

**CITY OF CHICAGO
DEPARTMENT OF REVENUE
AMUSEMENT TAX RULING**

Amusement Tax Ruling #4

Subject: Live Cultural Performance Exemption - DJ's

Effective Date: December 1, 2006

Section 1. Background

In general, Section 4-156-020(A) of the Chicago Municipal Code ("Code") imposes a tax on amusements at a rate of eight percent: "Except as otherwise provided by this article, an amusement tax is imposed upon the patrons of every amusement within the city. The rate of the tax shall be equal to eight percent of the admission fees or other charges paid for the privilege to enter, to witness, to view or to participate in such amusement, unless subsection E of this section provides for a lower rate."

Section 4-156-020(D)(1) provides an exemption for live cultural performances at venues with a maximum seating capacity of 750 or under: "The tax imposed in subsection A of this section shall not apply to or be imposed upon the admission fees to witness in person live theatrical, live musical or other live cultural performances that take place in any auditorium, theater or other space in the city whose maximum capacity, including all balconies and other sections, is not more than 750 persons."

Section 4-156-020(E) provides a reduced rate for live cultural performances at venues with a maximum seating capacity of more than 750: "The rate of the tax imposed in subsection A of this section shall be four percent of the admission fees or other charges to witness in person live theatrical, live musical or other live cultural performances that take place in any auditorium, theater or other space in the city whose maximum capacity, including all balconies and other sections, is more than 750 persons."

Section 4-156-010 provides a definition of live cultural performance: "'Live theatrical, live musical or other live cultural performance' means a live performance in any of the disciplines which are commonly regarded as part of the fine arts, such as live theater, music, opera, drama, comedy, ballet, modern or traditional dance, and book or poetry readings. The term does not include such amusements as athletic events, races or performances conducted at adult entertainment cabarets (as defined in Chapter 16-16 of this Code)."

The purpose of this ruling is to specify the situations in which the Chicago Department of Revenue ("Department") will consider the activities of a disc jockey ("DJ") to qualify as a "live cultural performance" at a dance club or other venue, so as to qualify for the exemption or reduced rate set forth in Sections 4-156-020(D)(1) and (E).

Section 2. Requirements

In order for the activities of a DJ to be considered a "live cultural performance" at a dance club or other venue, the activities must substantially add to or otherwise modify the pre-recorded material used by the DJ, in the form of a significant degree of technical manipulation, singing, speaking, dancing or other activity.

Section 3. Safe Harbor

The Department will assume that the activities of the DJ qualify as a live cultural performance where both of the following conditions exist:

- a. The pre-recorded material used by the DJ was recorded by the DJ. This may be original work composed by the DJ or the work of other artists that the DJ has mixed or otherwise modified.
- b. The DJ is paid substantially above the rate that would be paid solely for the service of playing the pre-recorded material of other artists. As of the date of the issuance of this ruling, the Department will assume that the payment of \$2,000 or more for a single performance qualifies the event for this safe harbor.

Section 4. Additional Factors

Where the activities of a DJ do not qualify for the safe harbor set forth in Section 3, they may nevertheless qualify as a live cultural performance if at least four of the five following factors apply:

- a. The DJ is featured in advertisements for the venue.
- b. The DJ is visible to patrons of the venue, who spend a substantial amount of time observing the DJ's performance.
- c. The DJ is featured more prominently than other amusements or activities available at the venue.
- d. The patrons are charged substantially above the amount that would be paid for entry into the venue in the absence of the DJ. For purposes of this ruling, the term "substantially above" means at least one and a half times the amount that would be charged without the DJ.
- e. The DJ is represented by a manager and/or agent.

Section 5. Proof

The venue has the burden of proving that it qualifies for the exemption or reduced rate set forth in Sections 4-156-020(D)(1) and (E). The proof required includes, at a minimum, a signed and sworn statement concerning the requirements listed in Section 2 above, along with any of the factors that

apply from Sections 3 and 4, on a form to be provided by the Department. In addition, the venue must attach to the statement a copy of the contract between the venue and the DJ.

Upon request, the venue may also be required to provide the Department with books and records showing the name of each DJ who performed at the venue, the dates and times at which each DJ performed, and the admission fees or other charges paid by patrons to witness the DJ at each of the dates and times at which each DJ performed, along with such other documents and information as the Department may reasonably require.

Section 6. Procedures

If desired, at least 14 days in advance of an event involving a DJ, a venue may submit to the Department the materials described in Section 5 above, and the Department will endeavor to provide the venue with an advance written determination of whether or not the event qualifies for treatment as a live cultural performance.