

Declaratory Order 2024-01

Request for Ruling Regarding the Taxability of Charges for Entertainment Services and Related Activities

Company requests a ruling that the charges for entertainment services provided are not subject to Rhode Island sales and use taxes. Company also requests a ruling that the charges for entertainment services provided are not subject to any other Rhode Island state or local taxes.

Facts

Unless otherwise noted, the facts below are taken from the facts presented in the Ruling Request.

Company operates Location, a destination for challenge-based entertainment where customers engage in entertainment services and may also purchase food and beverages. The charges for the entertainment services are separately stated from the purchases of food. The services offered at Location are comprised of challenges experienced by a player in different forms as follows:

- 1. Rooms** – Location contains several rooms where teams of two to six players work together to master different challenges and earn rewards.
- 2. Arenas** – Location also has arenas where customers can engage in myriad player-vs-player arena-style competitions.
- 3. Scavenger Hunts** – Location has an area for scavenger hunts with puzzles built into custom art features, which are hand-made by artists.

In each of Location’s entertainment challenges, players can earn points and find digital treasure. The points can be redeemed for in-game upgrades and other rewards – the examples in the Ruling Request include VIP e-mail access or a free pretzel. Company will separately accrue use tax on the value of taxable items for which points are redeemed to the extent required by Rhode Island law.

Each ticket is sold per person and tickets provide access to all Location challenges for a designated time-period (e.g., 2 hours, 4 hours, or all day). Customers that purchase a timed ticket can extend or upgrade a ticket at the venue.

Location also is able to host large groups and events. Customers may reserve the entire facility or either a private dining room (approximately 25 guests) or a function room (approximately 50 people). Pricing for events and large groups is negotiated with food and beverage costs for large groups separately itemized.

In addition to food and beverages provided to large groups and entertainment customers, individuals may also purchase food and beverages regardless of whether they access the entertainment facility. The food and beverage charges will be itemized separately from charges for the entertainment services on invoices and receipts to customers for both standard-pricing situations and large-group events with negotiated pricing. Company acknowledged it plans to collect all applicable state sales and use taxes and local meals and beverage taxes on the separately stated food and beverage charges.

Pertinent Law

Under the Rhode Island General Laws, “[a] tax is imposed upon sales at retail in this state...at the rate of [seven percent (7%)] of the gross receipts of the retailer from the sales or rental charges” R.I. Gen. Laws § 44-18-18. A “retail sale” or “sale at retail” is defined as “any sale, lease, or rentals of tangible personal property...or services as defined in § 44-18-7.3 for any purpose other than resale, sublease, or subrent in the regular course of business.” R.I. Gen. Laws § 44-18-8. A comparable excise tax “is imposed on the storage, use, or other consumption in this state of tangible personal property...purchased from any retailer at the rate of [seven percent (7%)] of the sale price of the property.” R.I. Gen. Laws § 44-18-20(a). The use tax is a complement to the sales tax, the purpose of which is to prevent tax avoidance and prevent an unfair burden being placed upon local retailers who must compete with retailers in other states who are exempt from the sales tax. *Great Lakes Dredge & Dock Co. v. Norberg*, 369 A.2d 1101, 1106 (R.I. 1977). Collectively, the two taxes are referred to as the Sales and Use Tax.

For purposes of computing the tax, a retailer’s “gross receipts” are “the total amount of the sale price, as defined in § 44-18-12...of the retail sales of retailers.” R.I. Gen. Laws § 44-18-13. “‘Sales price’ applies to the measure subject to sales tax and means the total amount of consideration, including cash, credit, property, and services, for which personal property or services are sold, leased, or rented, valued in money, whether received in money or otherwise....” R.I. Gen. Laws § 44-18-12(a).

The obligation to charge, collect, and remit the sales tax to the Tax Division is upon retailers, pursuant to R.I. Gen. Laws §§ 44-18-18 and 44-18-19, and the obligation to declare and pay the use tax on untaxed purchases that were taxable, is upon the consumer, pursuant to R.I. Gen. Laws § 44-18-21. A “retailer” under the Sales and Use Tax is defined as “[e]very person engaged in the business of making sales at retail,” but specifically includes others within the statutory definition of a retailer. R.I. Gen. Laws § 44-18-15(a)(1).

In addition to all other taxes and fees, R.I. Gen. Laws § 44-18-18.1 levies and imposes a one percent (1%) local meals and beverage tax on all sales of meals and/or beverages in Rhode Island in or from an eating and/or drinking establishment. R.I. Gen. Laws § 44-18-18.1(a).

An “[e]ating and/or drinking establishment” means and includes restaurants, bars, taverns, lounges, cafeterias, lunch counters...food-and-drink concessions...lunch carts, mobile canteens and other similar vehicles, and other like places of business which furnish or provide facilities for immediate consumption of food at tables, chairs, or, counters or from trays, plates, cups, or other tableware....” R.I. Gen. Laws § 44-18-18.1(c)(2).

A “meal” is defined as “any prepared food or beverage offered or held out for sale by an eating and/or drinking establishment for the purpose of being consumed by any person to satisfy the appetite and that is ready for immediate consumption.” R.I. Gen. Laws § 44-18-18.1(c)(3). Further, “[a]ll such food and beverage, unless specifically exempted or excluded herein shall be included, whether intended to be consumed on the seller’s premises or elsewhere, whether designated as breakfast, lunch, snack, dinner, supper, or by some other name, and without regard to the manner, time, or place of service.” *Id.* Rhode Island Regulation 280-RICR-20-70-4 further provides for the taxability of meal services.

Discussion

Based on the facts provided, all standard charges for the entertainment services alone are not taxable since they are listed separately from any food or beverage charge. *See* 280-RICR-20-70-4.7(A)(11) (“[c]over charge when admittance to a facility is the only thing received (if cover charge includes a meal or beverage it is subject to tax)”). If, however, any ticket price included meals or beverages, then the total ticket price would be subject to both the 7% sales tax and the 1% meals and beverage tax. R.I. Gen. Laws § 44-18-7(4) (defining “sales” as “[t]he furnishing, preparing, or serving for consideration of food, meals, or drinks, including any cover, minimum, entertainment, or other charge in connection therewith.”).

The sale of meals and beverages is subject to the 7% sales tax and the 1% meals and beverage tax. Events such as birthday parties, holiday parties, etc. where the event would include food and game tickets would subject the entire package to the 7% sales tax and 1% meals and beverage tax, regardless of whether the meals were separately stated.

Accordingly, Company must secure a sales tax permit and remit the sales tax and meals and beverage tax as required by law. The Business Application and Registration (“BAR”) form is used to register for a sales tax permit with the Tax Division. The current BAR form may be found here: [TX_BAR_eff07012022_1.pdf \(ri.gov\)](#). Additionally, you may reach out to the Tax Division’s Excise Tax Section for assistance at this e-mail address: Tax.Excise@tax.ri.gov.

The redemption of digital points for upgrades and rewards such as VIP e-mail access or a free pretzel is taxable to the extent the upgrade or reward for which the points are redeemed is taxable. Since Company is an eating/drinking establishment pursuant to R.I. Gen. Laws § 44-18-18.1(c)(2), the redemption of digital points for prepared food like a pretzel is taxable. If the upgrade or reward acquired is not taxable, such as the VIP e-mail access, then the redemption of the points would not be taxable for those specific upgrades or rewards.

Company would be subject to income taxes, and any other applicable taxes, in addition to the ones addressed above.

Whether Company owes any other state or local taxes depends on the facts and circumstances of any given transaction and may not be limited by this ruling.

Ruling

Based on the facts provided, Company's entertainment charges alone are not subject to sales and use tax. However, the sale of meals and/or beverages with or without a game ticket is subject to both sales tax and meals and beverage tax. No tax is owed for the redemption of digital points if the items for which the points are redeemed are nontaxable; however, the redemption of digital points for upgrades and rewards such as VIP e-mail access or a free pretzel is taxable to the extent the upgrade or reward for which the points are redeemed is taxable. Further, Company may be liable for income and other taxes depending on their activity.

This ruling is limited to the facts stated therein and may be relied upon by Company and shall be valid unless (1) expressly revoked; (2) the applicable statutory provisions of law are amended in a manner that requires a different result; (3) the underlying facts described herein materially change; or (4) a decision on point has been issued by the Rhode Island or federal courts.

Neena S. Savage
Tax Administrator
February 1, 2024