Cite as Det. No. 91-265, 11 WTD 459 (1992).

BEFORE THE INTERPRETATION AND APPEALS DIVISION
DEPARTMENT OF REVENUE
STATE OF WASHINGTON

In the Matter of the Petition For Ruling of	)	D E T E R M I N A T I O N
	)	No. 91-265
. . .	)	Registration No. . . .

[1] RULE 131 & RULE 183: B&O & RETAIL SALES TAX -- CARD ROOM FEES. An hourly fee that is charged to players for using a "public cardroom" is taxable under the Service and Other Business Activities Tax classification.

Headnotes are provided as a convenience for the reader and are not in any way a part of the decision or in any way to be used in construing or interpreting this Determination.

NATURE OF ACTION:

A certified public accountant requests a tax ruling on behalf of several undisclosed clients.

FACTS:

Okimoto, A.L.J. -- The taxpayer represents several bowling establishments that have recently opened "public cardrooms" pursuant to WAC 230-02-410. That regulation allows retail businesses to set aside a designated area for card playing by members of the public as a commercial stimulant to that business upon approval by the Washington State Gambling Commission. The taxpayer describes the issue in its petition as follows:

> In these cardrooms our clients provide a designated area for the playing of various card games. The client provides the tables, playing cards and chips. The client also provides a "public card room employee" whose duties include those enumerated in WAC 230-02-415. Our clients do not participate in any games of

> chance, pools, merchandise games or any other activity in the cardroom area. Some will presumably serve food and beverages in the card room area.
>
> The normal fee for playing is based on the amount of time that the customer spends in the cardroom.
> I am requesting your advice as to whether the gross income received from operating the cardroom will be considered a service and other activity as described in Rule 131 or a retail sale for the participation in an amusement or recreation activity as defined in Rule 183 (and E.T.B. 531.04.08.183).

In addition, in the event that the card room fees are considered a retail activity, the taxpayer asks whether it "... will be permissible to post a sign on the premises indicating that the basic rate per hour is X dollars, the amount of tax, and the total or does the cash register receipt, or other receipt, need to have the sales tax broken out separately?

ISSUES:

What is the correct tax classification for hourly fees received from card players for using a "public cardroom"?

DISCUSSION:

[1] RCW 82.04.050(3) includes within the definition of a retail sale:

> ... the sale of or charge made for personal business or professional services including amounts designated as interest, rents, fees, admission, and other service emoluments however designated, received by persons engaging in the following business activities: (a) Amusement and recreation businesses including but not limited to golf, pool, billiards, skating, bowling, ski lifts and tows and others;

WAC 458-20-183 (Rule 183) is the lawfully promulgated rule implementing the above statute. It states in part:

> The term "sale at retail" is defined by RCW 82.04.050 to include the sale of or charge made by persons engaging in certain business activities, including "amusement and recreation businesses." The statute indicates the type of activities and business intended to be taxed under this classification; i.e., "including but not limited to golf, pool, billiards, skating, bowling, ski lifts and tows, and others." Thus, while

> certain activities are specifically included within the statutory definition (golf, pool, etc.) it is clear that the types of activities and businesses intended to be taxed under the retail sales tax classification are those in which payment is for participation.
>
> The term "sale at retail" includes all activities wherein a person pays for the right to actively participate in an amusement or recreation activity. The term does not include the sale of or charge made for providing facilities where a person is merely a spectator or passive participant in the activity, such as movies, concerts, sports events, and the like. Nor does the term include activities of an instructional nature, even though the person is physically participating in the activity.

We recognize the taxpayer's uncertainty regarding the application of the two rules. However, we believe that the operation of a public card room which is regulated by the Washington State Gambling Commission is not an amusement or recreational business activity within the meaning of RCW 82.04.050(3). This is true even though a high degree of participation by the players is to be expected. Instead, the taxability of this activity is specifically addressed in WAC 458-20-131, (Rule 131). It states in pertinent part:

> ...MISCELLANEOUS. Revenues of card rooms, etc., from all activities other than those which are reportable under the retailing classification, must be reported under the service and other business activities classification. Such revenues include income from the furnishing of playing facilities to card players, etc. (Emphasis ours)

We believe that the hourly fee charged to the players by the bowling establishments constitutes "income from furnishing of playing facilities to card players, etc." Therefore, Rule 131 specifically provides that these amounts are taxable under the Service and Other Business Activities Tax classification.

Because we have determined that the fee is not subject to retail sales tax, we need not address the taxpayer's second question regarding whether the tax needs to be separately stated.

It should be noted, however, that the sale of prepared food and/or beverages in the cardroom area remain retail sales under WAC 458-20-244 (Rule 244) and are fully subject to the retail sales tax.

This legal opinion may be relied upon for reporting purposes and as support of the reporting method in the event of an audit. This ruling is issued pursuant to WAC 458-20-100(9) and is based upon only the facts that were disclosed by the taxpayer. In this regard, the department has no obligation to ascertain whether the taxpayer has revealed all of the relevant facts or whether the facts disclosed are actually true. This legal opinion shall bind this taxpayer and the department to these facts. However, it shall not be binding if there are relevant facts which are in existence but have not been disclosed at the time this opinion was issued; if, subsequently, the disclosed facts are ultimately determined to be false; or if the facts as disclosed subsequently change and no new opinion has been issued which takes into consideration those changes. This opinion may be rescinded or revoked in the future; however, any such rescission or revocation shall not affect prior liability and shall have a prospective application only.

DATED this 20th day of September, 1991.