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SC revenue ruling #16-4

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STATE OF SOUTH CAROLINA
DEPARTMENT OF REVENUE

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SC REVENUE RULING #16-4

SUBJECT: Coin-Operated Devices

EFFECTIVE DATE: Applies to all periods open under statute.

SUPERSEDES: SC Revenue Ruling #96-2
SC Revenue Ruling #91-14
SC Technical Advice Memorandum #90-7

REFERENCE: Article 19 of Title 12, Chapter 21 (2014)
S.C. Regulation 117-1300.2 (2012)

AUTHORITY: S.C. Code Ann. Section 12-4-320 (2014)
S.C. Code Ann. Section 1-23-10(4) (2005)
SC Revenue Procedure #09-3

SCOPE: The purpose of a Revenue Ruling is to provide guidance to the public. It is an advisory opinion issued to apply principles of tax law to a set of facts or general category of taxpayers. It is the Department's position until superseded or modified by a change in statute, regulation, court decision, or another Departmental advisory opinion.

Discussion and Law:

Code Section 12-21-2720 provides, in part:

(A) Every person who maintains for use or permits the use of, on a place or premises occupied by him, one or more of the following machines or devices shall apply for and procure from the South Carolina Department of Revenue 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 four 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 may 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.

(3) a machine of the nonpayout type, or in-line pin game, 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 may be altered or changed.

(E) The Department of Revenue is authorized to assess an additional fee of fifty dollars on each Class Two coin-operated machine license authorized in this section. These funds must be collected by the Department of Revenue and sent to the State Law Enforcement Division to offset the cost of video gaming enforcement. The State Law Enforcement Division shall retain, expend, and carry forward these funds.

Code Section 12-21-2730 provides:

Every person owning or operating a billiard or pocket billiard table, foosball table, bowling lane table, or skeeball table for profit shall apply for and procure from the department a license for the privilege of operating the table and pay for the license a biennial tax of fifty dollars for each table owned or operated.

The license in this section must be issued and is valid in accordance with Section 12-21-2734.

Based on the above, Code Section 12-21-2720 requires that every person who maintains or permits the use of a machine or device, operated by coin or thing of value, for the purpose of amusement must obtain a license every two years. Pursuant to Code Section 12-21-2730, every person owning or operating for profit a billiard or pocket billiard table, foosball table, bowling lane table, or skeeball table must obtain a license every two years.

In addition to all other licenses, a person who owns or operates devices described in Code Sections 12-21-2720 and 12-21-2730 shall obtain an operator’s license every two years pursuant to Code Section 12-21-2728. All licenses are nonrefundable and may not be transferred from one machine to another machine.

The amount of the biennial license depends upon the type of machine, device, or table. For simplicity, the Department refers to machines or devices under Code Section 12-21-2720(A)(1) as “Type I” machines, machines or devices under Code Section 12-21-2720(A)(2) as “Type II” machines, and machines or devices under Code Section 12-21-2720(A)(3) as “Type III” machines. Since the license required under Code Section 12-21-2730 is for the same amount as under Code Section 12-21-2720(A)(1), the Department refers to the license issued under Code Section 12-21-2730 also as a “Type I” license.

The purpose of this advisory opinion is to restate and update guidelines to assist in determining the proper licenses required on various amusement and arcade machines, devices, and tables pursuant to Code Sections 12-21-2720 and 12-21-2730.

Questions and Answers:

1. Q. Are “machines for the playing of amusements” and “mechanical amusement devices” the same type of machines?
 - A. “Machines for the playing of amusements” and “mechanical amusement devices” are the same type of machines, except that “machine[s] for the playing of amusements” referenced in Code Section 12-21-2720(A)(2) (a “Type II” machine) are limited to those machines for the playing of amusements without a free play feature.

Code Section 12-21-2720(A)(1) references “mechanical amusement devices” but is silent regarding amusement machines with a free play feature. It has been the Department’s longstanding position that “mechanical amusement devices” referenced in Code Section 12-21-2720(A)(1) (a “Type I” machine) are applicable to those amusement devices with a free play feature.¹

2. Q. What are examples of types of machines that are not “mechanical amusement devices” or “machines for the playing of amusements”?
 - A. A digital display machine that measures blood pressure, pulse rate or stress level provides medical information and is not a mechanical amusement device. Further, a coin-operated, computerized breath alcohol tester is a machine whose primary purpose is to provide for the safety of the customer and is not for the playing of amusement. Accordingly, such machines are not subject to the license tax under Code Section 12-21-2720.

However, a digital display machine that measures a person’s “love” level or other non-medical information is an amusement machine and, therefore, is subject to the coin-operated device license tax under Code Section 12-21-2720(A). If the machine has a free play feature, it is subject to licensing as a “Type I” machine. If it does not have a free play feature, it is subject to licensing as a “Type II” machine.

3. Q. Are all electronic machines, devices or tables considered machines for the playing of “video games”, subject to the license tax imposed under Code Section 12-21-2720(A)(2)?
 - A. No. Not all electronic machines, devices or tables are machines for the playing of video games. Video games are those games played by manipulating images on a television, computer or other similar display screen. Video game machines without a free play feature are subject to licensing under Code Section 12-21-2720(A)(2) as a “Type II” machine.

¹ See SC Revenue Ruling #96-2 and the Second College Edition of the American Heritage Dictionary for the definition of the terms "machine", "mechanical", "amusement", and "device".

Machines operated by a slot in which a coin or thing of value is deposited for the playing of video games of billiards, pocket billiards, foosball, bowling and skeeball are subject to the taxes imposed by Code Section 12-21-2720, and not Code Section 12-21-2730. (See Question 4 for additional explanation.)

Note: Pursuant to Code Section 12-21-2710, video game machines with a free play feature (formerly “Type III” machines) are unlawful.

4. Q. What licensing provision applies to billiard and pocket billiard tables, foosball tables, bowling lane tables, and skeeball tables?
- A. Code Section 12-21-2730 imposes a license tax on specific devices; however, these same machines or devices could also fall within the provisions of Code Section 12-21-2720. Because it is more specific, Code Section 12-21-2730 is controlling with respect to billiard and pocket billiard tables, foosball tables, bowling lane tables, and skeeball tables owned or operated for profit.

The devices subject to the licensing provisions of Code Section 12-21-2730, while not required to be operated by a slot wherein is deposited a coin or thing of value, must be “for profit”. If a player is not charged to use these devices, it is not for profit and is not subject to the license tax.

Machines operated by a slot in which a coin or thing of value is deposited for the playing of video games of billiards, pocket billiards, foosball, bowling and skeeball are subject to the taxes imposed by Code Section 12-21-2720, and not Code Section 12-21-2730. (See Question 3.)

5. Q. What do the terms “free play feature” and “without a free play feature” mean?
- A. Regulation 117-1300.2 defines “free play feature” and reads:

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 one without a free-play feature.

A free play feature allows a person to play an entire game free of charge where the free game is the same game the person would play if he had paid to play the game. For example, a player may receive a free game after a high score or after a number match where the last number of the player’s score matches a number randomly selected by the machine (Score: 328,446, Randomly Selected Number: 6).

In order to qualify as a machine or device “without a free play feature”, the machine or device’s mechanism constituting the free play feature must be completely and wholly removed from the machine or device.

6. Q. Is a machine with multiple player stations required to have a coin-operated device license for each player station?
- A. Code Sections 12-21-2720(A)(3) requires all “Type III” machines to have a coin-operated device license for each player station.

While Code Section 12-21-2720(A)(1) and (2) do not specifically require a “Type I” or “Type II” machine to have a coin-operated device license for each player station, it is sometimes necessary to determine if a machine, a group of connected machines, or an amusement game system is more than one machine, each of which requires its own license. In making this determination, the Department will look at many factors, including but not limited to:

- a. The number of video or viewing screens.
 - b. The ability of two or more players to play independently of each other.
 - c. The number of slots where a coin or thing of value is deposited in order to play.
 - d. The design of the machine.
 - e. How the machine is perceived by the public – as one machine or more than one machine.
7. Q. Is a “Type I” or “Type II” machine required to have a coin-operated device license if an admissions tax is imposed to play that machine?
- A. No. Code Section 12-21-2720(A)(1) and (2) specifically provide that a Type I or Type II machine on which an admissions tax is imposed is exempt from the license provisions of that section.

For example, a coin-activated baseball batting machine where the participant deposits his own coins to enter and activate a baseball batting cage equipped with a mechanical pitching device is subject to the admissions tax imposed by Code Section 12-21-2420. Since the machine is subject to admissions tax, it is not subject to a coin-operated device license tax imposed on a machine under Code Section 12-21-2720(A)(1) or (2).

8. Q. Can the amount paid to purchase a license for a machine that is determined to be illegal be refunded?
- A. No. State and local law enforcement agencies and the judicial system make the determination as to whether a machine or device is legal or illegal under the laws of South Carolina. The Department is not authorized to make this determination. Furthermore, Code Section 12-21-2724 provides that, upon application for a license under these provisions, the Department may presume that the operation of the machine is lawful and, when a license has been issued, the license may not be refunded notwithstanding that the operation of the machine is prohibited.

Accordingly, the licensing of an illegal machine does not make the machine legal in South Carolina. Code Section 12-21-2736 provides that the issuance of a license by the Department does not make lawful the operation of any unlawful gambling machine. If a machine is held to be illegal, the owner of the machine may not receive a refund for the license that was purchased from the Department and affixed to the illegal machine.

Summary of Guidelines:

A summary of guidelines that will assist in determining the proper license taxes on various types of amusement and arcade machines, devices and tables, pursuant to Code Sections 12-21-2720 and 12-21-2730 is provided below.

Type I Machine Code Section 12-21-2720(A)(1)²	<u>Free Play</u> <u>Feature³</u>	<u>Operated</u> <u>By Slot</u>	<u>Type</u> <u>License</u>
Machine for playing music	N/A	Yes	I
Kiddy ride	N/A	Yes	I
Juke box	N/A	Yes	I
Mechanical amusement device	Yes	Yes	I
Type II Machine Code Section 12-21-2720(A)(2)⁴	<u>Free Play</u> <u>Feature</u>	<u>Operated</u> <u>By Slot</u>	<u>Type</u> <u>License</u>
Machine for playing of amusements	No	Yes	II
Crane type machine	N/A	Yes	II
Machine for the playing of video games ⁵	No	Yes	II
Pin table with levers	Yes	Yes	II
Pin table with levers	No ⁶	Yes	II
Type III Machine Code Section 12-21-2720(A)(3)	<u>Free Play</u> <u>Feature</u>	<u>Operated</u> <u>By Slot</u>	<u>Type</u> <u>License</u>
In-line pin game without flippers	N/A	Yes	III
Type of Device Code Section 12-21-2730⁷	<u>Free Play</u> <u>Feature</u>	<u>Operated</u> <u>By Slot</u>	<u>Type</u> <u>License</u>
Billiard table	N/A	N/A	I
Pocket billiard table	N/A	N/A	I
Foosball table	N/A	N/A	I
Bowling lane table	N/A	N/A	I
Skeeball table	N/A	N/A	I

² Code Section 12-21-2720(A)(1) specifically provides that a machine on which the admissions tax is imposed is exempt. See Question 7 above.

³ See Regulation 117-1300.2 and Question 5.

⁴ Code Section 12-21-2720(A)(2) specifically provides that a machine on which the admissions tax is imposed is exempt. See Question 7 above.

⁵ Not all electronic machines, devices or tables qualify as machines for the playing of video games. Video games are those games played by manipulating images on a television, computer or other similar display screen. Machines operated by a slot in which a coin or thing of value is deposited for the playing of video games of billiards, pocket billiards, foosball, bowling and skeeball are subject to the taxes imposed by Code Section 12-21-2720(A)(2) and not under Code Section 12-21-2730.

⁶ Code Section 12-21-2720(A)(2) provides that a pin table with levers and a free play feature is a "Type II" machine. It is the Department's position that a pin table with levers without a free play feature is a "machine for the playing of amusements", which is also a "Type II" machine.

⁷ Devices subject to the licensing provisions of Code Section 12-21-2730, while not required to be operated by a slot or a coin, must be "for profit". If a player is not charged to use these machines or devices, it is not for profit and is not subject to the license tax.

SOUTH CAROLINA DEPARTMENT OF REVENUE

s/Rick Reames III
Rick Reames III, Director

May 17, 2016
Columbia, South Carolina