges paid for the "use" of a bowling alley. Additionally, an Attorney General's Opinion dated August 2, 1956 (See Attorney General's Report, July 1, 1955 to June 30, 1957) concluded the charge made by a person operating a golf driving range was subject to the admissions tax.

Therefore, it continues to be the policy of the Tax Commission to regard baseball batting machines as places of amusement.

The second issue is whether coin activated baseball batting machines are subject to a C.O.D. license tax. This issue was also addressed in South Carolina Technical Advice Memorandum #90-8. The Commission's policy regarding this issue has been revised as a result of a recent change in the governing statute.

Code Section 12-21-2720 states, 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 this section...

(1) Any machine for the playing of music or kiddie rides operated by a slot or mechanical amusement devices and juke boxes wherein is deposited any coin or thing of value. Batting machines on which an admissions tax is imposed are exempt from the provisions of this item. (emphasis added)

(2) Any machine for the playing of amusements or video games, without free play feature, or machines of the crane type operated by a slot wherein is deposited any coin or thing of value, and any machine for the playing of games or amusements, which has a free play feature, operated by a slot wherein is deposited any coin or thing of value and the machine is of the nonpayout pin table type with levers or "flippers" operated by the player by which the course of the balls can be altered or changed. (emphasis added)

This code section, as amended with respect to baseball batting machines, is effective for licenses issued after August 31, 1991.

The Tax Commission's interpretation of Code Section's 12-21-2720 applicability to baseball batting machines, prior to its' amendment, can be found by reviewing several policy documents.

SC Technical Advice Memorandum #90-8, issued March 14, 1990, concluded baseball batting machines were subject to the \$25 C.O.D. license fee imposed under Code Section 12-21-2720(1). Subsequently, SC Revenue Ruling 90-9, issued September 6, 1990, established guidelines to assist in determining the proper license tax to impose on various types of amusement machines. This Revenue Ruling superseded SC Technical Advice Memorandum #90-8 and concluded that machines without a free play feature were subject to the \$100 C.O.D. license fee imposed under Code Section 12-21-2720(2). Such guidelines would subject baseball batting machines to the \$100 C.O.D. license.

In light of the conclusions reached in the policy documents discussed above, we must consider the intention of the legislature to exempt baseball batting machines from any C.O.D. license fee when they amended Code Section 12-21-2720(1). "[A] construction adopted should not be such as to nullify, destroy, or defeat the intention of the legislature". 73 Am. Jur. 2d, Statutes Section 145.

Therefore, due to a change in the Code Section 12-21-2720, baseball batting machines will be exempt from both the \$25 and \$100 C.O.D. licenses.

Conclusions:

1. Coin activated baseball batting machines constitute "places of amusement" and are subject to the admissions tax imposed by Code Section 12-21-2420.
2. Coin activated baseball batting machines on which an admissions tax is imposed are not subject to the \$25 or \$100 C.O.D. license tax imposed by Code Sections 12-21-2720(1) and (2), respectively.

SOUTH CAROLINA TAX COMMISSION

s/S. Hunter Howard, Jr.

S. Hunter Howard, Jr., Chairman

s/A. Crawford Clarkson, Jr.

A. Crawford Clarkson, Jr., Commissioner

s/T. R. McConnell

T. R. McConnell, Commissioner

Columbia, South Carolina
September 4, 1991