



GLENN HEGAR TEXAS COMPTROLLER OF PUBLIC ACCOUNTS

P.O. Box 13528 • Austin, TX 78711-3528

August 21, 2018

Stuart Baggish
General Counsel
Advanced Computing Solutions LP
P.O. Box 1628
Round Rock, Texas 78680

RE: Private Letter Ruling No. 20170927081404
Advanced Computing Solutions LP, Taxpayer No. 32058654214
Tejas Vending LP, Taxpayer No. 32058555387
Lucky 7 Downloads LLC, Taxpayer No. 32064875084

Dear Mr. Baggish:

We issue this private letter ruling in accordance with Rule 3.1, Private Letter Rulings and General Information Letters.¹ We are responding to your request dated Sept. 20, 2017 and supplemental material provided March 29, 2018. Detrimental reliance relief is provided in accordance with Rule 3.10, Taxpayer Bill of Rights.

You requested guidance on whether electronic sweepstakes machine machines are subject to license and tax requirements under Occupations Code Chapter 2153 (Coin-Operated Machines).

Facts Presented

We derive the following facts from your written descriptions of the transactions and services involved and a representative Music Download Software Distribution Agreement.

Advanced Computing Solutions LP (ACS), Tejas Vending LP (Tejas), and Lucky 7 Downloads LLC (Lucky), headquartered in Texas, are collectively, “in the business of software distribution and music download sales.”

These entities install sweepstakes machines and related equipment at a sponsoring establishment. Lucky contracts with sponsoring establishments using the Music

¹ Unless otherwise indicated, all references to “Section” are to the Texas Tax Code, and all references to “Rule” are to Title 34 of the Texas Administrative Code.

Download Software Distribution Agreement (Agreement). This Agreement is “for the placement and operation of music download gift certificate sale-based sweepstakes software and equipment in SPONSOR’s facility...” The recitals of the Agreement state Lucky is engaged in the business of leasing space and operating sweepstakes systems.

The sponsoring establishment encourages participants to purchase music downloads, which automatically come with 100 sweepstakes entries. A participant sets up an account at the sponsoring establishment, which verifies the participant is at least 18 years old, and pays the attendant for a gift certificate, which comes with a printed login ID that the purchaser uses to access music downloads on Lucky’s website and to play the electronic sweepstakes machines.

The participant uses the unique login ID on the gift certificate at the sweepstakes machine to reveal sweepstakes winnings in one of two manners: 1) instant reveal; or 2) game play. Playing the games does not change whether the participant wins or loses; the sweepstakes results are pre-determined. If the participant has a winning sweepstakes certificate, the attendant will pay out the cash.

Question, Ruling, and Analysis

Our restatement of your question is shown below, followed by our response and analysis.

Question: Are electronic sweepstakes machines operated with a login ID considered coin-operated machines subject to the General Business License and Occupations Tax Permit requirements under Occupations Code Chapter 2153?

Ruling: Electronic sweepstakes machines operated with a login ID are not coin-operated machines subject to licensing and tax permit requirements under Occupations Code Chapter 2153.

Analysis:

Occupations Code Sec. 2153.002(1) (Definitions) defines a coin-operated machine to mean “any kind of machine or device operated by or with a coin or other United States currency, metal slug, token, electronic card, or check, including a music or skill or pleasure coin-operated machine.”

The section defines a skill or pleasure coin-operated machine, in relevant part, as “any kind of coin-operated machine that dispenses, or is used or is capable of being used to dispense or afford, amusement, skill, or pleasure or is operated for any purpose, other than for dispensing only merchandise, music, or service.” Occupations Code Sec. 2153.002(9).

Coin-operated machine owners are required to obtain a general business license. Occupations Code Sec. 2153.151 (License or Registration Required). In addition, an

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occupation tax is imposed on each coin-operated machine. Occupations Code Sec. 2153.401 (Imposition of Tax).

Customers operate the electronic sweepstakes machines described in this ruling by logging into the terminal and entering a gift certificate number (i.e., printed login ID). Customers do not use a coin or other United States currency, metal slug, token, electronic card, or check to operate the machines. Therefore, the electronic sweepstakes machines do not fit within the definition of a coin-operated machine and are not subject to the license and tax permit requirements of Occupations Code Chapter 2153 for coin-operated machines.

The transaction according to the submitted facts may be subject to sales tax and we encourage a submission of a private letter ruling for the subsequent transaction. For more information on the requirements for private letter ruling requests, please see Rule 3.1, which is available from our website, along with other helpful information, at <https://www.comptroller.texas.gov/taxes/letters-rulings/>.

The Texas Tax Code and Texas Administrative Code are accessible at www.comptroller.texas.gov/taxes/.

If you have questions about this private letter ruling, please email us through our website at <https://comptroller.texas.gov/web-forms/tax-help/> and reference Private Letter Ruling #20170927081404.

Sincerely,

Tax Policy Division – Direct Taxes
Texas Comptroller of Public Accounts