

BEFORE THE APPEALS DIVISION
DEPARTMENT OF REVENUE
STATE OF WASHINGTON

In the Matter of the Petition For Correction of)	<u>D E T E R M I N A T I O N</u>
Assessment/Refund of)	
)	No. 98-044
)	
...)	Registration No. . . .
)	FY . . ./Audit No. . . .
)	

RULE 131: GAMBLING -- PULL TABS -- GAINS AND LOSSES -- OFFSETS -- TYPE OF GAME. Rule 131 does not prohibit a taxpayer from offsetting gains and losses by aggregating the total income from one type of game and subtracting from it the total losses from the same type of game. The phrase "type of game" refers to all games of chance commonly conceived of and operated as a particular kind of game; e.g., pull tabs are one "type of game," punchboards are another "type of game," bingo is another "type of game."

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:

An owner of a tavern seeks reconsideration of an audit in which the Department of Revenue's (Department) Audit Division instructed the taxpayer not to offset gains from one pull tab game with the losses from another pull tab game in computing taxable amounts.¹

FACTS:

Gray, A.L.J. -- The taxpayer operates a tavern that offers pull tab games to its customers. The pull tab games are the only games of chance offered by the taxpayer to its customers. The Department audited the taxpayer for the period January 1, 1993 through December 31, 1996. The assessment included \$. . . in service and other classification business and occupation (B&O) tax. The Audit Division instructed the taxpayer:

In 1994, the corporation changed its gambling philosophy which resulted in greater losses but higher gross revenue, resulting in an increased net revenue. [The taxpayer] reported its gambling activity on the Washington Gambling Commission's quarterly

¹ Identifying details regarding the taxpayer and the assessment have been redacted pursuant to RCW 82.32.410

activity report. The detail sheets of this report line itemized each individual game by identifying number, gross revenue, payouts, loss or gain for each game, and cash overage or shortage. The detail sheet was totaled, with the losses of one game being netted against the winnings of another game. These individual sheets were totaled for the month and for the quarter for reporting as a summary on the Washington Gambling Commission's quarterly activity reports. The netted monthly totals of losses against gains was used for reporting the gambling revenue on the state excise tax return.

WAC 458-20-131 ["Rule 131"] states that "increases" from games of chance are taxable under the service & other classification. "Increases" are defined as the winnings, gains, or accumulations accruing from any one game over and above the amount paid out in winnings. Further, it states that each game is considered a separate, taxable transaction. Also, RCW 82.04.080 states that gross income of the business means value proceeding or accruing without any deduction for losses.

The gambling revenue to be reported to the state is the total of the individual amount of gains realized from one game after the payouts are made for that one game. If there are no gains after the payout for that one game, nothing is reported, neither the zero gain or the amount of the loss for that one game. Also, as each game is a separate, taxable transaction and losses are not deductible, the loss of the one game is not deductible against gains from other individual games. The total gains of all games must be reported without netting any losses from other games.

The taxpayer argued that its practice is not only acceptable but is required under Rule 131. It totals the amount of income derived from all pull tab games in the tavern, subtracts all losses that it is entitled to deduct from the total income, and the resulting figure is its tax base. The taxpayer relies upon language in Rule 131 to support its position.

ISSUES:

May the taxpayer offset gains derived from one pull tab game with the losses incurred from another pull tab game?

DISCUSSION:

WAC 230-02-260 defines "pull tab:"

A "pull tab" is a single folded or banded ticket or is a card, the face of which is initially covered or otherwise hidden from view to conceal a number, symbol or set of symbols, a few of which contain numbers or symbols out of every set of pull tabs have been designated in advance and at random as prize winners, when, for the opportunity to obtain each such folded or banded ticket or card, view the numbers or symbols thereon and possibly obtain a prize winning pull tab, a person pays some consideration to an operator.

Gambling income is not specifically assigned to a tax classification in ch. 82.04 RCW. Consequently, it is taxed at the service B&O rate. RCW 82.04.290(4).

RCW 82.04.290 provides that persons engaging in a business for which no tax rate is specified are taxable under the Service and Other classification of the business and occupation tax. Thus, persons who receive income from advertising, other than publishers of newspapers, periodicals, or magazines, are taxable under this catchall service classification.

Det. No. 89-97A, 8 WTD 203 (1989).

[1] The tax treatment of “[m]erchandising games, games of chance and concessionaires” is specified in WAC 458-20-131 (Rule 131). Rule 131 does not expressly mention “pull tab” games. Both the Audit Division and the taxpayer rely upon the following language from Rule 131, which appears in the section pertaining to “punchboards:”²

Each type of game is considered as a separate, taxable transaction. Thus, losses on one type of game may not be deducted from winnings on another type of game.

The Audit Division did not correctly quote this language in its instructions to the taxpayer, having left out the phrase “type of.” That error changed the meaning of the instruction to the taxpayer. “Type of game” is not defined in Rule 131. An undefined term may be defined by resorting to a dictionary. Statutory terms not defined in the statute are given their ordinary meanings as set forth in a dictionary. City of Seattle v. Hill, 40 Wn. App. 159 (1985). Webster’s II New College Dictionary (1995) defines “type” to mean, in pertinent part, “[a] group of persons or things that share common traits or characteristics distinguishing them as an identifiable group or class.” Rule 131 identifies several types of games of chance in the pertinent section of that rule pertaining to “Games of Chance Other Than Merchandising Games.” Those games include dice games, card games, bingo or keno games, “pools,” or “similar games of chance:”

wherein players participate in such games with the opportunity of winning a certain sum of money, scrip or trade checks or a pool which accumulates . . .

Each of those games (e.g., dice games, card games, bingo or keno, pull tabs, punchboards) is a “type of game.” We conclude that the taxpayer’s method of offsetting gains and losses is not barred by Rule 131. Rule 131 prohibits taxpayers from offsetting losses from pull tabs with, for example, gains from bingo games. The taxpayer is offsetting losses and gains from pull tab games only, which is one “type of game” contemplated by Rule 131.

The petition is granted.

DECISION AND DISPOSITION:

² “Punchboards” are a game of chance that differ from pull tabs. Punchboards are defined at WAC 230-02-270.

The taxpayer's petition is granted.

Dated this 30th day of March, 1998.