

ROSCOE HOLMES, *et al.*

Petitioners

v.

BALTIMORE COUNTY, MARYLAND

Respondent

* IN THE
* MARYLAND TAX COURT
* Case No. 14-MI-00-0533
*
*

MEMORANDUM AND ORDER

Roscoe Holmes, Terry Land, Dennis Mann and Prabhjot Batra, and their respective café businesses, Hidden Treasures Sweepstakes, LLC, Lakeside Leasing, LLC, Spin-N-Win, Hot Spot Internet Café/Business Center, Hot Spot Entertainment of Maryland, LLC and Click-N-Spin, LLC (collectively, "Petitioners"), have appealed the denial of Petitioners' claims for refund of licensing fees by the Baltimore County Department of Permits, Approvals and Inspections (the "Respondent" or "Baltimore County"). Petitioners' refund claims were made pursuant to Maryland Code, Article 24, Section 9-712(d)(2), and Maryland Code, Tax-General Article Section 13-510(b). Respondent failed to make a determination on Petitioners' claims within six (6) months of the claims being filed, and therefore, pursuant to Maryland Code, Article 24, Section 9-712(2), Petitioners properly considered their claim disallowed and appealed to this Court.

Petitioners operated internet cafes that offered "sweepstakes games" in the Baltimore County area which allowed players to win additional internet time at internet cafes after the initial purchase of internet time. If a player won the sweepstakes, the player also had the option of

claiming a cash prize instead of the additional internet time. The games were played on regular personal computers with touch screens attached and typical internet connections. The computers were simply used to electronically unveil sweepstakes results, which were electronically and randomly predetermined. There were no coin-operated machines inside of any of the Petitioners' internet cafes that allowed patrons to play the sweepstakes game.

Before operating these machines in November of 2011, Petitioners retained representatives during the permitting process to determine whether a license was required by State or County laws. The evidence suggests that no State or County officials advised the Petitioners that the sweepstakes games required a license until October of 2012.

In early October 2012, officials from the Respondent visited Petitioners' respective businesses and demanded Petitioners pay an annual \$1,000.00 per machine licensing fee to continue operating. The Respondent pro-rated the fee to \$500.00 for each machine to cover the period from October 2012 through December 2012. Respondent officials suggested that if Petitioners did not pay the newly demanded licensing fees within a few days, the Respondent would immediately shut down the Petitioners' internet cafes. Petitioners paid the fees under the reasonable belief that, if they did, they would then be operating legal internet cafes. Within a few weeks of Petitioners' payment of the licensing fees in the amount of \$177,000.00 for 354 licenses, Baltimore County police raided the internet cafes and seized all the computers, cash and other property. The State and the Federal authorities determined that the computers were illegal slot machines under State law and therefore forfeitable.

The Baltimore County Code establishes certain licenses and associated fees required for conducting certain activities in the County. Businesses are required to have a license for a "coin-

operating amusement device.” A “coin-operating amusement device” is defined as “a machine, game, or device *played or operated by the insertion of a coin or token* and maintained for public amusement and operation.” Baltimore County Code, Section 21-4-201(b)(1). The licenses issued to Petitioners for operation of their computers were for coin-operated amusement devices. The Petitioners’ computers are operated by a customer entering a numeric PIN or, in some instances, by swiping an electronic card, and do not meet the definition of a coin-operated amusement device.

Baltimore County Administrative Officer Fred Homan, in a letter dated May 16, 2011 to the Baltimore County Council, purports to modify and expand the definition of “coin-operated amusement device” by defining “amusement device” as “any electronic or mechanical device that is designed to provide amusement or entertainment and for which a fee is charged to operate or use.” However, Section 3-1-202 of the Code, from which Mr. Homan purports to draw his authority, provides in pertinent part that “[i]f a fee is authorized by the Code, but the amount of the fee is not established by the Code, the County Administrative Officer may determine and establish the amount of a fee.” The Code section does not authorize the Administrative Officer to create, establish, authorize or expand the definition of existing licenses to a broader class of machines, such as “amusement devices” or “simulated gaming machines.” Accordingly, the licensing fees were erroneously, illegally and wrongfully assessed and collected by Baltimore County.

Moreover, the Court agrees with the Petitioners that Baltimore County cannot license the operation of devices that are considered illegal under applicable State law. As a matter of law and as a matter of fundamental fairness, the Respondent cannot demand that Baltimore County law requires the payment of licensing fees to operate certain devices and then, through the County

State's Attorney's Office and County Police, immediately seize the licensed devices arguing that they are illegal under State law. The Respondent's conduct here renders the assessment and collection of the licensing fees wrongful and illegal, and for these additional reasons, the fees must be returned to the Petitioners.

Accordingly, it is, this 19th day of November, 2019, ORDERED, by the Maryland Tax Court, that Petitioners' claims for a refund of licensing fees from Baltimore County, Maryland is granted and the Baltimore County's denials of the refund claims are hereby REVERSED.

CC: G. Adam Ruther, Esq.
R. Brady Locher, Esq.

CERTIFIED TRUE COPY
TEST: John T. Hearn, Clerk

NOTICE: You have the right of appeal from the above Order to the Circuit Court of any County or Baltimore City, wherein the property or subject of the assessment may be situated. The Petition for Judicial Review **MUST** be filed in the proper Court within thirty (30) days from the date of the above Order of the Maryland Tax Court. Please refer to Rule 7-200 et seq. of the Maryland Rules of Court, which can be found in most public libraries.