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SC PRIVATE LETTER RULING #94-12 (TAX)

TO: Greater Business Solutions, Inc.
7094 Peachtree Industrial, Suite 280
Norcross, Georgia 30071

SUBJECT: Type of Coin-Operated Device License Required
(C.O.D.)

DATE: December 22, 1994

REFERENCE: S. C. Code Ann. Section 12-21-2720 (Supp. 1993)

AUTHORITY: S. C. Code Ann. Section 12-4-320 (Supp. 1993)
SC Revenue Procedure #94-1

SCOPE: A Private Letter Ruling is an official advisory opinion issued by the
Department of Revenue to a specific person.

NOTE: A Private Letter Ruling may only be relied upon by the person to whom it
is issued and only for the transaction or transactions to which it relates. A
Private Letter Ruling has no precedential value.

PRIVATE LETTER RULINGS ARE GENERALLY EDITED FOR CONFIDENTIALITY. THE
TAXPAYER HAS GRANTED THE DEPARTMENT PERMISSION TO PUBLISH THIS
DOCUMENT UNEDITED.

Question:

Does the video coin-operated machine manufactured by U.S. Games, Inc. and known as the
"Countertop Champion"¹ require a Class II license under Code Section 12-21-2720(A)(2) or a
Class III license under Code Section 12-21-2720(A)(3)?

¹See the Facts portion of this document for a complete description of the "Countertop Champion".

Conclusion:

The video coin-operated machine manufactured by U.S. Games, Inc. and known as the "Countertop Champion" requires a Class II license under Code Section 12-21-2720(A)(2).

Note: Since the "Countertop Champion" requires a Class II license under Code Section 12-21-2720(A)(2), it does not meet the requirements of Code Sections 12-21-2791 or 16-19-40. As such, it is illegal to pay players for points won during the play of any of the games offered on the "Countertop Champion".

Facts:

The "Countertop Champion" is a video coin-operated machine that permits one or two persons to play different types of games. The machine, as the name suggests, can be placed on a counter or table at any business establishment and is approximately 14 inches high, 20 inches wide, and 15 inches deep. It contains a 13 inch high resolution color touchscreen monitor.

The machine software contains the following games:

1. Video Poker
2. Blackjack
3. Bowling
4. Pool
5. Solitaire
6. Memory Master
7. Trivia Quiz

While the machine is not being played, the monitor advertises the games that can be played and may also provide advertisement for the business in which it is located.

A player may play one game for a quarter. Once the quarter has been inserted into the machine, the player is given one credit. The screen at this point displays the one credit and a list of the available games. See Exhibit "A" which shows how the screen looks at this point in its operation.

The player then chooses the type of game he or she wishes to play. Each game has a time limit of three minutes. In each game, the object is to score the most points. Players who achieve the highest scores may, upon completion of a game, list their names in the machine beside their point total. This will allow other players to compete against these scores in the future.

In some games, such as video poker, blackjack, and trivia quiz, players may bet points. If a player in these games loses all of his or her points, the game is over regardless of the number of

hands played, the number of questions answered, or the amount of the allotted time (three minutes) remaining².

For example, in video poker, a player may play five hands of poker. However, if the player bets and loses all of his or her points after the second hand, the game is over. Or if the player is only able to complete four hands before the three minutes expires, the game is over. Finally, in video poker the player may be able to play two additional hands if he or she scores enough points after five hands and still has time remaining.

There is one constant with all the games. Once the game is over, the player will not receive any additional credits regardless of the number of points scored. The machine's monitor will return to the screen that shows the types of games that can be played and the credits the player purchased. If the player only purchased one credit to begin with, then this screen will show zero credits and the player must insert another quarter to play another game.

Finally, a switch can be activated that will allow the distributor of this machine to demonstrate its operation to prospective purchasers. Once this switch is activated, the distributor may demonstrate the machine without requiring the insertion of coins.

Discussion:

Code Section 12-21-2720 imposes license taxes on three categories of amusement machines, and reads, in part:

Every person who maintains for use or permits the use of, on any place or premise occupied by him, one or more of the following machines or devices shall apply for and procure from the South Carolina Department of Revenue and Taxation a license effective for two years for the privilege of making use of the machine in South Carolina and shall pay for the license a tax of fifty dollars for each machine in item (1), two hundred dollars for each machine in item (2), and three thousand dollars for each machine in item (3):

(1) a machine for the playing of music or kiddy rides operated by a slot or mechanical amusement devices and juke boxes in which is deposited a coin or thing of value. A machine on which an admissions tax is imposed is exempt from the C.O.D. license provisions of this section.

(2) a machine for the playing of amusements or video games, without free play feature, or machines of the crane type operated by a slot in which is deposited a coin or thing of value, and a machine for the playing of games or amusements, which has a free play feature, operated by a slot in which is deposited a 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. A machine required to be licensed under this item is exempt from the license fee if an admissions tax is imposed.

²Once the three minutes expire, the game is over regardless of how well the player is playing.

(3) a machine of the nonpayout type, in-line pin game, or video game with free play feature operated by a slot in which is deposited a coin or thing of value except machines 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.

Furthermore, Regulation 117-31 provides insight as to the definition of the phrase "free play feature" and reads, in part:

The words "which has a free-play feature" shall mean and include any machine which is designed and made with such feature by the manufacturer of such machine, provided, however, that where the mechanism constituting a free-play feature has been completely and wholly removed from the machine, and a certificate to that effect is filed at the time of application for license, the machine shall be licensed as provided by [Section 12-21-2720] of the 1976 Code.

In SC Revenue Ruling #90-9 the Commissioners concluded that video games without a free play feature must be licensed as Class II machines and video games with a free play feature must be licensed as Class III machines.

Finally, it has been the longstanding policy of the Department that a free play feature was one that allows a player to play a complete game free of charge³. For example⁴, a player may receive a free game if:

1. a certain number of points are scored;
2. the last number of the player's score matches a number randomly selected by the machine (Score: 328,446, Randomly Selected Number: 6); or
3. the player is allowed to bet credits purchased or won (free games) with each bet representing another play⁵.

Administrative interpretations of statutes by the agency charged with their administration and not expressly changed by the legislative body are entitled to great weight. Marchant v. Hamilton 309 S.E. 2d 781 (1983). When as in this case, the construction or administrative interpretation of a statute has been applied for a number of years and has not been changed by the legislature, there is created a strong presumption that such interpretation or construction is correct. Ryder Truck Lines, Inc. v. South Carolina Tax Commission, 248 S.C. 148, 149 S.E. 2d 435; Etiwan Fertilizer Company v. South Carolina Tax Commission, 217 S.C. 354, 60 SE 2d, 682.

³A free play feature allows a player to play an entire game free of charge. The free game is the same game the player would play if he or she had paid to play the game.

⁴These examples do not represent all the methods in which a player may win or achieve a free play.

⁵This type of free play feature is usually found in Video Game Machines regulated under Article 20 of Chapter 21 in Title 12 of the South Carolina Code of Laws.

Based on the above, the "Countertop Champion" does not offer a free play feature and is therefore a Class II machine under Code Section 12-21-2720(A)(2). While it may offer an extended play feature for some games⁶, the Department has never required a Class III license for machines that only have an extended play feature.

⁶An example of an extended play feature is the ability of a player to play two additional hands in the video poker game if he or she scores enough points after five hands of poker. See also Footnote #3 for information as to what constitutes a free game.