

ST 16-0001-GIL 01/04/2016 C.O.A.D

A coin-operated amusement device includes any "...device operated or operable by insertion of coins, tokens, chips or similar objects...which returns to the player thereof no money or property or right to receive money or property..." 35 ILCS 510/1. (This is a GIL).

January 4, 2016

Dear Mr. Xxxxx,

This letter is in response to your letter dated October 5, 2015, in which you request information. The Department issues two types of letter rulings. Private Letter Rulings ("PLRs") are issued by the Department in response to specific taxpayer inquiries concerning the application of a tax statute or rule to a particular fact situation. A PLR is binding on the Department, but only as to the taxpayer who is the subject of the request for ruling and only to the extent the facts recited in the PLR are correct and complete. Persons seeking PLRs must comply with the procedures for PLRs found in the Department's regulations at 2 Ill. Adm. Code 1200.110. The purpose of a General Information Letter ("GIL") is to direct taxpayers to Department regulations or other sources of information regarding the topic about which they have inquired. A GIL is not a statement of Department policy and is not binding on the Department. See 2 Ill. Adm. Code 1200.120. You may access our website at www.tax.illinois.gov to review regulations, letter rulings and other types of information relevant to your inquiry.

The nature of your inquiry and the information you have provided require that we respond with a GIL. In your letter you have stated and made inquiry as follows:

"Pursuant to Ill. Adm. Code §1200.110, COMPANY ("COMPANY") submits the following request for Private Letter Ruling on behalf of client ("Company") whose use of a mobile point of sale device (described below) within its restaurants in Illinois.

STATEMENT OF FACTS

The Company is one of the largest full service casual dining companies with restaurant locations in most states including Illinois. The Company initiated a pilot program incorporating the use of a mobile point of sale device (herein "Mobile Point of Sale Device" or "Device") at its restaurant locations that will accommodate tabletop menu, ordering and payment in some of its Illinois locations. The Mobile Point of Sales Device is an Android tablet with a touch screen interface that will be placed at each table that provides pictures/detailed descriptions of the menu items and

allows customers to place drink, appetizer, and entrée orders, and pay their check by credit card, debit card or gift card on the Device. Alternatively, it can be paid through their server/wait staff if preferred.

The Mobile Point of Sale Device also allows restaurants *the option* to enhance the customer experience by allowing access to premium content located on the Device. This content could include news, sports, access to social media, selecting songs to be played on the restaurant's playlist as well as access to interactive games. The Company will charge separate fees for access to games on the Device, access to current news and social media, and for song selections. The games application software resides within each Device. During the pilot phase, the Company intends to charge only for the game fees, and the use of the Device to access news content will be free.¹ The premium content fee will be included as a line item on the customer's food and beverage bill. The vendor ("Vendor") of the Mobile Point of Sale Device has indicated to the Company that at the average restaurant over XX% of the restaurant customers use the Device for ordering and/or payment at the end of the meal, while only XX-XX% of the customers access any premium content located on the Device.

The owner of the Devices charges the Company a monthly service fee for the use of the Devices. Per the agreement between the Vendor and the Company, the Company will be responsible for collection/remittance of any applicable state or local taxes imposed on the transactions. Additionally, the Vendor may also charge monthly commissions to the Company as a percentage of the game fee and song fee income. The Company will be required to pay to the Vendor a portion (or potentially all) of the revenue generated by these premium content fees.

In a possible alternative scenario, the Vendor will not charge the Company a monthly service fee for use of the devices, but will instead receive from the Company all of the premium content fees up to a maximum amount, at which time the fees in excess of such amount will be shared with the Company.

The Mobile Point of Sale Device was developed specifically for the restaurant industry. The primary purpose of the Device is to facilitate (1) order placement, (2) order add-ons, (3) checkout/payment, and (4) customer satisfaction surveys. The benefits of the Device to the restaurant industry include increased food and beverage sales, a quicker table turnover, and increased guest loyalty and satisfaction. To achieve these desired results, the Company will provide one Mobile Point of Sale Device at each table within each restaurant. The average restaurant will typically

¹ This fee structure is intended to be employed solely for the pilot program. Following the conclusion of the program, the Company may elect to charge a fee for access to any premium content on the Device.

contain XX tables, and on average XX Mobile Point of Sale Devices would then be used at each establishment.

It is the Company's intent that access to premium content (including news, videos, sports, educational items, and interactive games) is ancillary to the true purpose of the Device as part of the Company's established point of sales order and payment system. A picture of the Device and its intended use (e.g., ordering food through a mobile menu) is included below.

ISSUES

- 1) Based on the information provided, would the Device be viewed as a coin-operated amusement device for purposes of the state tax under 35 ILCS 510/1?
- 2) Will such determination be applicable at the local level since the Department of Revenue does not collect tax on a coin-operated amusement device that local jurisdictions may impose? Since the authority for local jurisdictions to impose a tax on coin-operated amusement devices is granted in 35 ILCS 510/7 would a determination of what is and what is not a coin-operated amusement device under 35 ILCS 510/1 also apply at the local level?

TAXPAYER'S POSITION

Illinois imposes a tax on the privilege of operating amusement devices that require the insertion of coins, tokens, chips or similar objects. Such devices include but are not limited to Jukeboxes, pinball machines and coin-operated video games.² The Company believes that the Device should not be viewed as a "coin-operated amusement device." First, the Company asserts that the Mobile Point of Sale Device should not be considered a "coin-operated amusement device" because it is not operated via a coin or token. Second, the purpose of the Company's Device is not that of amusement but the facilitation of ordering food and customer payment. The Device was specially designed for the restaurant industry for the purpose of increasing food sales, efficiency, and enhanced customer satisfaction. The Vendor's statistics have shown that XX-XX% of customers that are seated at tables with Device use it for ordering their meals, XX% or more use it for payment at the end of the meal, and on average only XX-XX% of such customers use the Device to purchase of premium content. Unlike the Mobile Point of Sale Device, a coin-operated amusement device actually requires payment of some kind in order to be used for its intended purpose. Restaurant guests that use the Mobile Point of Sale Device to order food or pay their bill are not required to provide

² 35 ILCS 510/1

payment in order to use the Device. Clearly, the Mobile Point of Sales Device is not intended to provide “amusement, diversion, or entertainment” based on the actual and predominant use of the Device. The Mobile Point of Sale Device is primarily designed and intended to facilitate (1) order placement, (2) order add-ons, (3) checkout/payment, and (4) customer satisfaction surveys.

The Company would like confirmation on whether the Device will be viewed as a coin-operated amusement device under 35ILCS 510/1. The Company would also like confirmation whether such determination will be applicable at the local level since the Department of Revenue does not collect tax on a coin-operated amusement device that local jurisdictions may impose.

CONCLUSION

Company reviewed Illinois laws, regulations and administrative decisions but was unable to locate a definitive authority or clear determination on this matter. Therefore, we request the Commissioner’s office review the facts presented in our request and provide a ruling response with regard to the proper taxability of this emerging technology.

If you have any questions, please contact the undersigned at XXX-XXX-XXXX.

DEPARTMENT’S RESPONSE:

The Department’s regulation “Public Information, Rulemaking and Organization” provides that “[w]hether to issue a private letter ruling in response to a letter ruling request is within the discretion of the Department. The Department will respond to all requests for private letter rulings either by issuance of a ruling or by a letter explaining that the request for ruling will not be honored.” 2 Ill. Adm. Code 1200.110(a)(4). The Department declines to issue a Private Letter Ruling in response to your request.

The Coin-Operated Amusement Device and Redemption Machine Tax Act imposes an annual privilege tax on the privilege of operating, in this State: 1) every coin-in-the-slot-operated amusement device that returns to the player no money or property or right to receive money or property; and 2) every redemption machine, as defined in 86 Ill. Adm. Code 460.105. 86 Ill. Adm. Code 460.101.

For an amusement device to be taxable, it must be coin-operated, and it must be an amusement device. The device cannot return money or property or the right to receive money or property to the player. An amusement device is a device which is played primarily for amusement or entertainment rather than for the purchase of some specific

commodity or service. Every kind of coin-operated amusement device, which does not return money or property or the right to receive money or property to the player, is subject to the tax. 86 Ill. Adm. Code 460.105(a).

A "redemption machine" is a single-player or multi-player amusement device involving a game, the object of which is throwing, rolling, bowling, shooting, placing, or propelling a ball or other object that is either physical or computer generated on a display or with lights into, upon, or against a hole or other target that is either physical or computer generated on a display or with lights, or stopping, by physical, mechanical, or electronic means, a moving object that is either physical or computer generated on a display or with lights into, upon, or against a hole or other target that is either physical or computer generated on a display or with lights, provided that all of the following conditions are met:

- A) The outcome of the game is predominantly determined by the skill of the player;
- B) The award of the prize is based solely upon the player's achieving the object of the game or otherwise upon the player's score;
- C) Only merchandise prizes are awarded;
- D) The wholesale value of prizes awarded in lieu of tickets or tokens for single play of the device does not exceed \$25, and
- E) The redemption value of tickets, tokens, and other representations of value, which may be accumulated by players to redeem prizes of greater value, for a single play of the device does not exceed \$25. 720 ILCS 5/28-2(a)(4).

Based on our understanding of the Mobile Point of Sale Device described in your letter, it does not appear to be an amusement device subject to the tax imposed by the Coin-Operated Amusement Device and Redemption Machine Tax Act because it is not played primarily for amusement or entertainment; rather, it appears to be primarily used for the purchase of a specific commodity, such as food, and service, such as order placement and order payment. The Device also does not appear to meet the definition of a redemption machine. The Department does express any opinion on any other issues relating to the devices.

The Department's authority to regulate and tax coin-operated amusement devices and redemption machines is non-exclusive. Municipalities have the right to impose taxes or license fees on these devices and machines and to regulate or control the operation of them within such municipalities as provided in Section 11-55-1 of the Illinois Municipal Code (65 ILCS 5/11-55-1), and counties have the right to impose taxes or license fees on these devices and machines in unincorporated territory and to regulate or control the operation of them within such territory as provided in Section 5-1076 of the Counties Code (55 ILCS 5/5-1076). 35 ILCS 510/7. The Department does not administer these local

taxes and cannot provide any guidance on the taxation of these devices and machines at the local level.

I hope this information is helpful. If you have further questions related to the Illinois sales tax laws, please visit our website at www.tax.illinois.gov or contact the Department's Taxpayer Information Division at (217) 782-3336.

Very truly yours,

Richard S. Wolters
Associate Counsel

RSW:bkl