

Rulings of the Tax Commissioner

Document Number: 14-1
Tax Type: Retail Sales and Use Tax
Brief Description: The total charge for children's party packages are subject to tax.
Topics: Taxable Transactions
Date Issued: 01/03/2014

This

ruling replaces P.D. 11-24

January 3, 2014

Re: Request for Ruling: Retail Sales and Use Tax

Dear *****:

On February 25, 2011, the Tax Commissioner issued a response to the ruling request filed on behalf of ***** (the "Taxpayer"). Based upon additional information regarding the Taxpayer's business and long standing policy of the Department, the following ruling is provided.

FACTS

The Taxpayer operates as a children's entertainment and amusement center that features air blown inflatables for children. The Taxpayer sells party packages primarily for birthday parties, but also for other special events for children. The parties are two hours long (1 hour, 30 minutes of play time and 30 minutes for pizza and cake). The price includes a private party or meeting room and a party coordinator. The coordinator is responsible for party set-up, greeting the host and guests, coordinating games, pizza and cake time, as well as clean-up and assisting with taking presents and other miscellaneous items to the host's vehicle. The price also includes a slice of pizza and drink for each participant and a t-shirt for the host child. Incidental or 'add-on' purchases (extra pizza, ice cream, balloons, etc.) are taxed according to Virginia law. The brochure provided with the ruling request further indicates that disposable paper plates, cups, napkins, utensils and tablecloths are also provided. Additionally, parties also include full color invitations with party details.

RULING

Prior Ruling

The February 25, 2011 ruling issued to the Taxpayer, was based upon my

determination rendered in Public Document (P.D.) 10-167 (8/10/10). In P.D. 10-167, the taxpayer's party packages were deemed not subject to the Virginia retail sales and use tax because the taxpayer did not provide food and beverage with its party packages. Upon further review of the facts related to the Taxpayer's business, and the applicable law and Department policy, I have decided that the determination in P.D. 10-167 was misapplied in the prior ruling issued to the Taxpayer. The true object test should not have been applied in that instance because Department policy demands that in instances where food is sold in conjunction with admissions, the entire charge is subject to the Virginia retail sales and use tax.

Current Ruling

Virginia Code § 58.1-602 defines "sales price", in pertinent part, as "the total amount for which tangible personal property or services are sold...."

Title 23 of the Virginia Administrative Code (VAC) 10-210-30 states:

The tax does not apply to sales of tickets, fees, charges, or voluntary contributions for admissions to places of amusement, entertainment, exhibition, display, or athletic contests, nor to charges made for participation in games or amusement activities. However "cover charges" or "minimum charges" which include the provision of or the entitlement to food, drinks, or other tangible property constitute a sale of property and are subject to the tax. Admission fees or "door charges" which entail no right to receipt of or credit toward the purchase of food or other tangible personal property are not subject to the tax.

In P.D. 02-77 (5/2/02), the taxpayer was a hotel and conference center that operated a theatre. The taxpayer sold tickets for theatre admission only, and for dinner theatre packages that included admission to the theatre and a meal. At issue was the application of tax on the packages that included admission to the theatre and a meal. The theatre admission and the meal were sold for a single charge. Pursuant to Title 23 VAC 10-210-30, Title 23 VAC 10-210-930 and the *Va. Code* § 58.1-602 definition of sales price, it was ruled that the total charge for the dinner theatre packages was taxable.

In P.D. 08-76 (6/6/08), the taxpayer was a nonprofit membership corporation. As a result of the Department's audit, the taxpayer was assessed tax and interest on the sale of event tickets to members that included catered meals. The taxpayer contested the assessment on the basis that the primary purpose of the events was not the provision of a catered meal, but rather for entertainment or business purposes. In addition, the taxpayer claimed that it paid tax to its vendors for the taxable goods and services purchased for such events. In this case, the taxpayer sponsored three events. The event tickets sold to members included the provision

of a catered meal. Although the sales tax did not apply to admissions, the admission was provided in conjunction with a taxable meal. The fact that the primary purpose of the events may not be the catered meal did not alter the fact that the ticket price included the provision of a taxable meal. Based upon the definition of sales price, the total charge for the ticket, which included the provision of a catered meal was deemed taxable. Accordingly, the assessment of tax to the sale of tickets that included the provision of catered meals was correct. This is consistent with the Department's policy set out in P.D. 02-77.

In this instant case, the Taxpayer charges a single price for the party packages, which include play time in the amusement center and the food and beverage served to the party guests. Based upon the aforementioned authorities, the total charge for the party packages is subject to the tax. The fact that the primary purpose of the party packages may not be the food and beverage provided does not alter the fact that the charge includes the provision of taxable food and beverage. Public Documents 02-77 and 08-76 reflect the Department's policy regarding the application of the tax to transactions for the sale of admissions and food. As such, these public documents support the Department's position in this instance, to hold the party packages at issue subject to the tax.

This ruling serves to rescind the prior ruling¹ Public Document 11-24 (2/25/11) is rescinded by this ruling. issued to the Taxpayer, and reflects the long standing policy of the Department with respect to transactions of this nature. Accordingly, the Taxpayer is not eligible for any refunds as stated in the prior ruling. Because the Taxpayer will be purchasing the food and beverage for resale to its customers, the Taxpayer may purchase these items exempt of the tax pursuant to a resale exemption certificate, Form ST-10. I apologize for any inconvenience this may have caused.

This response is based on the facts provided as summarized above. Any change in facts or the introduction of new facts may lead to a different result.

The *Code of Virginia* section, regulation and public documents cited are available on-line at www.tax.virginia.gov in the Laws, Rules and Decisions section of the Department's web site. If you have any questions about this response, you may contact ***** in the Office of Tax Policy, Appeals and Rulings, at *****.

Sincerely,

Craig M. Burns
Tax Commissioner

AR/1-4718422019.P

1. Public Document . 11-24 (2/25/11) is rescinded by this ruling.

Related Policy Documents: PD 11-24

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