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## Letter Ruling 02-4: Virtual Queuing Device

August 1, 2002

You have requested a letter ruling about the application of Massachusetts sales and use tax to charges to amusement park patrons for participation in a "virtual queuing" system that involves a [device] which is an electronic device that notifies patrons of their turn to get on a ride in lieu of waiting in a line for the ride. The optional charges relating to the [device] are separate from the admission charge to the park and are optional.

### Facts

\*\*\*\*\* ("Amusement Park") owns and operates amusement parks through various affiliates, including a subsidiary, \*\*\*\*\* that operates the \*\*\*\*\* theme park in Massachusetts (Park). Amusement Park has entered into a contract with \*\*\*\*\* (Virtual Queuing) to install a "virtual queuing" system at the Park.

Patrons pay to gain admittance to the Park, which allows them to participate in most rides and attractions without additional charge. On crowded days, patrons may have to wait in long lines for certain rides. However, waiting on line can be avoided if the patron pays an additional, optional charge to participate in the "virtual queuing" program. The program works as follows. The patron receives "[device]," a small, portable electronic device that allows the patron to electronically sign-in at a special ride reservation kiosk at the entrance to each ride. The [device] will then display the time the user can go on the ride. In the interim, the user can move about the park and participate in other activities rather than waiting on line. In some instances, the ride time is calculated automatically by the software and hardware associated with the operation of the [device], however for most rides, adjustments for the length of the actual line, for temporary shut-downs of rides and for other conditions within the Park that affect the wait time are made manually by employees of Virtual Queuing or Amusement Park and then transmitted to the [device] display. In addition to holding a place in line, the [device] can be programmed to give users various types of information, including the time, weather forecast, advertising messages from food or retail outlets within the Park, or to locate lost children. However, not all of these additional services are fully operational at this time.

Virtual Queuing has provided the [device]s and the equipment to support operation of the \*\*\*\*\* system

*[Specific details of the financial arrangement between Virtual Queuing and Amusement Park have been redacted.]*

There are several optional separately stated charges to the customer in connection with participation

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in the virtual queuing program. In order to reserve a [device] in advance, there is a \$5 reservation fee. The minimum charge for one person is \$20.00. An additional \$10 is charged for each additional person to utilize the same [device] to make ride reservations (to a maximum of 5). A security deposit is also required, which is fully refunded upon return of the undamaged [device].

#### Discussion of Law

Massachusetts imposes a 5% sales tax on sales of tangible personal property and telecommunications services. The definition of sale includes "any transfer of title or possession, or both. . .". G.L. c. 64H, § 1. Taxable telecommunications services include "any transmission of messages or information by electronic or similar means, between or among points by wire, cable, fiberoptics, laser, microwave, radio, satellite or similar facilities but not including cable television." Beeper, paging, and similar services are taxable telecommunications services. See TIR 99-2.

The general rules for transactions involving both services and transfers of tangible personal property are contained in the Services Enterprises Regulation, 830 CMR 64H.1.1, which provides:

(a) A service transaction is not subject to the sales tax where:

1. The real object of the transaction is the service itself, and no transfer of tangible personal property occurs; or
2. In his case the service enterprise pays the sales tax when the enterprise purchase the property from a vendor.

In this situation, the object of the transaction is participation in the virtual queuing program. However, the purchase of the virtual queuing service involves both the transfer or rental of tangible personal property (the \*\*\*\*\* device) as well as a taxable beeper or paging telecommunication service. With respect to the charge of \$20.00 for the first patron, the transfer of the [device] and the telecommunications service are a consequential element of the transaction within the meaning of 830 CMR 64H.1.1.

With respect to the additional per person charges to allow ride reservations to be made for more than one person, there is no additional transfer of tangible personal property, *i.e.*, only one [device] is given to the group, and there are no additional telecommunications services provided, *i.e.*, there is one notification of a ride time transmitted regardless of the number in the group. For this reason, we conclude that the additional per person charges do not relate to the transfer of tangible personal property or the sale of telecommunications services, and are therefore charges for a non taxable virtual queuing service. The reservation fee, which will be forfeited if the patron does not honor the reservation and is not credited toward the charges for participation in the [device] program is not part of the consideration for the taxable sale. The security deposit, which is returned to the customer when the [device] is returned undamaged is also not part of the consideration for the taxable sale.

#### Issues

1. Is the base charge of \$20.00 for the first person to use the [device] subject to tax?
2. Are the \$10.00 per person charges for additional people to reserve places on rides using the same [device] subject to tax?

3. Is the \$5 reservation fee subject to tax?

4. Is the security deposit subject to tax?

Rulings

1. The base charge of \$20.00 for the use of the [device] by the first person is subject to tax as a rental of tangible personal property and a taxable beeper or paging telecommunications service.

2. There is no additional tangible personal property transferred nor is there an additional telecommunications service provided to a group that pays additional per person charges.

3. The \$5 reservation fee is not subject to tax.

4. The security deposit is not subject to tax.

Very truly yours,

/s/Alan LeBovidge

Alan LeBovidge  
Commissioner of Revenue

AL:DMS:ecl

LR 02-4