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Tax decals issued for coin-operated amusement devices are not licenses

Astute Golden Tee “golfers” and aficionados of other coin-operated amusement devices know that Illinois requires each amusement device to display a tax decal evidencing that the device’s owner or lessor has paid an annual privilege tax on the device.

The Coin-Operated Amusement Device and Redemption Machine Tax Act, 35 ILCS 510/1, currently imposes an annual privilege tax of \$30 on each coin-operated amusement device “which returns to the player thereof no money or property or right to receive money or property.”

Accordingly, this tax applies to coin-operated games that are not used for gambling.

The Illinois Department of Revenue issues a tax decal for each coin-operated amusement device upon payment of the yearly privilege tax.

The amusement device must display the tax decal pursuant to Section 2 of the amusement device act, 35 ILCS 510/2.

Tomm’s Redemption Inc. operates a business that provides coin-operated amusement devices to various establishments in the Chicago area.

Having paid the annual privilege tax and obtained privilege tax decals, Tomm’s argued that Illinois had issued a license for Tomm’s to operate each of its coin-operated amusement devices.

But Section 35(a) of the Video Gaming Act, which took effect in July 2012, prohibits the possession or operation of and criminalizes the unauthorized use of certain coin-operated amusement devices for the purpose of gambling.

Specifically, Section 35(a) prohibits an amusement device that is configured to permit gambling by awarding credits and that contains “a circuit, meter or switch capable of removing and recording the removal of credits when the award of credits is dependent

upon chance.”

Tomm’s filed a complaint in Cook County Circuit Court making a facial challenge to the constitutionality of Section 35(a) of the Video Gaming Act, 230 ILCS 40/35(a), and seeking to enjoin the implementation of Section 35(a) under two theories.

First, Tomm’s argued that the video act is unconstitutionally vague because it does not clearly state what types of amusement devices the act prohibits.

Second, Tomm’s asserted the ownership of a property right pursuant to a validly issued license under the amusement device act.

Tomm’s alleged that the video act violated Tomm’s right to procedural due process with respect to the purported licenses to operate amusement devices obtained under the amusement device act.

Tomm’s argued that Section 35(a) of the video act is unconstitutional because it violates procedural due process by seizing or revoking Tomm’s purported licenses to operate the amusement devices or by criminalizing the licensed amusement devices without a hearing.

The circuit court held that Tomm’s procedural due process and vagueness arguments each lacked merit and therefore dismissed the complaint with prejudice.

The appellate court affirmed the dismissal of Tomm’s complaint in *Tomm’s Redemption Inc. v. Hamer*, 2014 IL App (1st) 131005 (March 14, 2014).

The appellate court first found that Section 35(a) of the video act clearly prohibits and criminalizes video-gaming devices that contain knock-off switches and retention meters.

Knock-off switches and reten-



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tion meters, which have been prohibited by federal law since at least 1951, serve as a type of illicit accounting system that transforms amusement devices that do not have a direct-payout system, such as a slot machine, into gambling devices.

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Accordingly, the appellate court held that Section 35(a) of the video act is not unconstitutionally vague.

The appellate court next addressed Tomm’s procedural due process argument founded upon the tax decals that the state revenue department issued under the amusement device act.

Tomm’s argued that each tax decal constituted an individual license to operate a coin-operated amusement device.

Under Tomm’s theory, the state needed to conduct a hearing before it could prohibit and criminalize the use of knock-off switches or retention meters in coin-operated amusement devices for which the revenue department had issued a tax decal.

Thus, Tomm’s argued, Section 35(a) of the video act violated procedural due process because it prohibited and criminalized coin-operated amusement devices that contained knock-off switches and retention meters without a hearing.

Rejecting Tomm’s argument, the appellate court held that the tax decals that the revenue department issues under the amusement device act are not licenses.

Instead, the decals are simply evidence that the owner or lessor of a coin-operated amusement device has paid the annual privilege tax imposed by the act.

Furthermore, the appellate court noted that even if the tax decals were licenses, the holder of a license does not have a protected property interest in the renewal of a license.

The revenue department issues tax decals for one-year increments only, and Section 35(a) of the video act took effect in July 2012.

The appellate court noted that any interest that Tomm’s may allege to have had under a tax decal issued before July 2012 was now moot and could not support a challenge to the constitutionality of the video act.

Accordingly, the appellate court rejected Tomm’s procedural due process argument and affirmed dismissal of the complaint.