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SC TECHNICAL ADVICE MEMORANDUM #90-8

TO: Marvin N. Davant, Director
Field Services Division

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

DATE: March 14, 1990

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

REFERENCE: S.C. Code Ann. Section 12-21-2420 (Supp. 1988)
S.C. Code Ann. Section 12-21-2720 (Supp. 1988)

AUTHORITY: S.C. Code 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:

Are coin activated "baseball batting cages" subject to the admissions tax imposed under Code Section 12-21-2420, or the C.O.D. tax imposed under Code Section 12-21-2720?

Facts:

Baseball batting cages exist whereby one pays to enter a cage equipped with a mechanical pitching device. The player uses a bat to attempt to hit the pitches. In the past, these locations were taxed under the admissions tax imposed under Code Section 12-21-2420.

Recently, however, some of these batting cages require prepurchased tokens or coins to activate the pitching devices. As a result, the present policy in some areas is to tax these slot activated batting cages as coin operated devices taxable only under Code Section 12-21-2720, and not taxable under the admissions tax Code Section 12-21-2420.

Discussion:

The first issue is whether baseball batting cages requiring tokens or coins constitute places of amusement, subject to the admissions tax.

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.

The second issue is whether or not coin activated baseball batting cages are subject to the C.O.D. license tax.

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 kiddy rides operated by a slot or mechanical amusement devices and juke boxes wherein is deposited any coin or thing of value. (emphasis added)

Finally, Code Section 12-21-150 reads:

The license tax or taxes imposed by this chapter shall, except as otherwise expressly provided, be in addition to all other licenses and taxes levied by law...

Conclusion:

Coin activated "baseball batting cages" constitute "places of amusement" and "mechanical amusement devices" and, therefore, are subject to both the admissions tax and C.O.D. tax, as imposed by Code Sections 12-21-2420 and 12-21-2720 respectively.