Excise Tax Advisory

Excise Tax Advisories are interpretive statements authorized by RCW 34.05.230.

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Contests of Chance

Issue

RCW 82.04.285 imposes business and occupation (B&O) tax under the Gambling Contests of Chance classification on the gross income from "contests of chance." Additionally, the Washington State Gambling Commission has regulatory and licensing authority over contests of chance.

This ETA explains how the Department of Revenue applies the RCW 82.04.285 definition of "contests of chance" for purposes of the B&O tax.

Background – B&O tax statutes

"Contests of chance" is defined by RCW 82.04.285 as:

> "…any contests, games, gaming schemes, or gaming devices, other than the state lottery as defined in RCW 67.70.010, in which the outcome depends in a material degree upon an element of chance, notwithstanding that skill of the contestants may also be a factor in the outcome. The term includes social card games, bingo, raffle, and punchboard games, and pull-tabs as defined in chapter 9.46 RCW. The term does not include race meets for the conduct of which a license must be secured from the Washington horse racing commission, or "amusement game" as defined in RCW 9.46.0201."

The gross income from "contests of chance" for B&O tax purposes does not include:

- The monetary value or actual cost of any prizes that are awarded;
- Amounts paid to players for winning wagers;
- Accrual of prizes for progressive jackpot contests; or
- Repayment of amounts used to seed guaranteed progressive jackpot prizes.

A portion of the B&O tax collected, from taxpayers with annual gross income of $50,000 or more from "contests of chance," is deposited in the Problem Gambling Account created in RCW 43.20A.892.

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Regulation of contests of chance by Gambling Commission.

The Washington State Gambling Commission regulates the operation of "contests of chance" under chapter 9.46 RCW. RCW 9.46.0225 defines "contest of chance" as:

> "…any contest, game, gaming scheme, or gaming device in which the outcome depends in a material degree upon an element of chance, notwithstanding that skill of the contestants may also be a factor therein."

Definitions for both agencies provide that the outcome of a "contest of chance" depends in a material degree upon an element of chance, notwithstanding that skill of the contestants may also be a factor.

Conclusion

The Department applies RCW 82.04.285's definition consistent with the Gambling Commission's regulation of contests of chance. That is, "contests of chance" for purposes of RCW 82.04.285 and the B&O tax are those contests regulated as "contests of chance" by the Gambling Commission, subject to any specific inclusions or exclusions found in RCW 82.04.285. Thus, if the activity is not regulated by the Gambling Commission as a "contest of chance," the income from that activity is not subject to B&O tax under RCW 82.04.4285. Even though these taxpayers are not subject to B&O tax under the "contests of chance" classification, they will be taxable under the appropriate classification applicable to the activity being performed.

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