



SC PRIVATE LETTER RULING #92-6

TO: ABC Associates

TAX ANALYST: Deana West, Tax Analyst
Tax Policy and Appeals Department

SUBJECT: Breath Alcohol Tester Machine
(C.O.D. License Tax)

REFERENCE: S.C. Code Ann. Section 12-21-2720 (Supp. 1991)

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

SCOPE: A Private Letter Ruling is a temporary document issued to a taxpayer, upon request, and it applies only to the specific facts or circumstances related in the request.

Private Letter Rulings have no precedential value and are not intended for general distribution.

Question:

Is the Patriot Model 5000, a coin-operated computerized breath alcohol tester, subject to the C.O.D. license tax imposed under Code Section 12-21-2720(2)?

Facts:

In an attempt to combat the problem of drunk driving, some bar owners are placing coin-operated computerized breath alcohol testers in their establishments. The particular machine in question is known as the Patriot Model 5000. This machine operates by a person inserting two quarters, placing the straw provided into the "bullseye" on the machine, and exhaling. The machine states the legal drinking limit and shows a digital display of the persons alcohol reading, accompanied by one of over 25 appropriate humorous voice comments.

The advertising brochures for the Patriot Model 5000 indicate the following characteristics:

1. The tester is not a toy.
2. The machine is tested weekly for accuracy.

3. The machine can be used as a polite way to stop serving unruly drinkers.
4. Establishments using this machine may be eligible for up to a 10% to 40% reduction on their liquor liability license.

Discussion:

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...a license...and shall pay for the license a tax of...one hundred dollars for each machine described in item (2) of this section...

* * * *

(2) Any machine for the playing of amusements or video games, without free play feature...(emphasis added).

In summary, a machine for the playing of amusements that does not have a free play feature requires a \$100 license. A machine which is not for the playing of amusements is not required to have a \$100 license.

The primary purpose of a particular machine is a question of fact to be determined by an examination of all the facts and circumstances. Based upon a review of the Patriot Model 5000's characteristics and advertising brochures, it can be concluded that the machine's primary purpose is to provide for the safety of the customer as well as the driving public. With information about a patron's blood alcohol content, the bar owner, as well as the patron, are aware that it is time for the patron to stop drinking, select a designated driver, or call a cab.

Conclusion:

The Patriot Model 5000 is not a machine for the playing of amusement and, therefore, is not subject to the C.O.D. license tax imposed under Code Section 12-21-2720(2).