

Cite as Det. No. 92-049, 12 WTD 97 (1993).

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

In the Matter of the Petition)	<u>D E T E R M I N A T I O N</u>
For Correction of Assessment)	
of)	No. 92-049
)	
. . .)	Registration No. . . .
)	. . ./Audit No. . . .
)	

[1] RULE 187 AND RULE 131: SERVICE B&O TAX -- RETAILING B&O TAX -- AMUSEMENT DEVICE -- MERCHANDISING GAME -- COIN-OPERATED CRANE GAME MACHINE. A coin-operated crane game machine meets Rule 187's definition of an "amusement device", rather than being similar to Rule 131's merchandising game of a punchboard that offers prizes of merchandise. The crane game is coin operated and is a game of chance, skill, and amusement with no assurance that a prize will be won. The receipts from the crane game are subject to the Service B&O tax. The punchboard is specifically designated by Rule 131 to be a merchandising game. The gross receipts from the punchboard are subject to Retailing B&O tax and sales tax liability.

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.

TAXPAYER REPRESENTED BY: . . .

NATURE OF ACTION:

Petition protesting the assessment of Retailing B&O tax and sales tax liability on amounts received from the operation of crane game amusement machines.

FACTS AND ISSUES:

Krebs, A.L.J. -- . . . (taxpayer) installs, maintains and operates its crane game amusement machines (crane machines) at locations of other persons. The taxpayer pays money to the

proprietor of the location of the crane machines based upon the cash receipts of the crane machines.

The Department of Revenue (Department) examined the taxpayer's business records for the period from June 1, 1988 through December 31, 1988 and an assessment was issued.

The taxpayer's gross income consists of receipts from the operation of crane machines. On Schedule II of the audit report, the Department's auditor gave a credit for amounts reported by the taxpayer as subject to Service business and occupation (B&O) and subjected the gross income to Retailing B&O and sales tax liability. The auditor based this action on the belief that the crane machine "is most like the punchboard which offers prizes of merchandise" as discussed in WAC 458-20-131 (Rule 131).

The auditor believed that the taxpayer's purchases of prizes were purchases for resale and not subject to sales/use taxes. Therefore, on Schedule III, the auditor gave a credit for sales/use taxes paid.

The taxpayer protests the assessment of Retailing B&O tax and sales tax liability on the gross receipts from the crane machines. The taxpayer, with reference to Rule 131, asserts in its petition the following:

It is readily apparent that those persons playing the crane machines are doing so primarily for the purpose of amusement and entertainment. This follows from the simple fact that they have no certainty of winning a prize no matter how many plays are made and that they have no knowledge of their ability to get a prize, what the prize might be, and the value of the potential prize.

[Rule 131] clearly differentiates between games of chance or amusement and merchandising games. The dominant characteristic of a merchandising game is that there is a certainty of distribution of a prize with a given number of plays. Crane games do not share this characteristic. Further, crane games have been operated at fairs and carnivals for many years. The net gains from operation of these games has been and continues to be taxed under the service and other business activities classification with retail sales tax being made on the retail cost of the prizes offered.

The issue is whether the crane machine is a merchandising game whose income is subject to Retailing B&O and sales tax per Rule

131, or whether it is a game of chance and amusement whose income is subject to Service B&O tax.

DISCUSSION:

The crane machine is a coin-operated machine. The player gets a certain amount of time, controlled by the machine, to operate the crane to pick up a prize. The player is successful about 30 percent of the time.

The Department's auditor reasoned that the income from the crane machine was similar to the income from a punchboard as discussed in Rule 131 where the rule states:

Punchboards which offer prizes of merchandise are considered as merchandising games, with the prizes being sold for the gross proceeds from the boards, and the gross income from such boards should therefore be reported under the retailing classification.

...

Punchboards which offer cash prizes are games of chance rather than merchandising games and the "increases"... therefrom should be reported under the service and other business classification.

(Emphasis supplied.)

Rule 131 further states:

CONCESSIONAIRES. Persons conducting games of chance at fairs, carnivals...and other similar places in which merchandise is delivered to players in the form of prizes and awards under certain conditions are taxable under the service and other business activities classification upon the gross income from the operation of such games. The predominant characteristics of the business in such cases is chance and amusement, and the transfers of merchandise in the form of prizes and awards is relatively small and does not constitute sales of such merchandise.

(Emphasis supplied.)

[1] Juxtaposing the crane machine and the punchboard, we find that the only similarity is that a prize of merchandise is offered. There are more dissimilarities such as (1) the punchboard is not a game of amusement or skill, (2) the crane machine is a game involving timing, some skill and amusement, and

significantly (3) it is coin operated. We believe that the regulation, WAC 458-20-187 (Rule 187), is more pertinent to the coin operated crane game and therefore controlling. Rule 187 in pertinent part provides:

(2) The term "amusement devices" means those devices and machines which, through the insertion of a coin, will permit the patron to play a game. It includes slot and pinball machines and those machines or devices which

permit the patron to see, hear or read something of interest.

...

(5) Persons operating amusement devices, except shuffleboard, pool, and billiard games, are taxable under the service and other business activities classification on the gross receipts therefrom.

(Emphasis supplied.)

In this case, the coin-operated crane machine game exactly fits the Rule 187 definition of "amusement devices". The machine is coin operated and permits the patron to play a game. In playing the game, the patron sees something of interest, that is, the prizes that can be won, and how he/she maneuvers the crane to capture a prize and moves it to the exit to claim/win the prize. Furthermore, the predominant characteristics of the crane game are chance and amusement--held by Rule 131 to be the characteristics of a game of chance that is Service B&O taxable. We conclude that the taxpayer's crane machine is an "amusement device" and that the gross receipts from the coin-operated crane machines are properly subject to Service B&O tax. Rule 187.

DECISION AND DISPOSITION:

The taxpayer's petition is granted.

DATED this 27th day of February 1992.