



## Online daily fantasy sports website

LR: 2016-2-SUT – Issued October 5, 2016

Tax: Sales and Use Tax

Taxpayer requested a Letter Ruling regarding the application of the New Jersey Sales and Use Tax Act to charges for Taxpayer's online daily fantasy sports website.

### Facts

Taxpayer is incorporated in the State of Delaware. Taxpayer is headquartered in Austin, Texas. Although Taxpayer is registered to do business in Texas, it does not offer contests to residents of that state. Taxpayer is also registered to do business in New Jersey, where it does offer contests.

Taxpayer operates an online daily fantasy sports website that currently allows users to enter daily contests in a variety of professional sports leagues and associations, including football, basketball, baseball, hockey, and golf.

In states in which Taxpayer offers its contests, individuals can sign up for an account on its website. The individual must create a unique login username and password for account authentication, as well as provide a valid email address. Once an account has been established, the individual ("User") must provide additional information in order to enter a contest, including name, date of birth, and mailing address. Taxpayer uses this information and other third-party technology to verify a User's age, state of residence, and eligibility for entering one of its contests.

A daily fantasy sports contest is premised on a User putting together a team of players in the selected sport of his or her own choosing. Taxpayer provides a list of available athletes that a User can pick from in determining his or her contest lineup. The pool of available players comes from the teams, or individuals in the case of golf, playing a game, match, or round, as applicable, in the sport during the contest timeframe.

A User must compile a lineup of players that cannot exceed a total salary cap. Each available athlete is signed a "salary" value by Taxpayer using the company's own quantitative analysis of a player based on performance, position, popularity, etc. Users are able to review each available player's past real-life game performance. By clicking on an available player's name, the User is shown a game log that details the player's statistical performance for the past 10 games. This information allows a User, based on his or her own skill, judgment, and contest methodology, to choose players that fit within both the salary cap requirements and his or her overall team composition preferences.

Once a User has finalized a team lineup, the User is able to enter that particular lineup in an open contest. Each contest has a set entry fee, with a payout to the top finishers. Taxpayer scores each contest based upon a point system in which a pre-determined point value is given for each activity a player performs during the course of the real-life game upon which the

contest is based. For example, in a basketball pool, points are awarded for each player's rebounds, assists, blocks, etc.

Taxpayer obtains its game log and player data from third-party vendors. The data obtained is generally available from many public sources and is not proprietary. Taxpayer does not provide any additional computation, analysis or translation of the data obtained from the third party vendors, other than to format the individual data points into its game log matrix and scoring system.

Users do not download any software onto their computers or electronic devices. In entering contests on Taxpayer's platform, Users access Taxpayer's database without charge in order to determine whether they can create a team that they believe is worth entering into a contest. Users do not receive any type of license for any of the software utilized by Taxpayer in offering its contests. All of the website content and functions underlying Taxpayer's games are carried out on third-party servers. Taxpayer believes that all of the hosted servers are outside of New Jersey.

Taxpayer does not charge Users any fees to register as a User, access its game log data or any other website functions. The only payment received by Taxpayer from its Users is the specific entry fee for each contest in which the Users participate.

### **Issue**

Whether payment of entry fees to participate in online draft fantasy sports contest are subject to New Jersey Sales and Use Tax.

### **Discussion**

The New Jersey Sales and Use Tax Act (N.J.S.A. 54:32B-1 et. seq.) imposes tax on enumerated services unless a valid exemption exists. N.J.S.A. 54:32B-3(b). The charge of entry fees for an online fantasy sports contest is not an enumerated service.

Information services are subject to Sales Tax. N.J.S.A. 54:32B-3(b) (12). An information service means the furnishing of information of any kind, which has been collected, compiled, or analyzed by the seller, and provided through any means or method, other than personal or individual information which is not incorporated into reports furnished to other people. N.J.S.A. 54:32B-2(yy).

Further, N.J.A.C. 18:24-35.3 states:

(b) A business, which sells access to any type of information, other than personal or individual information, through any means (for example, an electronic database or subscription to a hard copy report) is selling an information service, because what the customer seeks in that transaction is the information itself. For example, sales of access to stock quotes, legal research resources, local property tax values, and marketing trends, through electronic databases or through subscriptions to hard copy reports, are sales of information services.

[N.J.A.C. 18:24-35.3(b).]

Taxpayer states that it provides information to the contestant that it has purchased from a third-party. However, the contestant is not paying an entry fee for the information. The information

provided by Taxpayer is not being sold, nor is the customer seeking the information itself. Rather, the fee is to enter the online daily fantasy sports contest.

### **Conclusion**

The charge by Taxpayer is not for the information it provides to its contestants but for the entry fee to online daily fantasy sports contests. As such, the service provided is not an enumerated service, and therefore is not subject to New Jersey Sales and Use Tax.

---

A Letter Ruling is limited to the facts set forth therein and is binding on the Division of Taxation only with respect to the person or entity to whom it is issued and only if the person or entity fully and accurately describes all relevant facts. A Letter Ruling is based on the law, regulations, and Division policies in effect as of the date the Letter Ruling is issued or for the specific time period at issue in the Letter Ruling.