

**CITY OF CHICAGO
DEPARTMENT OF FINANCE
AMUSEMENT TAX RULING**

Pursuant to Sections 2-32-080, 2-32-096, 3-4-030, 3-4-150 and 4-156-034 of the Municipal Code of Chicago, the City of Chicago hereby adopts and promulgates Amusement Tax Ruling #5, effective July 1, 2015.

Dated: June 9, 2015



Dan Widawsky
Comptroller

Amusement Tax Ruling #5

Subject: Electronically Delivered Amusements

Effective Date: July 1, 2015

Ordinance Provisions

1. Section 4-156-020(A) of the Municipal Code of Chicago (“Code”) states, in pertinent part:

Except as otherwise provided by this article, an amusement tax is imposed upon the patrons of every amusement within the city.

2. Code Section 4-156-010 states, in pertinent part:

“Amusement” means: (1) *any exhibition, performance, presentation or show for entertainment purposes*, including, but not limited to, any theatrical, dramatic, musical or spectacular performance, promotional show, motion picture show, flower, poultry or animal show, animal act, circus, rodeo, athletic contest, sport, game or similar exhibition such as boxing, wrestling, skating, dancing, swimming, racing, or riding on animals or vehicles, baseball, basketball, softball, football, tennis, golf, hockey, track and field games, bowling or billiard or pool games; (2) *any entertainment or recreational activity offered for public participation or on a membership or other basis* including, but not limited to, carnivals, amusement park rides and games, bowling, billiards and pool games, dancing, tennis, racquetball, swimming, weightlifting, bodybuilding or similar activities; or (3) *any paid television programming*, whether transmitted by wire, cable, fiber optics, laser, microwave, radio, satellite or similar means. (emphasis added).

3. Code Section 4-156-030(A) states in pertinent part:

It shall be the joint and several duty of every owner, manager or operator of an amusement or of a place where an amusement is being held, and of every reseller to secure from each patron or buyer the tax imposed by Section 4-156-020 of this article and to remit the tax to the department of finance not later than the 15th day of each calendar month for all admission fees or other charges received during the immediately preceding calendar month ... (emphasis added).

4. Code Section 4-156-010 states in pertinent part:

“Owner” means: (1) with respect to the owner of a place where an amusement is being held, any person with an ownership or leasehold interest in a building, structure, vehicle, boat, area or other place who presents, conducts or operates an amusement in such place or who allows, by agreement or otherwise, another person to present, conduct or operate an amusement in such place; (2) with respect to the owner of an amusement, any person which has an ownership or leasehold interest in such amusement or any person who has a proprietary interest in the amusement so as to entitle such person to all or a portion of the proceeds, after payment of reasonable expenses, from the operation, conduct or presentation of such amusement, excluding proceeds from nonamusement services and from sales of tangible personal property; (3) with any person operating a community antenna television system or wireless cable television system, or any person receiving consideration from the patron for furnishing, transmitting, or otherwise providing access to paid television programming. (emphasis added).

5. Code Section 4-156-010 states in pertinent part:

“Operator” means any person who sells or resells a ticket or other license to an amusement for consideration or who, directly or indirectly, receives or collects the charges paid for the sale or resale of a ticket or other license to an amusement. The term includes, but is not limited to, persons engaged in the business of selling or reselling tickets or other licenses to amusements, whether on-line, in person or otherwise. The term also includes persons engaged in the business of facilitating the sale or resale of tickets or other licenses to amusements, whether on-line, in person or otherwise. (emphasis added).

6. Code Section 4-156-010 states in pertinent part:

“License” means a ticket or other license granting the privilege to enter, to witness, to view or to participate in an amusement, or the opportunity to obtain the privilege to enter, to witness, to view or to participate in an amusement, and includes but is not limited to a permanent seat license. (emphasis added).

7. Code Section 4-156-010 states in pertinent part:

“Ticket” means the privilege to enter, to witness, to view or to participate in an amusement, whether or not expressed in a tangible form.

Taxability

8. The amusement tax applies to charges paid for the privilege to witness, view or participate in an amusement. This includes not only charges paid for the privilege to witness, view or participate in amusements *in person* but also charges paid for the privilege to witness, view or participate in amusements that are *delivered electronically*. Thus:

- a. charges paid for the privilege of watching electronically delivered television shows, movies or videos are subject to the amusement tax, if the shows, movies or videos are delivered to a patron (*i.e.*, customer) in the City (*see* paragraph 13 below);
- b. charges paid for the privilege of listening to electronically delivered music are subject to the amusement tax, if the music is delivered to a customer in the City; and
- c. charges paid for the privilege of participating in games, on-line or otherwise, are subject to the amusement tax if the games are delivered to a customer in the City.

The customer will normally receive the provider's electronic communications at a television, radio, computer, tablet, cell phone or other device belonging to the customer.

9. Providers who receive charges for electronically delivered amusements are owners or operators and are required to collect the City's amusement tax from their Chicago customers. *See* paragraphs 13 and 14 below. As of the date of this ruling, the rate of the tax is 9% of the charges paid.

10. The amusement tax does not apply to *sales* of shows, movies, videos, music or games (normally accomplished by a "permanent" download). It applies only to *rentals* (normally accomplished by streaming or a "temporary" download). The charges paid for such rentals may be subscription fees, per-event fees or otherwise.

11. Charges that are not subject to the amusement tax may be subject to another tax (such as the City's personal property lease transaction tax, Code Chapter 3-32), but this ruling concerns only the amusement tax.

Bundled Charges

12. Where a charge is "bundled" by including both taxable and non-taxable elements (either non-taxable in the first instance or exempt), the Department of Finance ("Department") will apply the same rules that are set forth in Personal Property Lease Transaction Tax Ruling #3 (June 1, 2004). That ruling states, among other things, that "[i]f the lessor fails to separate the

lease or rental portion of the price from the non-lease or non-rental portion, the entire price charged shall be deemed taxable, unless it is clearly proven that at least 50% of the price is not for the use of any personal property." *See also* Code Section 4-156-020(H) (providing that the taxable "admission fees or other charges" do not include charges that are not for amusements, but only if those charges are separately stated and optional). Therefore, if a bundled charge is primarily for the privilege to enter, to witness, to view or to participate in an amusement, then the entire charge is taxable.

Sourcing

13. The Department will utilize the rules set forth in the Mobile Telecommunications Sourcing Conformity Act, 35 ILCS 638, to determine sourcing for the amusement tax. In general, this means that the amusement tax will apply to customers whose residential street address or primary business street address is in Chicago, as reflected by their credit card billing address, zip code or other reliable information.

Nexus

14. Because the amusement tax is imposed on the patron, and applies only to activity (*i.e.*, the amusement) that takes place within Chicago, there is no question that the tax applies whenever the amusement takes place in Chicago. The issue of nexus arises, at most, with regard to the question of whether a given provider has an obligation to *collect* the tax from its customer. That issue is beyond the scope of this ruling, and any provider with a question about that topic should consult its attorneys. In addition, a provider may request a private letter ruling from the Department, pursuant to Uniform Revenue Procedures Ordinance Ruling #3 (June 1, 2004).

Implementation

15. In order to allow affected businesses sufficient time to make required system changes, the Department will limit the effect of this ruling to periods on and after September 1, 2015. This paragraph does not release or otherwise affect the liability of any business that failed to comply with existing law before the effective date of this ruling.