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## Texas Private Letter Ruling No. 202309029L, 09/25/2023

Date Issued: 09/25/2023

Texas Comptroller of Public Accounts STAR System

DATE: September 25, 2023

TO: Emma Fuentes, Audit Division

FROM: Jennifer Burleson, Tax Policy Division

SUBJECT: Taxability of Electronic Games and Associated Content

The purpose of this memo is to provide additional guidance on the taxability of electronic games and associated content. This memo updates and replaces the previous policy memo, STAR Accession No. 201405957L (May 28, 2014).

### Issue

This memo provides guidance on the taxability of electronic games and associated content, including downloadable content and virtual currencies.

### Background

Electronic games encompass electronic audio/video games operated on or through the use of a personal computer, game console, mobile telephone device, or other device and by which game play is accomplished through a connection to the Internet. These games are partially or completely downloaded to play, or may require access codes, software, portals, or other instrumentalities to access the game or game website.

In recent years, electronic games have evolved into more of an interactive virtual gaming experience by offering associated content to further enrich game play. Games now offer players the ability to purchase additional content, character upgrades, and even their own virtual currencies.

Associated content includes the following:

- virtual goods, nonphysical objects, or virtual currency purchased for use within the electronic game or game community;
- additional game content such as expansion packs, bonus levels, and hidden content;
- game-play enhancements such as new or different objects, powers, or similar items; and
- aesthetic enhancements such as avatar appearances and clothing.

Purchasers of electronic games may also purchase subscriptions or membership fees for access to games or game communities such as chat rooms, forums, discussion boards, and similar areas where game players comment, interact, find information, or communicate generally regarding games and game-play.

The purchase of games and associated content can be made directly through a game's website. Access to games and associated content may also be purchased from third-party retailers. When purchases are made via third-party retailers, it is often in the form of redeemable, physical cards. These cards include a code which grants access to the game and associated content. They may also include a preloaded amount of virtual currency which may be redeemed by the purchaser to access content within a game.

Electronic games do not include video games received entirely on physical media, stand-alone free-to-play video games, or Internet access services.

## Statement of Policy

Existing statutes, rules, and policy decisions provide that electronic games and associated content are subject to Texas sales and use tax as an amusement service. See Section 151.0028 (Amusement Services) and Rule 3.298 (Amusement Services).<sup>1</sup>

Section 151.0028(a), in part, defines amusement services as the provision of amusement, entertainment, or recreation. Amusement services include membership in a private club or organization that provides

entertainment, recreational, sports, dining, or social facilities to its members. Section 151.0028(b).

Rule 3.298 further defines amusement services as entertainment, recreation, sport, pastime, diversion, or enjoyment that is a pleasurable occupation of the senses. The sale of an amusement service includes dues, initiation fees, and other charges, assessments, and fees required for a special privilege, status, or membership classification in a private club or organization. Rule 3.298(a)(5).

Electronic games and associated content may be participatory games similar to those identified in subsection (a)(1)(D) or games of skill such as those identified in subsection (a)(1)(E)(iv) of Rule 3.298. The only difference is where the participation takes place. Comptroller's Decision No. 114,493 (2019). *See also* STAR Accession Nos. 200206185L (June 17, 2002) and 200910529L (Oct. 27, 2009). The purchase of electronic games and associated content, including virtual currencies is taxable as amusement services regardless of whether access is purchased directly through a game's website or a redeemable card.

Membership fees, subscription fees, or similar charges, by whatever name called, for access to an electronic game or associated content are charges for membership or access to special privileges. These charges are taxable as amusement services. Section 151.0028(b) and Rule 3.298(a)(5).

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