CHAPTER 21

Stamp and Business License Tax

CROSS REFERENCES

Cigarette taxes, see S.C. Code of Regulations R. 117‑1600.

Lotteries or raffles unlawful unless authorized, see Section 33‑57‑100.

Standards for raffles, see Section 33‑57‑140.

ARTICLE 1

General Provisions

**SECTION 12‑21‑10.** Administration of chapter; rules and regulations; county officers shall assist.

The department shall administer and enforce the taxes imposed by this chapter and shall prescribe rules and regulations pertinent to such enforcement. County treasurers and other county officers designated by the department shall assist in such administration by distributing regulations, giving information, selling stamps, reporting violations and in other ways not inconsistent with their respective offices to the extent and in the manner required by regulations of the department.

HISTORY: 1962 Code Section 65‑651; 1952 Code Section 65‑651; 1942 Code Sections 2526, 2529, 2531, 2546; 1932 Code Sections 2526, 2529, 2531, 2546; 1928 (35) 1089; 1929 (36) 114; 1930 (36) 1354; 1932 (37) 1493; 1934 (38) 1577; 1935 (39) 282; 1936 (39) 1377, 1591, 1771; 1938 (40) 1799; 1940 (41) 1921; 1947 (45) 106.

CROSS REFERENCES

General exemptions from property taxes, see Section 12‑37‑220.

Licenses and fees for protection of fish, game and wildlife, generally, see Section 50‑1‑5 et seq.

Library References

Taxation 3635.

Westlaw Topic No. 371.

C.J.S. Taxation Sections 2153, 2158.

**SECTION 12‑21‑20.** Preparation and distribution of stamps.

The department shall cause to be prepared and distributed for the payment of the taxes prescribed in this chapter stamps suitable for denoting the tax on the documents or articles enumerated in this chapter.

HISTORY: 1962 Code Section 65‑652; 1952 Code Section 65‑652; 1942 Code Sections 2525, 2528, 2532; 1932 Code Sections 2525, 2528, 2532; 1928 (35) 1089; 1930 (36) 1358; 1932 (37) 1319, 1378; 1933 (38) 245, 923; 1937 (40) 539.

Library References

Taxation 3635.

Westlaw Topic No. 371.

C.J.S. Taxation Sections 2153, 2158.

**SECTION 12‑21‑30.** Sale of stamps.

The department may engage any person to sell tax stamps and shall allow as compensation for receiving, selling and accounting for such stamps three per cent of the sale price thereof.

HISTORY: 1962 Code Section 65‑653; 1952 Code Section 65‑653; 1942 Code Sections 2528, 2532; 1932 Code Sections 2528, 2532; 1928 (35) 1089; 1930 (36) 1358; 1932 (37) 1319; 1933 (38) 245, 293; 1937 (40) 539.

CROSS REFERENCES

Power of the Commission to prescribe rules and regulations with respect to stamping articles to be taxed, see Section 12‑21‑2810.

Tax on tobacco, ammunition, and playing cards, see Section 12‑21‑610 et seq.

Attorney General’s Opinions

Because of the strong legislative intent expressed in Section 8‑21‑300 that clerks be placed on a salaried income only, clerks of court should not retain, as compensation, commissions from the sale of South Carolina Tax Commission documentary stamps under Section 12‑21‑30. 1987 Op Atty Gen, No 87‑1, p 15 (1966 WL 12431) 1987 WL 245410.

In accordance with the provisions of Section 12‑21‑30 of the 1976 Code of Laws, the Tax Commission has the authority to engage persons to sell documentary stamps on consignment. 1981 Op Atty Gen, No 81‑35, p 56 (April 9, 1981) 1981 WL 96561.

Salary of register of mesne conveyances to be reduced to extent of compensation. Compensation for the sale of State documentary stamps is received by the register of mesne conveyances as a result of his office and he may not receive such compensation without a reduction in his salary to the extent of such compensation. 1964‑65 Op Atty Gen, No 1894, p 176 (August 24, 1965) 1965 WL 8052.

**SECTION 12‑21‑40.** Affixing of stamps.

Stamps shall be affixed in such manner that their removal will require continued application of steam or water. But the department may prescribe such other method for the affixing of such stamps in substitution for or in addition to the method provided in this section as it may deem expedient.

HISTORY: 1962 Code Section 65‑654; 1952 Code Section 65‑654; 1942 Code Sections 2523, 2525, 2528, 2531, 2534; 1932 Code Sections 2523, 2525, 2528, 2531, 2534; 1928 (35) 1089; 1929 (36) 114; 1930 (36) 1358; 1932 (37) 1319, 1378, 1493; 1934 (38) 1577; 1935 (39) 282; 1936 (39) 1377, 1591, 1771; 1937 (40) 539; 1938 (40) 1799; 1940 (41) 1921.

**SECTION 12‑21‑50.** Use of business license meter impressions.

The use of business license meter impressions, in lieu of revenue stamps, on cigarettes or other commodities required by law to carry State revenue stamps, may be permitted, in the discretion of the department.

HISTORY: 1962 Code Section 65‑654.1; 1954 (48) 1566.

**SECTION 12‑21‑60.** Cancellation of stamps.

Whenever an adhesive stamp is used for denoting any tax imposed by this chapter on documents, except as otherwise provided, the person using or affixing such stamp shall write, stamp or cause to be written or stamped thereon the initials of his name and the date upon which the stamp is attached or used, so that it may not again be used. But the department may prescribe such other method for the cancellation of such stamps as it may deem expedient.

HISTORY: 1962 Code Section 65‑655; 1952 Code Section 65‑655; 1942 Code Section 2523; 1932 Code Section 2523; 1928 (35) 1089.

**SECTION 12‑21‑70.** Fee for issuing duplicate license.

Whenever any license required under the provisions of this chapter is lost or misplaced or for any reason the issuance of a duplicate license is necessitated, the person to whom such duplicate license is issued shall pay a fee of one dollar for the issuance of such duplicate to the department. The fee shall be turned in to the State Treasurer as other funds collected by the department.

HISTORY: 1962 Code Section 65‑656; 1952 Code Section 65‑656; 1942 Code Section 2552; 1932 Code Section 2552; 1928 (35) 1089.

**SECTION 12‑21‑80.** Payment of tax by temporary, transient or itinerant businesses; penalties.

In the case of any person engaging in a temporary, transient or itinerant business which is taxable under the provisions of this chapter, the entire tax shall be paid upon demand by the department or any duly authorized agent thereof, and in case the tax is not paid upon demand all penalties provided for by this chapter shall immediately apply.

HISTORY: 1962 Code Section 65‑657; 1952 Code Section 65‑657; 1942 Code Sections 2542, 2545; 1932 Code Sections 2542,2545; 1928 (35) 1089.

Library References

Taxation 3697, 3711.

Westlaw Topic No. 371.

C.J.S. Taxation Sections 1025, 2206, 2219 to 2220.

**SECTION 12‑21‑90.** Refunds when goods have been shipped out of State; affidavit and acknowledgment.

In case any goods, wares or merchandise upon which business or soft drinks license stamps or soft drinks license crowns have been placed or have been sold and shipped to a regular dealer in such articles in another state, the seller in this State shall be entitled to a refund of the actual amount of the tax paid upon condition that the seller in this State shall make affidavit that the goods were so sold and shipped and that he shall furnish from the purchaser a written acknowledgment that he has received such goods and the amount of stamps or crowns thereon, together with the name and address of the purchaser. Upon receipt of such affidavit and acknowledgment the department shall issue to the seller in this State its warrant or order upon the State Treasurer for the amount thereof, which warrant or order shall be paid by the State Treasurer or, in the case of soft drink license stamps or crowns, such stamps or crowns of sufficient value to cover the refund.

HISTORY: 1962 Code Section 65‑658; 1952 Code Section 65‑658; 1942 Code Sections 2528, 2534; 1932 Code Sections 2528, 2534; 1928 (35) 1089; 1930 (36) 1358; 1932 (37) 1319; 1937 (40) 539.

Library References

Taxation 3700.

Westlaw Topic No. 371.

C.J.S. Taxation Section 2208.

**SECTION 12‑21‑100.** Exemption of certain articles sold to United States for military use or resale to military personnel; sale to ships engaged in foreign or coastwise shipping.

Beer, wine, soft drinks or any goods, wares and merchandise subject to tax under the provisions of this chapter shall be exempt from such tax when sold to the United States Government or United States Government instrumentality for Army, Navy, Marine or Air Force purposes and delivered to a place lawfully ceded to the United States, or delivered to a ship belonging to the United States Navy for distribution and sale to members of the military establishment only, or when sold and delivered to ships regularly engaged in foreign or coastwise shipping between points in this State and points outside the State. Any goods, the sale of which is exempt by this section, may be stored and delivered without payment of the tax imposed by this chapter if stored and delivered in accordance with regulations to be promulgated by the South Carolina Department of Revenue.

HISTORY: 1962 Code Section 65‑659; 1952 Code Section 65‑659; 1942 Code Sections 2528, 2534; 1932 Code Sections 2528, 2534; 1928 (35) 1089; 1930 (36) 1358; 1932 (37) 1319; 1937 (40) 539; 1966 (54) 2591; 1993 Act No. 181, Section 130.

CROSS REFERENCES

Stamp tax on cigarettes, see Section 12‑21‑735.

Library References

Taxation 3637.

Westlaw Topic No. 371.

C.J.S. Taxation Section 2166.

**SECTION 12‑21‑110.** Refunds when goods have been damaged.

The department may promulgate rules and regulations providing for the refund to dealers of the cost of stamps affixed to goods which by reason of damage become unfit for sale and are destroyed by the dealer or returned to the manufacturer or, in the case of the soft drink tax, in the event of any other legitimate loss that may occur upon proof of such loss to manufacturers.

HISTORY: 1962 Code Section 65‑661; 1952 Code Section 65‑661; 1942 Code Sections 2528, 2534; 1932 Code Sections 2528, 2534; 1928 (35) 1089; 1930 (36) 1358; 1932 (37) 1319; 1937 (40) 539.

Library References

Taxation 3700.

Westlaw Topic No. 371.

C.J.S. Taxation Section 2208.

Attorney General’s Opinions

Commission may authorize refund whether tax paid by affixing stamps or crowns. The Tax Commission may promulgate rules and regulations authorizing the refund to wholesalers of the amount of tax on goods which are damaged, whether the tax be paid by affixing stamps or crowns. 1968‑69 Op Atty Gen, No 2644, p 56 (March 6, 1969) 1969 WL 10647.

**SECTION 12‑21‑120.** Rules and regulations as to refunds.

The department may promulgate rules and regulations to prevent any abuse of the provisions contained in this chapter providing for refunds.

HISTORY: 1962 Code Section 65‑662; 1952 Code Section 65‑662; 1942 Code Sections 2528, 2534; 1932 Code Sections 2528, 2534; 1928 (35) 1089; 1930 (36) 1358; 1932 (37) 1319; 1937 (40) 539.

Library References

Taxation 3635.

Westlaw Topic No. 371.

C.J.S. Taxation Sections 2153, 2158.

**SECTION 12‑21‑130.** Revolving fund; use for purchase of crowns and admission tickets.

In the business license tax division of the department there is established a revolving fund in the sum of fifty thousand dollars for the purchase of crowns and admission tickets and all payments from such fund shall be refunded as the fund is depleted out of revenues collected from the sale of crowns or tickets.

HISTORY: 1962 Code Section 65‑663; 1952 Code Section 65‑663; 1942 Code Section 2551; 1932 Code Section 2551; 1928 (35) 1089.

**SECTION 12‑21‑140.** Payment of taxes; disposition of taxes collected; remittance sheets.

All persons taxable under the provisions of this chapter shall pay such taxes to the department. The department shall remit to the State Treasurer all moneys collected under the provisions of this chapter and all such remittances shall be accompanied by a typewritten statement, showing the sources from which the taxes were derived. The department shall furnish the Comptroller General with a true copy of all remittance sheets which the department is required by this chapter to send to the State Treasurer.

HISTORY: 1962 Code Section 65‑664; 1952 Code Section 65‑664; 1942 Code Section 2550; 1932 Code Section 2550; 1928 (35) 1089; 1930 (36) 1361.

Library References

Taxation 3697, 3713.

Westlaw Topic No. 371.

C.J.S. Taxation Sections 2206, 2222.

**SECTION 12‑21‑150.** Taxes imposed by chapter shall be in addition to other taxes.

The license tax or taxes imposed by this chapter shall, except as otherwise expressly provided, be in addition to all other licenses and taxes levied by law, as a condition precedent to engaging in any business or doing any act taxable under this chapter.

HISTORY: 1962 Code Section 65‑665; 1952 Code Section 65‑665; 1942 Code Section 2547; 1932 Code Section 2547; 1928 (35) 1089.

Library References

Taxation 3602.

Westlaw Topic No. 371.

C.J.S. Taxation Sections 2142, 2145.

NOTES OF DECISIONS

Construction and application 1

1. Construction and application

Owner and operator of movie theater who paid taxes pursuant to Section 12‑21‑2710, which imposes 20 percent tax on admissions to movie theaters when showing motion pictures rated “X” or not rated by Motion Picture Association of America and which was declared unconstitutional, was entitled to refund for taxes paid pursuant to that section, as while Section 12‑21‑2420 provides for tax on admissions to motion picture theaters and specifically states that the tax shall be paid by person or persons paying admissions price, Section 12‑21‑2710 contains no similar language and unless otherwise expressly provided, payment of taxes imposed by Chapter 21 of Code constitutes “condition precedent to engaging in any business or doing any act taxable under this chapter” (Section 12‑21‑150), and thus tax imposed by Section 12‑21‑2710 was to be paid by business establishment and business establishment is therefore entitled to seek refund now that tax has been held unconstitutional. Multi‑Cinema, Ltd. v. South Carolina Tax Com’n (S.C. 1987) 292 S.C. 411, 357 S.E.2d 6.

**SECTION 12‑21‑170.** “Retail or selling price” defined.

Whenever the retail or selling price is referred to in this chapter as the basis for computing a tax, it is intended to mean the ordinary, customary or usual price paid by the consumer.

HISTORY: 1962 Code Section 65‑667; 1952 Code Section 65‑667; 1942 Code Section 2534; 1932 Code Section 2534; 1928 (35) 1089; 1930 (36) 1358.

Library References

Taxation 3673.

Westlaw Topic No. 371.

C.J.S. Taxation Sections 2186 to 2188.

**SECTION 12‑21‑180.** Revival of former law.

Should any part of this chapter be declared unconstitutional or void for any reason by any court of competent jurisdiction, the appropriate provisions of Act No. 73, approved April 22, 1927, applicable to the same subject matter, if any, shall be of full force and effect and unrepealed and unaffected by the terms of this chapter.

HISTORY: 1962 Code Section 65‑669; 1952 Code Section 65‑669; 1942 Code Section 2553; 1932 Code Section 2554; 1928 (35) 1089.

ARTICLE 5

Tobacco, Ammunition and Playing Cards

CROSS REFERENCES

Department of Revenue to ascertain amount of state excise tax paid, promulgate rules, see Section 11‑47‑20.

**SECTION 12‑21‑610.** Imposition of tax.

Every person doing business within the State and engaging in the business of selling such articles or commodities as are named in this article shall, for the privilege of carrying on such business, and every person, firm, corporation, club or association within the State importing, receiving or acquiring from without the State or from any other source any such articles for use or consumption within the State shall for the privilege of so doing be subject to the payment of a license tax which shall be measured by and graduated in accordance with the volume of sales or acquisitions of such person within the State.

HISTORY: 1962 Code Section 65‑701; 1952 Code Section 65‑701; 1942 Code Sections 2527, 2555‑2; 1932 Code Section 2527; 1928 (35) 1089; 1930 (36) 1358; 1935 (39) 244, 365; 1937 (40) 539; 1938 (40) 1761, 2925.

Library References

Taxation 3678.

Westlaw Topic No. 371.

C.J.S. Taxation Sections 2173, 2177.

NOTES OF DECISIONS

Constitutional issues 1

1. Constitutional issues

Although a state lacks authority to tax cigarettes sold to enrolled Indian tribe members on Indian reservations for the members’ own consumption, on‑reservation cigarette sales to persons other than reservation Indians are legitimately subject to state taxation. Department of Taxation and Finance of New York v. Milhelm Attea & Bros., Inc., U.S.N.Y.1994, 114 S.Ct. 2028, 512 U.S. 61, 129 L.Ed.2d 52.

This section [Code 1962 Section 65‑701] cannot be enforced against a United States Army Post Exchange as that would constitute an interference with the activities of the United States. U.S. v. Query, 1941, 37 F.Supp. 972, affirmed 121 F.2d 631, certiorari denied 62 S.Ct. 295, 314 U.S. 685, 86 L.Ed. 548, certiorari granted 62 S.Ct. 1036, 316 U.S. 653, 86 L.Ed. 1733, vacated 62 S.Ct. 1122, 316 U.S. 486, 86 L.Ed. 1616.

Nor against C. C. C. camp exchange. The tax imposed by these provisions is a license tax and not a property one; being an excise tax it is laid on the enjoyment of a privilege, and when applicable the operation of a Civilian Conservation Corps camp exchange, it falls upon the means by which the Federal Government undertakes to perform its legal function and is a burden which is prohibited. U.S. v. Query, 1937, 21 F.Supp. 784.

**SECTION 12‑21‑620.** Tax rates on products containing tobacco; “cigarette” defined.

(A) There shall be levied, assessed, collected, and paid in respect to the articles containing tobacco enumerated in this section the following amounts:

(1) upon all cigarettes made of tobacco or any substitute for tobacco, three and one‑half mills on each cigarette;

(2) upon all tobacco products, as defined in Section 12‑21‑800, five percent of the manufacturer’s price.

Manufacturer’s price as used in this section is the established price at which a manufacturer sells to a wholesaler.

(B) As used in this section, “cigarette” means:

(1) any roll for smoking containing tobacco or any substitute for tobacco wrapped in paper or in any substance other than a tobacco leaf; or

(2) any roll for smoking containing tobacco or any substitute for tobacco, wrapped in any substance, weighing three pounds per thousand or less, however labeled or named, which because of its appearance, size, type of tobacco used in the filler, or its packaging, pricing, marketing, or labeling, is likely to be offered to, or purchased by, consumers as a cigarette described in item (1) of this subsection.

HISTORY: 1962 Code Section 65‑702; 1952 Code Section 65‑702; 1942 Code Section 2527; 1932 Code Section 2527; 1928 (35) 1089; 1930 (36) 1358; 1935 (39) 244, 365; 1937 (40) 539; 1938 (40) 2925; 1942 (42) 1690; 1950 (46) 2549; 1953 (48) 74; 1960 (51) 1779; 1962 (52) 2168; 1968 (55) 3094; 1969 (56) 444; 1977 Act No. 219, Pt II, Section 28; 1996 Act No. 239, Section 2; 2010 Act No. 170, Section 2, eff May 13, 2010.

Library References

Taxation 3679.

Westlaw Topic No. 371.

C.J.S. Taxation Section 2178.

Attorney General’s Opinions

Roll your own cigarettes are subject to payment of cigarette taxes, the Tobacco Escrow Fund Act, the Tobacco Qualified Escrow Fund Enforcement Act, and the Reduced Ignition Propensity Standards and Firefighter’s Protection Act. S.C. Op.Atty.Gen. (October 3, 2012) 2012 WL 4836945.

**SECTION 12‑21‑625.** Cigarette surtax; imposition; crediting of revenues; definition of “cigarette”.

(A) Effective July 1, 2010, there is imposed a surtax on cigarettes subject to the tax imposed pursuant to Section 12‑21‑620(1) in an amount equal to two and one‑half cents on each cigarette.

(B) Notwithstanding another provision of law providing for the crediting of the revenues of license or other taxes, the revenue of the surtax imposed pursuant to this section must be credited as follows:

(1) five million dollars annually to the Medical University of South Carolina Hollings Cancer Center to be used for tobacco‑related cancer research;

(2) five million dollars annually to the Smoking Prevention and Cessation Trust Fund created pursuant to Section 11‑11‑230(A);

(3) the remaining annual revenue shall be deposited in the South Carolina Medicaid Reserve Fund created pursuant to Section 11‑11‑230(B).

(C) For all purposes of reporting, payment, collection, and enforcement, the surtax imposed by this section is deemed to be imposed pursuant to Section 12‑21‑620.

(D) For purposes of this section, “cigarette” means:

(1) any roll for smoking containing tobacco or any substitute for tobacco wrapped in paper or in any substance other than a tobacco leaf; or

(2) any roll for smoking containing tobacco or any substitute for tobacco, wrapped in any substance, weighing three pounds per thousand or less, however labeled or named, which because of its appearance, size, type of tobacco used in the filler, or its packaging, pricing, marketing, or labeling, is likely to be offered to, or purchased by, consumers as a cigarette described in item (1).

HISTORY: 2010 Act No. 170, Section 1, eff May 13, 2010.

Attorney General’s Opinions

Roll your own cigarettes are subject to payment of cigarette taxes, the Tobacco Escrow Fund Act, the Tobacco Qualified Escrow Fund Enforcement Act, and the Reduced Ignition Propensity Standards and Firefighter’s Protection Act. S.C. Op.Atty.Gen. (October 3, 2012) 2012 WL 4836945.

**SECTION 12‑21‑650.** What is deemed sale or retail “price”; articles given as prizes.

Whenever in this article:

(1) reference is made to manufactured tobacco products manufactured or imported to sell at a certain price, as the basis for computing the tax, it is intended to mean the ordinary, customary or usual price paid by the consumer for each individual cigar, package of cigarettes, package of smoking tobacco or other tobacco product;

(2) the retail or selling price is referred to as the basis for computing the amount of stamps required on any article, it is intended to mean the ordinary, customary or usual price paid by the consumer for each article less the amount of tax added thereto; and

(3) when any articles or commodities subject to tax under this article are given as prizes on punchboards, shooting galleries and under similar circumstances the tax shall be based on the ordinary selling price of such articles.

HISTORY: 1962 Code Section 65‑705; 1952 Code Section 65‑705; 1942 Code Section 2527; 1932 Code Section 2527; 1928 (35) 1089; 1930 (36) 1358; 1935 (39) 244, 365; 1937 (40) 539; 1938 (40) 2925; 1964 (53) 1880.

Library References

Taxation 3679.

Westlaw Topic No. 371.

C.J.S. Taxation Section 2178.

**SECTION 12‑21‑660.** Licenses required for engaging in tobacco business.

Every person engaged in the business of purchasing, selling or distributing cigars, cheroots, stogies, cigarettes, snuff or smoking or chewing tobacco at wholesale or through vending machines within the State and all cigarette, cigar and tobacco product manufacturers’ sales representatives who conduct business in this State shall file with the Department of Revenue an application for a license permitting him to engage in such business. When such business is conducted at two or more separate places, a separate license for each place of business shall be required. A person whose business is conducted through vending machines needs to obtain only one license but shall maintain an up‑to‑date list of the location of each vending machine operated under this license and each manufacturer’s sales representative needs to obtain only one license. The provisions of this section shall not apply to persons who own and stock vending machines for use on their own premises.

Nothing in this section shall be construed as requiring a license for the privilege of buying, selling or distributing leaf tobacco nor shall this section apply to churches, schools or charitable organizations operating booths at state, county, or community fairs or to school or church entertainments.

HISTORY: 1962 Code Section 65‑706; 1952 Code Section 65‑706; 1942 Code Section 2527; 1932 Code Section 2527; 1928 (35) 1089; 1930 (36) 1358; 1935 (39) 244, 365; 1937 (40) 539; 1938 (40) 2925; 1967 (55) 555; 1977 Act No. 31; 1993 Act No. 181, Section 133.

CROSS REFERENCES

Action of the Commission upon receipt of an application for a license to engage in any business as set forth in this section, see Section 12‑21‑670.

Library References

Licenses 16(0.1).

Taxation 3679.

Westlaw Topic Nos. 238, 371.

C.J.S. Taxation Section 2178.

Attorney General’s Opinions

A corporation that maintains inventories and has salesmen within the State is engaged in the business of selling at wholesale within the provisions of this section [Code 1962 Section 65‑706]. 1966‑67 Op Atty Gen, No 2320, p 144 (September 26, 1967) 1967 WL 8630.

A manufacturer’s salesman working the retail trade within South Carolina is not required to obtain a license under this section [Code 1962 Section 65‑706] and Code 1962 Section 65‑707. 1966‑67 Op Atty Gen, No 2299, p 118 (July 21, 1967) 1967 WL 8609.

A person that sells at wholesale and through vending machines is required to purchase only one license under this section [Code 1962 Section 65‑706]. 1966‑67 Op Atty Gen, No 2299, p 118 (July 21, 1967) 1967 WL 8609.

**SECTION 12‑21‑670.** Application for license; issuance of permanent license; display of license.

The application must be filed on a blank to be furnished by the department for that purpose and shall contain a statement including the name of the individual, partnership, (and in the case of each individual partner) or corporation, the post‑office address and the nature of the business. Upon receipt of an application for a license to engage in any business as set forth in Section 12‑21‑660, the department shall issue to the applicant a permanent license permitting the purchase, sale, and distribution of the articles designated therein. The license must be displayed at all times in some conspicuous place at or in the place of business where it may be easily seen by the public. The license provided for in this section must be obtained before engaging in the business in this State and is only valid for the person in whose name it is issued and only for the transaction of business at the place designated in the license.

HISTORY: 1962 Code Section 65‑707; 1952 Code Section 65‑707; 1942 Code Section 2527; 1932 Code Section 2527; 1928 (35) 1089; 1930 (36) 1358; 1935 (39) 244, 365; 1937 (40) 539; 1938 (40) 2925; 1967 (55) 555; 1986 Act No. 306, Section 1.

Library References

Licenses 22.

Westlaw Topic No. 238.

C.J.S. Architects Section 12.

C.J.S. Licenses Sections 70 to 72.

Attorney General’s Opinions

A manufacturer’s salesman working the retail trade within South Carolina is not required to obtain a license under this section [Code 1962 Section 65‑707] and Code 1962 Section 65‑706. 1966‑67 Op Atty Gen, No 2299, p 118 (July 21, 1967) 1967 WL 8609.

**SECTION 12‑21‑680.** Reclassification as between wholesale and retail business.

The department may reclassify a person as a wholesaler or retailer as may be just and proper according to the business done.

HISTORY: 1962 Code Section 65‑708; 1952 Code Section 65‑708; 1942 Code Section 2527; 1932 Code Section 2527; 1928 (35) 1089; 1930 (36) 1358; 1935 (39) 244, 365; 1937 (40) 539; 1938 (40) 2925.

**SECTION 12‑21‑690.** Licenses shall not be transferable; operation of business pending granting of license.

No license issued permitting the sale and distribution of tobacco products shall be transferable and any license issued to any person who shall afterwards retire from business shall be null and void. But anyone may be allowed to operate for ten days after purchase of stock in bulk, pending granting of a license upon application made promptly upon such purchase.

HISTORY: 1962 Code Section 65‑709; 1952 Code Section 65‑709; 1942 Code Section 2527; 1932 Code Section 2527; 1928 (35) 1089; 1930 (36) 1358; 1935 (39) 244, 365; 1937 (40) 539; 1938 (40) 2925.

Library References

Licenses 37, 38.

Westlaw Topic No. 238.

C.J.S. Architects Sections 13 to 14.

C.J.S. Licenses Sections 80 to 100.

**SECTION 12‑21‑735.** Payment of license tax on cigarettes by reporting method rather than by tax stamps.

Section effective until January 1, 2019. See, also, Section 12‑21‑735 effective January 1, 2019.

Each person or distributor of cigarettes taxable under this article, first receiving untaxed cigarettes for sale or distribution in this State, is subject to the tax imposed in Section 12‑21‑620. Each distributor required to pay the tax shall make a report to the department, in the form the department prescribes, of all cigarettes sold or disposed of in this State, and pay taxes due thereon not later than the twentieth day of the month next succeeding the month of the sale or disposition. However, any person or distributor making shipments of cigarettes to retail locations in and out of this State shall apply to the department for a license which enables them to purchase cigarettes free of tax, and report and pay tax as provided in this section on sales of cigarettes sold to locations in this State.

The department shall require bonds or statements of financial stability satisfactory to the department to cover possible losses resulting from failure to remit taxes due. When the return required by this section is timely filed and the taxes shown to be due are paid by the date specified in this section, the person or distributor may deduct three and one‑half percent of the tax due.

(I) The department may promulgate regulations necessary to enforce this section.

HISTORY: 1995 Act No. 114, Section 1; 1996 Act No. 239, Section 3; 2016 Act No. 145 (H.4151), Section 1, eff March 14, 2016.

**SECTION 12‑21‑735.** Stamp tax on cigarettes.

Section effective January 1, 2019. See, also, Section 12‑21‑735 effective until January 1, 2019.

(A) Each person or distributor of cigarettes taxable under this article, first receiving untaxed cigarettes for sale or distribution in this State, is subject to the tax imposed in Section 12‑21‑620. The taxes imposed on cigarettes pursuant to this chapter must be paid by affixing stamps in the manner and at the time provided in this section. Except as otherwise provided in this section, stamps must be affixed to each individual package of cigarettes by distributors before being sold, distributed, or shipped to another person. A distributor may affix stamps only to packages of cigarettes obtained directly from a manufacturer or importer with a valid permit issued pursuant to 26 U.S.C. Section 5713. If cigarettes are manufactured in this State and sold directly to consumers in this State by a manufacturer or importer, the cigarette packages must be stamped by a licensed distributor before being sold.

(B) Only manufacturers or importers with a valid permit issued pursuant to 26 U.S.C. Section 5713, or licensed distributors, may receive or possess unstamped packages of cigarettes. Only a manufacturer or importer with a valid permit issued pursuant to 26 U.S.C. Section 5713 may ship or otherwise cause to be delivered unstamped packages of cigarettes in, into, or from this State, except that a licensed distributor may transfer, transport, or cause to be transported unstamped cigarettes from a facility owned by the distributor to another facility, wherever located, owned by the distributor.

(C) A qualified distributor licensed pursuant to this chapter may sell cigarettes without South Carolina stamps affixed to the package, provided that:

(1) the cigarettes are set forth in separate stock for sale to a licensed distributor of cigarettes in another state;

(2) if the cigarettes are not in the possession of a qualified distributor licensed pursuant to this chapter, the cigarettes must be in the possession of a person having immediate evidence of a license in business as a distributor of cigarettes in the another state, and the cigarettes must be purchased for the purpose of resale in the other state;

(3) the cigarettes, at the time of sale by the distributor, properly are stamped with revenue stamps authorized and issued by another state for use on the cigarettes, if the other state requires revenue stamps, or any applicable tax imposed on the cigarettes by the other state has been paid if the law of the other state permits the sale of the cigarettes to consumers in a package not bearing a stamp; and

(4) at all times there is accompanying the cigarettes an invoice, indicating the purchase date, the name, address, and telephone number of the seller, and the name, address, and telephone number of the purchaser. A distributor shall have on file a record of each sale, the original purchase order, a copy of the invoice, and a signed receipt from the purchaser showing that the purchase was made exclusively for resale in another state.

(D) Cigarettes may be sold by qualified distributors without revenue stamps affixed to the package when exempted from tax by Section 12‑21‑100. A distributor that receives or possesses cigarettes intended for sale or distribution into or within this State which are exempt from the taxes imposed pursuant to this chapter shall affix stamps that indicate the package of cigarettes is exempt from tax.

(E) The department shall prescribe, prepare, and furnish stamps of denominations and quantities as necessary for the payment of the tax imposed by this chapter. The department also shall cause to be prepared and distributed to licensed distributors stamps that indicate that a package of cigarettes is exempt from the taxes imposed pursuant to this chapter.

(1) The stamps must be of a type that when affixed on each individual package the stamps cannot be removed without being mutilated or destroyed.

(2) The department, by rules and regulations, shall designate the type of stamps to be applied.

(3) The stamps must be sold only in amounts of thirty thousand or multiples of thirty thousand.

(4) In addition to stamps, the department, by rules and regulations, may authorize licensed distributors to use other devices which imprint distinctive indicia evidencing the payment of the tax upon each individual package. The machines must be constructed in a manner as accurately records or meters the number of impressions or tax stamps made. The tax meter machines or other devices must be kept available at all reasonable times for inspection by the department.

(5) The department, by rules and regulations, may authorize a process allowing for a credit for damaged tax stamps, for product returned as unsellable, and for product unrecoverable as a result of bad debt.

(6) A distributor is allowed a tax credit for the purchase of one stamping machine and equipment acquired by the distributor within one year of implementation by the department. The credit may be claimed beginning in the first calendar month following the purchase of the machine and equipment and continuing for the immediately succeeding seventeen months. The amount of the credit equals the direct costs actually incurred by the distributor to acquire the stamping machine and equipment, as determined by the department, divided by eighteen, with the maximum cumulative credit equaling one hundred seventy‑five thousand dollars. The direct costs must exclude costs for shipping, installation, or for ongoing maintenance related to the machine. Any tax credit must be applied only to the tax remitted pursuant to this chapter. The department may promulgate regulations necessary to implement the provisions of this credit.

(7) The department, by rules and regulations, may authorize the sale of stamps to a distributor on thirty‑day credit periods. Those persons authorized to pay tax by such means are required to execute a bond with a solvent surety company qualified to do business in this State, in an amount of one hundred ten percent of the distributor’s estimated tax liability for thirty days, but not less than two thousand dollars, and conditioned upon the distributor paying all taxes due the State arising from this section. This form of payment is in lieu of cash or its equivalent. Payment for each month’s liability is due on or before the twentieth day of each month, including Sundays and holidays. At the discretion of the department, default in the bonding and payment provisions by any distributor may result in the revocation of the distributor’s privilege to purchase stamps.

(F) All stamps prescribed by the department must be designed and furnished in a fashion that permits identification of the distributor that affixed the stamp to the particular package of cigarettes by means of a serial number or other mark on the stamp. A stamp on a package of cigarettes must note whether the taxes prescribed in this chapter were paid or whether the package of cigarettes was exempt from the taxes.

(G) Stamps only may be affixed to packages of cigarettes that are listed on the South Carolina Tobacco Directory published by the Office of the Attorney General pursuant to Section 11‑48‑30.

(H) The department may appoint manufacturers and distributors of cigarettes, in or out of this State, as agents to buy or affix stamps to be used in paying the tax imposed by this chapter, but the agent at all times has the right to appoint a person in his employ who is to affix the stamps to any cigarette under the agent’s control.

(1) When the department sells and delivers to an agent, the agent is entitled to receive as compensation for his services and expenses as an agent in affixing and accounting for the taxes represented by the stamps and to retain out of the money to be paid by the agent for the stamps a discount of four and twenty‑five one hundredths percent of the face value of the stamps.

(2) The department, by rules and regulations, shall provide a method of purchasing stamps.

(I) The department may promulgate regulations necessary to enforce this section.

(J) For the limited purpose of recovering the costs incurred by the department associated with the installation and operation of the cigarette stamp program, annually the department may retain up to four hundred thousand dollars of tax revenue generated pursuant to Section 12‑21‑620(A)(1), not to exceed actual costs. By March fifteenth of each year, the department must report to the Chairman of the Senate Finance Committee and the Chairman of the House Ways and Means Committee the costs incurred by the department associated with the operation of the cigarette tax stamp program.

HISTORY: 1995 Act No. 114, Section 1; 1996 Act No. 239, Section 3; 2016 Act No. 145 (H.4151), Section 1, eff March 14, 2016 and January 1, 2019.

Editor’s Note

2016 Act No. 145, Section 2, provides as follows:

“SECTION 2. This act takes effect on January 1, 2019, except that Section 12‑21‑735(I) takes effect upon approval by the Governor.”

Effect of Amendment

2016 Act No. 145, Section 1, effective March, 14, 2016, inserted (I).

2016 Act No. 145, Section 1, effective January 1, 2019, rewrote the section.

CROSS REFERENCES

Civil penalties and damages applicable to certain return or statement filings, see Section 12‑54‑43.

Criminal penalties applicable to certain return or statement filings, see Section 12‑54‑44.

Library References

Taxation 3688.

Westlaw Topic No. 371.

C.J.S. Taxation Section 2189.

**SECTION 12‑21‑750.** Certain retail dealers shall furnish duplicate invoices; violations.

All retail dealers in manufactured tobacco products, shells, cartridges or playing cards purchasing or receiving such commodities from without the State, whether they shall have been ordered through a wholesaler or jobber in this State, by drop shipment or otherwise, shall, within five days after receipt of them, mail a duplicate invoice of all such purchases or receipts to the department. Failure to furnish duplicate invoices as required shall be a misdemeanor and, upon conviction, be punishable by a fine of not more than one hundred dollars for each offense or imprisonment for a period not exceeding thirty days.

HISTORY: 1962 Code Section 65‑718; 1952 Code Section 65‑718; 1942 Code Section 2527; 1932 Code Section 2527; 1928 (35) 1089; 1930 (36) 1358; 1935 (39) 244, 365; 1937 (40) 539; 1938 (40) 2925.

Library References

Taxation 3688.

Westlaw Topic No. 371.

C.J.S. Taxation Section 2189.

**SECTION 12‑21‑760.** Intent of article: stamps shall not be required on resale.

It is the intent of this article to require all manufacturers within this State, wholesale dealers, jobbers, distributors and retail dealers to affix the stamps provided for in this article to taxable commodities, but when the stamps have been affixed as required in this article no further or other stamp shall be required under the provisions of this chapter regardless of how often such articles may be sold or resold within this State.

HISTORY: 1962 Code Section 65‑719; 1952 Code Section 65‑719; 1942 Code Sections 2527, 2555‑2; 1932 Code Section 2527; 1928 (35) 1089; 1930 (36) 1358; 1935 (39) 244, 365; 1937 (40) 539; 1938 (40) 1761, 2925.

Library References

Taxation 3646.

Westlaw Topic No. 371.

C.J.S. Taxation Section 2171.

**SECTION 12‑21‑770.** Distributor’s liability to pay tax.

Every person, firm, corporation, club or association who sells, stores or receives for the purpose of distribution to any person, firm, corporation, club or association any shotgun or other shells, cartridges, manufactured tobacco products or playing cards otherwise taxable under the provisions of this chapter shall pay the tax at the rates provided in this article for the sale of such articles.

HISTORY: 1962 Code Section 65‑720; 1952 Code Section 65‑720; 1942 Code Section 2527; 1932 Code Section 2527; 1928 (35) 1089; 1930 (36) 1358; 1935 (39) 244, 365; 1937 (40) 539; 1938 (40) 2925.

Library References

Taxation 3678.

Westlaw Topic No. 371.

C.J.S. Taxation Sections 2173, 2177.

**SECTION 12‑21‑780.** Returns shall be filed by distributors; payment of tax on tobacco products; discount.

Every distributor, on or before the twentieth day of each month, shall file with the South Carolina Department of Revenue a return on forms to be prescribed and furnished by the department showing the quantity and wholesale price of all tobacco products transported or caused to be transported into the State by him or manufactured or fabricated in the State for sale in this State. Every distributor authorized by the department to make returns and pay the tax on tobacco products sold, shipped, or delivered by him to any person in the State shall file a return showing the quantity and wholesale price of all products so sold, shipped, or delivered during the preceding calendar month. These returns must contain such further information as the department may require. Every distributor shall pay to the department with the filing of the return the tax on tobacco products for the month imposed under this article. When the distributor or dealer files the return and pays the tax within the time specified in this section, he may deduct therefrom three and one‑half percent of the tax due.

HISTORY: 1962 Code Section 65‑724; 1968 (55) 2855; 1993 Act No. 181, Section 134; 1995 Act No. 61, Section 2; 1996 Act No. 239, Section 4.

CROSS REFERENCES

Civil penalties and damages applicable to certain return or statement filings, see Section 12‑54‑43.

Criminal penalties applicable to certain return or statement filings, see Section 12‑54‑44.

Tobacco products defined, see Section 12‑21‑800.

Library References

Taxation 3688, 3697.

Westlaw Topic No. 371.

C.J.S. Taxation Sections 2189, 2206.

**SECTION 12‑21‑785.** Returns.

Notwithstanding the provisions of Sections 12‑21‑735 and 12‑21‑780, the department may require returns and payments of this tax for other than monthly periods.

HISTORY: 1996 Act No. 239, Section 1.

Library References

Taxation 3688.

Westlaw Topic No. 371.

C.J.S. Taxation Section 2189.

**SECTION 12‑21‑800.** “Tobacco products” defined.

As used in Sections 12‑21‑620 and 12‑21‑780, “tobacco products” means cigars, cheroots, stogies, periques, granulated, plug cut, crimp cut, ready rubbed, and other smoking tobacco, snuff, snuff flour, cavendish, plug and twist tobacco, fine‑cut, and other chewing tobacco, shorts, refuse scraps, clippings, cuttings and sweepings of tobacco, and other kinds and forms of tobacco, prepared in a manner to be suitable for chewing or smoking in a pipe or otherwise, or both for chewing or smoking, but does not include cigarettes.

HISTORY: 1962 Code Section 65‑722; 1968 (55) 2855; 1996 Act No. 239, Section 5.

**SECTION 12‑21‑810.** “Distributor” defined.

As used in Section 12‑21‑780, “distributor” means:

(A) Any person engaged in the business of selling tobacco products in this State who brings or causes to be brought into this State from without the State any tobacco products for sale;

(B) Any person who makes, manufacturers, or fabricates tobacco products in this State for sale in this State;

(C) Any person engaged in the business of selling tobacco products without this State who ships or transports tobacco products to retailers in this State to be sold by those retailers.

HISTORY: 1962 Code Section 65‑723; 1968 (55) 2855.

**SECTION 12‑21‑820.** Tax on cigarettes and tobacco products; boundary clarification.

(A) If the location of a retailer that sells cigarettes and tobacco products changes from South Carolina to North Carolina as a result of the boundary clarification, as contained in the amendments to Section 1‑1‑10, effective January 1, 2017, and the retailer has South Carolina tax‑paid cigarettes and tobacco products in inventory on the date of the boundary change, then the retailer is entitled to a refund of South Carolina cigarette and tobacco taxes paid on those cigarette and tobacco products if North Carolina imposes a tax on those cigarette and tobacco products. This refund may be issued to the retailer notwithstanding that the South Carolina tax was paid by the wholesaler from whom the retailer purchased the cigarettes and tobacco products. The retailer must provide proof that the North Carolina cigarette taxes were paid on the same cigarettes and tobacco that was previously taxed by South Carolina.

(B) If North Carolina does not impose a tax on the cigarette and tobacco products in inventory as a result of the boundary clarification, South Carolina shall refund the South Carolina cigarette and tobacco taxes to the extent the South Carolina tax exceeds the North Carolina tax. The refund amount is calculated based on the inventory information required by North Carolina as a result of the boundary clarification.

(C) Any wholesaler who sold South Carolina tax‑paid cigarettes to a retail business is not entitled to a refund of these taxes because of a change in the retailer’s location from South Carolina to North Carolina as a result of the boundary clarification.

HISTORY: 2016 Act No. 270 (S.667), Section 8, eff January 1, 2017.

ARTICLE 7

Beer and Wine License Taxes

**SECTION 12‑21‑1010.** Definitions.

When used in this article the following words and terms shall have the following meanings:

(1) The word “wholesaler” means any person who makes the first sale within this State or who sells or distributes any quantity of beer or wine to any other person for resale, but the term shall not include any person who produces wine in the State from fruits grown within the State by or for the manufacturer;

(2) The word “retailer” means any person who sells or distributes any quantity of beer or wine to a consumer;

(3) The word “beer” has the meanings provided pursuant to Section 61‑4‑10(1) and (2);

(4) The word “wine” means all wines containing not more than twenty‑one per cent of alcohol by volume; and

(5) (Reserved);

(6) The word “producer” means a brewery or winery or a manufacturer or bottler or an importer into the United States of beer or wine, or both.

HISTORY: 1962 Code Section 65‑731; 1952 Code Section 65‑731; 1942 Code Section 2557‑9; 1935 (39) 263; 1939 (41) 302; 1946 (44) 1463; 1948 (45) 2091; 1949 (46) 645; 1951 (47) 546; 1969 (56) 767; 1980 Act No. 519, Part II, Section 15A; 2003 Act No. 70, Section 2, eff June 25, 2003; 2010 Act No. 228, Section 1, eff June 7, 2010.

Editor’s Note

2010 Act No. 228, Section 2, provides:

“Upon approval by the Governor, the revised definition of ‘beer’ in Section 12‑21‑1010(3) of the 1976 Code, as amended by this act, applies retroactively to May 2, 2007.”

CROSS REFERENCES

Alcohol and alcoholic beverages, generally, see Section 61‑2‑10 et seq.

Attorney General’s Opinions

Near beer without alcoholic content is to be taxed as soft drink, and that with alcoholic content is to be taxed as beer. 1985 Op Atty Gen, No. 85‑62, p 171 (June 14, 1985) 1985 WL 166032.

NOTES OF DECISIONS

Validity of municipal ordinances 1

1. Validity of municipal ordinances

A municipal ordinance assessing a 1 percent tax on the gross proceeds derived from the sale of food and beverages in establishments that maintain a license for on‑premises consumption of alcohol, beer or wine was not preempted by or inconsistent with the State beer, wine, and alcohol tax statutes; since these statutes essentially deal with taxes to be paid by wholesalers or importers of beer and wine, or license taxes to be paid for the privilege of selling alcoholic liquor in the state, they do not address taxes or fees on food or beverage sales in establishments holding an on‑premises beer, wine, and/or liquor license. Hospitality Ass’n of South Carolina, Inc. v. County of Charleston (S.C. 1995) 320 S.C. 219, 464 S.E.2d 113. Taxation 3626

**SECTION 12‑21‑1020.** Tax on beer and wine in containers of one gallon or more.

There shall be levied and collected on all beer offered for sale in containers of one gallon or more in this State a license tax of six‑tenths cent per ounce and on all wines offered for sale in this State a license tax of ninety cents per gallon or fractional quantity thereof.

HISTORY: 1962 Code Section 65‑732; 1952 Code Section 65‑732; 1942 Code Section 2557‑2; 1935 (39) 1211; 1936 (39) 1780; 1938 (40) 1811; 1939 (41) 302; 1946 (44) 1463; 1951 (47) 546; 1955 (49) 329; 1968 (55) 2855; 1969 (56) 444.

CROSS REFERENCES

Breweries, samples and sales of beer, see Section 61‑4‑1515.

Library References

Intoxicating Liquors 89.

Westlaw Topic No. 223.

C.J.S. Intoxicating Liquors Sections 267 to 281.

Attorney General’s Opinions

The tax on metric size containers of wine that are greater in size than one gallon U.S. Standard Measure is provided for in Section 12‑21‑1020 and Section 12‑21‑1310 of the 1976 Code of Laws. 1978 Op Atty Gen, No 78‑128, p 160 (June 30, 1978) 1978 WL 22596.

**SECTION 12‑21‑1030.** Tax on sales of less than one gallon and in metric size containers.

If beer be offered for sale in bottles or cans, there shall be levied and collected a tax of six‑tenths cents per ounce or fractional quantity thereof, and on wines offered for sale in quantities of less than one gallon there shall be levied and collected a tax of six cents for each eight ounces or fractional quantity thereof, and wine offered for sale in metric sizes a tax at the rate of twenty‑five and thirty‑five one hundredths cents per liter.

HISTORY: 1962 Code Section 65‑733; 1952 Code Section 65‑733; 1951 (47) 546; 1955 (49) 329; 1968 (55) 2855; 1969 (56) 444; 1975 (59) 625.

CROSS REFERENCES

Breweries, samples and sales of beer, see Section 61‑4‑1515.

Library References

Intoxicating Liquors 89.

Westlaw Topic No. 223.

C.J.S. Intoxicating Liquors Sections 267 to 281.

**SECTION 12‑21‑1035.** Tax on beer brewed at a brewpub.

(A) Beer brewed on a permitted premises pursuant to Article 17, Chapter 4, Title 61, must be taxed based on the number of gallons of beer produced on the permitted premises and must be taxed at the same rate of taxation for beer provided in Section 12‑21‑1020. The permittee shall maintain adequate records as determined by the department to ensure the collection of this tax.

(B) The taxes imposed by the provisions of this section, except as otherwise provided, are due and payable in monthly installments on or before the twentieth day of the month following the month in which the tax accrues.

(C) On or before the twentieth day of each month, a person on whom the taxes in this section are imposed shall file with the department, on a form designed by it, a true and correct statement showing the total gallons produced and any other information the department may require.

(D) At the time of making a monthly report, the person shall compute the taxes due and pay to the department the amount of taxes shown to be due. A return is considered to be timely filed if the return is mailed and has a postmark dated on or before the date the return is required by law to be filed.

HISTORY: 2001 Act No. 89, Section 53, eff July 20, 2001.

CROSS REFERENCES

Taxation, records, see Section 61‑4‑1730.

Library References

Intoxicating Liquors 89.

Westlaw Topic No. 223.

C.J.S. Intoxicating Liquors Sections 267 to 281.

**SECTION 12‑21‑1050.** Payment of tax; penalty for nonpayment; extensions of time.

The tax prescribed in this article must be paid by requiring each wholesaler to make a report to the department, in the form the department prescribes, of all beer and wine sold or disposed of within this State by the wholesaler and to pay the tax due thereon not later than the twentieth of the month following the sale of beer or wine. Any wholesaler who fails to file the report or to pay the tax as prescribed in this section must pay a penalty of one quarter of one percent of the amount of the tax due and unpaid or unreported for each day the tax remains unpaid or unreported. The penalty must be assessed and collected by the department in the manner as other taxes are assessed and collected. The department may grant any wholesaler extensions of time for filing the reports and paying the taxes prescribed in this article and no penalties may be assessed or collected to the extent that the extensions of time are granted.

HISTORY: 1962 Code Section 65‑734; 1952 Code Section 65‑734; 1942 Code Section 2557‑3; 1933 (38) 287, 576; 1934 (38) 1439; 1969 (56) 767; 1971 (57) 709; 1980 Act No. 422; 1983 Act No. 24, Section 3; 1992 Act No. 501, Part II, Section 34B.

CROSS REFERENCES

Application of this section to determination of June payments of additional wine excise tax, see Section 12‑21‑1320.

Library References

Intoxicating Liquors 94.

Westlaw Topic No. 223.

C.J.S. Intoxicating Liquors Sections 273 to 274.

Attorney General’s Opinions

It is necessary that a container of beer or wine have affixed thereto tax stamps or facsimile that is approved by the Commission as evidence of the payment of the tax; otherwise the same is contraband and subject to confiscation. 1966‑67 Op Atty Gen, No 2296, p 117 (July 19, 1967) 1967 WL 8606.

**SECTION 12‑21‑1060.** Discount on tax paid when due.

Under the reporting method of tax payment on sales of beer and wine prescribed in Section 12‑21‑1050, the Department of Revenue shall allow a discount of two percent to the wholesaler on the amount of tax reported on each monthly report.

In no case shall any discount be allowed if the taxes are not paid in full or if either the report or the taxes are received by the department after the date due, or after the expiration of any extension granted by the department.

HISTORY: 1962 Code Section 65‑735; 1952 Code Section 65‑735; 1951 (47) 546; 1959 (51) 144; 1968 (55) 2855; 1969 (56) 767; 1993 Act No. 181, Section 136.

Library References

Intoxicating Liquors 91.

Westlaw Topic No. 223.

C.J.S. Intoxicating Liquors Section 270.

**SECTION 12‑21‑1070.** Tax on persons importing or receiving beer or wine on which tax has not been paid.

Every person, firm, corporation, club, or association, or any organization or individual within this State, importing, receiving, or acquiring from without the State or from any other sources whatever, beer or wine as defined in Section 12‑21‑1010 on which the tax imposed by this chapter has not been paid, for use or consumption within the State, shall be subject to the payment of a license tax at the same rates provided in Sections 12‑21‑1020 and 12‑21‑1030.

HISTORY: 1962 Code Section 65‑735.1; 1955 (49) 329; 1967 (55) 248.

Library References

Intoxicating Liquors 90.

Westlaw Topic No. 223.

C.J.S. Intoxicating Liquors Sections 267 to 269.

**SECTION 12‑21‑1085.** Taxes provided for in Article 7 in lieu of all other taxes on beer and wine; exceptions.

Except as provided in Section 12‑21‑1035 and Article 9, the taxes provided for in this article are in lieu of all other taxes and licenses on beer and wine of the State, the county, or the municipality, except the sales and use tax or the local hospitality tax, and include licenses for its delivery by the wholesaler.

HISTORY: 2005 Act No. 26, Section 1, eff March 23, 2005.

**SECTION 12‑21‑1090.** Rules and regulations; confiscation and sale.

The department may promulgate rules and regulations for the payment and collection of the taxes levied by this article. The administrative provisions of Section 12‑21‑2870, wherever applicable, are adopted for the administration and enforcement of the provisions of this article.

HISTORY: 1962 Code Section 65‑737; 1952 Code Section 65‑737; 1942 Code Section 2557‑3; 1933 (38) 287, 576; 1934 (38) 1439; 1956 (49) 1841; 2005 Act No. 145, Section 23, eff June 7, 2005.

Library References

Intoxicating Liquors 94.

Westlaw Topic No. 223.

C.J.S. Intoxicating Liquors Sections 273 to 274.

**SECTION 12‑21‑1100.** Authority to conduct examinations and inspections.

The department or any agent or representative designated by it for that purpose and all peace officers or police officers of the State may enter upon the premises of any person selling or offering for sale any beer, ale, porter, wine, or other similar malt or fermented beverage without a warrant and examine or cause to be examined any books, records, papers, memoranda or commodities and secure any other information directly or indirectly pertaining to the enforcement of this article.

HISTORY: 1962 Code Section 65‑738; 1952 Code Section 65‑738; 1942 Code Section 2557‑4; 1933 (38) 287, 576; 1934 (38) 1439.

Library References

Intoxicating Liquors 94.

Westlaw Topic No. 223.

C.J.S. Intoxicating Liquors Sections 273 to 274.

**SECTION 12‑21‑1110.** Payment of expenses.

The cost of stamps, supplies, and other expenses of the administration of this article shall be paid out of the proceeds derived from the collection of this tax upon warrants drawn by the Department of Revenue upon the State Treasurer.

HISTORY: 1962 Code Section 65‑739; 1952 Code Section 65‑739; 1942 Code Section 2557‑3; 1933 (38) 287, 576; 1934 (38) 1439; 1993 Act No. 181, Section 137.

**SECTION 12‑21‑1120.** Disposition of taxes and license fees.

The beer and wine taxes and license fees provided for by this article must be paid to and collected by the department and deposited to the credit of the general fund of the State.

HISTORY: 1962 Code Section 65‑740; 1952 Code Section 65‑740; 1951 (47) 546; 1964 (53) 1918; 1968 (55) 2855; 1969 (56) 444; 1991 Act No. 171, Part II, Section 22D.

Library References

Intoxicating Liquors 95.

Westlaw Topic No. 223.

C.J.S. Intoxicating Liquors Section 275.

**SECTION 12‑21‑1130.** Disposition of State’s portion of tax.

The State’s portion of all revenue derived from the sale of beer and wine shall be paid to the State Treasurer for credit to the special school account on the last day of each month. The department shall transfer to the special school account from any unallocated funds on hand on the last day of each month the State’s portion of such revenue.

HISTORY: 1962 Code Section 65‑741; 1952 Code Section 65‑741; 1942 Code Section 1862; 1935 (39) 325, 1211; 1936 (39) 1308, 1351, 1456, 1556, 1624, 1780.

Library References

Intoxicating Liquors 95.

Westlaw Topic No. 223.

C.J.S. Intoxicating Liquors Section 275.

ARTICLE 9

Additional Wine Excise Tax

**SECTION 12‑21‑1310.** Additional tax levied; rate.

In addition to any and all other taxes or licenses, there shall be levied and collected on all wines offered for sale in this State an additional tax of eighteen cents per gallon or fraction thereof, and on wines offered in quantities less than one gallon, there shall be levied and collected a tax of one and two‑tenths cents for eight ounces or fraction thereof, and wine offered for sale in metric sizes a tax at the rate of five and seven one hundredths cents per liter.

HISTORY: 1962 Code Section 65‑745; 1960 (51) 1779; 1968 (55) 2855; 1975 (59) 625.

CROSS REFERENCES

Alcohol and alcoholic beverages, generally, see Section 61‑2‑10 et seq.

Library References

Intoxicating Liquors 89.

Westlaw Topic No. 223.

C.J.S. Intoxicating Liquors Sections 267 to 281.

Attorney General’s Opinions

The tax on metric size containers of wine that are greater in size than one gallon U.S. Standard Measure is provided for in Section 12‑21‑1020 and Section 12‑21‑1310 of the 1976 Code of Laws. 1978 Op Atty Gen, No 78‑128, p 160 (June 30, 1978) 1978 WL 22596.

**SECTION 12‑21‑1320.** Persons against whom tax shall be levied; reports; payment; penalties.

The additional taxes imposed by Section 12‑21‑1310 shall be levied against and collected from the wholesaler, importer, or any other person first offering such wine for sale within this State. The wholesaler, importer, or other person offering said wine for sale in this State shall make a report to the Department of Revenue in such form as the department may prescribe and shall pay the tax due thereon not later than the twentieth day of the month following the sale of the wine.

Any wholesaler, importer, or other person first offering wine for sale in this State who fails to file the report or to pay the tax hereby imposed, on or before the twentieth day of the month following the sale of wine, shall pay a penalty of not less than twenty dollars nor more than one thousand dollars, to be assessed and collected by the department in the same manner and with like effect as other taxes are collected. The provisions of Section 12‑21‑1050 shall determine the payment of taxes for the month of June.

HISTORY: 1962 Code Section 65‑746; 1960 (51) 1779; 1983 Act No. 24, Section 4; 1993 Act No. 181, Section 138.

Library References

Intoxicating Liquors 90, 92, 94.

Westlaw Topic No. 223.

C.J.S. Intoxicating Liquors Sections 267 to 269, 271, 273 to 274.

**SECTION 12‑21‑1330.** Notice of changes to be filed by manufacturers, brewers, brokers, and certain others; violations.

All manufacturers, brewers, brewer sales representatives, brokers or any persons or firms whatsoever offering malt beverages for shipment into this State shall notify in writing the department and the wholesale dealer affected at least ninety days previous to any change made by them, either in their distributors or the territories of their distributors in this State. Wholesale dealers shall notify in writing the department and the shipping brewer affected at least ninety days previous to any change in either the territory or the distribution of their products. Any manufacturer, brewer, brewer sales representative, broker or any person who sells his product in violation of this provision shall forfeit the privilege of purchasing or using any beer and wine license tax crowns or lids.

HISTORY: 1962 Code Section 65‑747; 1960 (51) 1779.

CROSS REFERENCES

Beer and wine taxes, change in distributors, see S.C. Code of Regulations R. 117‑1250.

Library References

Intoxicating Liquors 92.

Westlaw Topic No. 223.

C.J.S. Intoxicating Liquors Section 271.

Attorney General’s Opinions

Section 12‑21‑1330 of the Code, requiring notifications to the Tax Commission of changes in business activity applies to both beer and wine distribution businesses. 1979 Op Atty Gen, No 79‑35, p 50 (February 27, 1979) 1979 WL 29041.

**SECTION 12‑21‑1340.** Collection and enforcement.

All the applicable provisions of Title 61, this chapter and Chapter 1 of this Title, shall apply with full force and effect for the collection and enforcement of the additional taxes imposed by this article.

HISTORY: 1962 Code Section 65‑748; 1960 (51) 1779.

Library References

Intoxicating Liquors 94.

Westlaw Topic No. 223.

C.J.S. Intoxicating Liquors Sections 273 to 274.

**SECTION 12‑21‑1350.** Additional taxes and penalties shall not be shared with counties and municipalities.

Notwithstanding the provisions of Section 12‑21‑1120, the additional taxes or penalties imposed by this article shall not be shared with cities and municipalities or counties.

HISTORY: 1962 Code Section 65‑749; 1960 (51) 1779.

ARTICLE 11

Producers and Wholesalers of Beer and Wine

**SECTION 12‑21‑1540.** Applicant for certificate of registration shall authorize audit and examination of books and records.

In all cases, the applicant for a certificate of registration required by this article, as a condition precedent to the issue of such certificate of registration, must certify that the Department of Revenue shall have the right within statutory limitations to audit and examine the books and records, papers and memoranda of the applicant with respect to the administration and enforcement of laws administered by the Department of Revenue.

HISTORY: 1962 Code Section 65‑744.8; 1969 (56) 767; 1993 Act No. 181, Section 139.

Library References

Intoxicating Liquors 92.

Westlaw Topic No. 223.

C.J.S. Intoxicating Liquors Section 271.

**SECTION 12‑21‑1550.** Invoices and bills of lading shall be furnished to Department of Revenue.

Prior to shipment into the geographic boundaries of South Carolina to a licensed wholesaler of any beer or wine by a registered producer, the registered producer shall mail by first class mail to the Department of Revenue a correct and complete invoice, showing in detail the items in such shipment by quantity, type, brand and size and the point of origin and the point of destination. Also, prior to or at the time of shipment, a copy of the bill of lading shall be forwarded to the Department of Revenue by first class mail. Upon acceptance of delivery of the shipment by the duly licensed wholesaler, the wholesaler shall furnish the Department of Revenue with a copy of the invoice covering the shipment, with endorsement thereon showing the date, time and place delivery was accepted.

HISTORY: 1962 Code Section 65‑744.4; 1969 (56) 767; 1993 Act No. 181, Section 140.

Library References

Intoxicating Liquors 92.

Westlaw Topic No. 223.

C.J.S. Intoxicating Liquors Section 271.

**SECTION 12‑21‑1560.** Beer or wine shipped in violation of chapter declared contraband.

Any beer or wine shipped or moved into the geographic limits of South Carolina in violation of any provision of this chapter is hereby declared contraband and may be seized and sold as provided for in Section 61‑6‑4310.

HISTORY: 1962 Code Section 65‑744.5; 1969 (56) 767; 1972 (57) 3013.

Library References

Intoxicating Liquors 244 to 257.

Westlaw Topic No. 223.

C.J.S. Intoxicating Liquors Sections 551 to 597.

**SECTION 12‑21‑1570.** Administration and enforcement.

The Department of Revenue shall administer and enforce the provisions of this article.

HISTORY: 1962 Code Section 65‑744.9; 1969 (56) 767; 1993 Act No. 181, Section 141.

Library References

Intoxicating Liquors 7.

Westlaw Topic No. 223.

C.J.S. Intoxicating Liquors Sections 46 to 49, 51, 285 to 286, 288.

**SECTION 12‑21‑1580.** Rules and regulations.

The Department of Revenue shall have the power to make such rules and regulations, not inconsistent with law, deemed necessary for the proper administration and enforcement of this article. Such rules and regulations shall have the full force and effect of law.

HISTORY: 1962 Code Section 65‑744.10; 1969 (56) 767; 1993 Act No. 181, Section 142.

Library References

Intoxicating Liquors 7.

Westlaw Topic No. 223.

C.J.S. Intoxicating Liquors Sections 46 to 49, 51, 285 to 286, 288.

**SECTION 12‑21‑1590.** Disposition of moneys received by Department of Revenue.

All monies received by the Department of Revenue under the provisions of this chapter shall be deposited with the State Treasurer to the credit of the general fund of the State.

HISTORY: 1962 Code Section 65‑744.11; 1969 (56) 767; 1993 Act No. 181, Section 143.

Library References

Intoxicating Liquors 95.

Westlaw Topic No. 223.

C.J.S. Intoxicating Liquors Section 275.

**SECTION 12‑21‑1610.** Restrictions on importation of beer or wine for sale; penalty.

A person, firm, corporation, club, or an association or any organization within this State shall not bring, ship, transport, or receive into this State in any manner whatsoever any beer or wine as defined in Section 12‑21‑1010 for sale except duly licensed beer and wine wholesale distributors. A person, firm, corporation, club, or an association in violation of this section is subject to a penalty of not less than twenty‑five dollars nor more than one thousand dollars, to be assessed and collected by the Department of Revenue in the same manner and with like effect as other taxes are collected.

HISTORY: 1962 Code Section 65‑744.13; 1972 (57) 3013; 1973 (58) 1857; 1993 Act No. 181, Section 144; 2003 Act No. 40, Section 4, eff June 2, 2003.

Library References

Intoxicating Liquors 138.

Westlaw Topic No. 223.

C.J.S. Intoxicating Liquors Sections 323, 369 to 375.

Attorney General’s Opinions

The requirements of Section 12‑21‑1610 or other sections do not preclude engaging in business as both producer and wholesaler of beer. 1979 Op Atty Gen, No 79‑119, p 166 (October 15, 1979) 1979 WL 43250.

ARTICLE 17

Admissions Tax

**SECTION 12‑21‑2410.** Definitions.

For the purpose of this article and unless otherwise required by the context:

(1) The word “admission” means the right or privilege to enter into or use a place or location;

(2) The word “place” means any definite enclosure or location; and

(3) The word “person” means individual, partnership, corporation, association, or organization of any kind whatsoever.

HISTORY: 1962 Code Section 65‑801; 1959 (51) 144.

Attorney General’s Opinions

The amusement tax is not imposed on cable television companies when they charge homeowners for pay television movies. 1974‑75 Op Atty Gen, No 4150, p 218 (October 6, 1975) 1975 WL 22445.

The admissions tax is a tax on the right or privilege to enter into or use. 1968‑69 Op Atty Gen, No 2792, p 286 (December 18, 1969) 1969 WL 10779.

Golf course greens fee taxable. Where greens fee charged to use facilities of golf course, such fee within purview of this article, being paid admission to place of amusement. Op Atty Gen, No 1548 (July 8, 1963) 1963 WL 8299.

NOTES OF DECISIONS

In general 1

1. In general

The word “use,” as employed in this section [former Code 1962 Section 65‑801] means that the tax under former Code 1962 Section 65‑802 is imposed upon a person who avails himself of the facilities of a place of amusement. Beach v. Livingston (S.C. 1966) 248 S.C. 135, 149 S.E.2d 328.

The admissions tax applies to charges paid for the “use” of a bowling alley. (Decided under former statute.) Beach v. Livingston (S.C. 1966) 248 S.C. 135, 149 S.E.2d 328.

**SECTION 12‑21‑2420.** Imposition of tax; rate; exemptions; payment, collection, and remittance; disposition of revenues.

There must be levied, assessed, collected, and paid upon paid admissions to places of amusement within this State a license tax of five percent. The license tax may be listed separately from the cost of admission on an admission ticket. However, no tax may be charged or collected:

(1) On account of any stage play or any pageant in which wholly local or nonprofessional talent or players are used.

(2) On admissions to athletic contests in which a junior American Legion athletic team is a participant unless the proceeds inure to any individual or player in the form of salary or otherwise.

(3) On admissions to high school or grammar school games or on general gate admissions to the State Fair or any county or community fair.

(4) On admissions charged by any eleemosynary and nonprofit corporation or organization organized exclusively for religious, charitable, scientific, or educational purposes; or the presentation of performing artists by an accredited college or university; provided, that the license tax herein levied and assessed shall be collected and paid upon all paid admissions to all athletic events of any institution of learning above the high school level; provided, however, that carnivals, circuses, and community fairs operated by eleemosynary or nonprofit corporations or organizations organized exclusively for religious, charitable, scientific, or educational purposes shall not be exempt from the assessment and collection of admissions tax on charges for admission for the use of or entrance to rides, places of amusement, shows, exhibits, and other carnival facilities, but not to include charges for general gate admissions except when the proceeds of any such carnival, circus, or community fair are donated to a hospital; provided, further, that no admission tax shall be charged or collected by reason of any charge made to any member of a nonprofit organization or corporation for the use of the facilities of the organization or corporation of which he is a member.

(5) On admissions to nonprofit public bathing places.

(6) On admissions to any hunting or shooting preserve.

(7) On admissions to privately owned fish ponds or lakes.

(8) On admissions to circuses operated by eleemosynary, nonprofit corporations or organizations organized exclusively for religious, charitable, scientific, or educational purposes when the proceeds derived from admissions to the circuses shall be used exclusively for religious, charitable, scientific or educational purposes.

(9) On admissions to properties or attractions which have been named to the National Register of Historical Places.

(10) On admissions charged to classical music performances of a nonprofit or eleemosynary corporation organized and operated exclusively to promote classical music.

(11) On admissions to events other than those events enumerated in item (4) of this section, sponsored and operated exclusively by eleemosynary, nonprofit corporations or organizations organized exclusively for religious, charitable, scientific, civic, fraternal, or educational purposes when the net proceeds derived from admissions to the events shall be immediately donated to an organization operated exclusively for charitable purposes. The term “net proceeds” shall mean the portion of the gross admissions proceeds remaining after necessary expenses of the event have been paid. This item shall not apply to an event in which the above organizations receive a percentage of gross proceeds or a stated fixed sum for the use of its name in promoting the event.

(12) On admissions charged by nonprofit or eleemosynary community theater companies or community symphony orchestras, county and community arts councils and departments and other such companies engaged in promotion of the arts.

(13) On admissions to boats which charge a fee for pleasure fishing, excursion, sight‑seeing and private charter.

(14) On admissions to a physical fitness center subject to the provisions of Chapter 79 of Title 44, the Physical Fitness Services Act, that provides only the following activities or facilities:

(a) aerobics or calisthenics;

(b) weightlifting equipment;

(c) exercise equipment;

(d) running tracks;

(e) racquetball;

(f) swimming pools for aerobics and lap swimming; and

(g) other similar items approved by the department.

The entire admission charge of a physical fitness center which provides any other activity or facilities is subject to the tax imposed by this article. Physical fitness facilities or centers of the State of South Carolina and any of its political subdivisions which are exempt from the Physical Fitness Services Act, pursuant to Section 44‑79‑110 and, therefore, subject to the admissions tax under this article are nevertheless exempt from the admissions tax if they meet other requirements of this subsection.

(15) For entry into the pit area of NASCAR sanctioned motor speedways or racetracks for drivers, crew members, or car owners where a participation fee is charged these persons by NASCAR, or by the speedway or racetrack, where a charge to these persons is made on a per event basis for entry into the pit area, or where a combination of annual and per event charges to these persons is made for entry into the pit area.

(16) on admissions to the State Museum.

The tax imposed by this section must be paid by the person or persons paying the admission price and must be collected and remitted to the South Carolina Department of Revenue by the person or persons collecting the admission price. The tax imposed by this section does not apply to:

(a) any amount separately stated on the ticket of admission for the repayment of money borrowed for the purpose of constructing an athletic stadium or field by any accredited college or university;

(b) any amount of the charge for admission, whether or not separately stated, that is a fee or tax imposed by a political subdivision of the State. The revenue derived from the provisions of this section from fishing piers along the coast of South Carolina is allocated for use of the Commercial Fisheries Division of the Department of Natural Resources; or

(c) any amount that an accredited college or university requires a season ticket holder to pay to a nonprofit athletic booster organization that is exempt from federal income taxation in order to receive the right to purchase athletic event tickets.

HISTORY: 1962 Code Section 65‑802; 1952 Code Sections 65‑801, 65‑802; 1942 Code Section 2531; 1932 Code Section 2531; 1928 (35) 1089; 1929 (36) 114; 1932 (37) 1493; 1934 (38) 1577; 1935 (39) 282; 1936 (39) 1377, 1591, 1771; 1938 (40) 1799; 1940 (41) 1921; 1956 (49) 1841; 1959 (51) 144; 1960 (51) 1958; 1961 (52) 466; 1965 (54) 589; 1968 (55) 2855; 1969 (56) 444; 1972 (57) 2562; 1974 (58) 2381, 2812; 1978 Act No. 605, Sections 1, 2; 1981 Act No. 88, Section 1; 1985 Act No. 201, Part II, Section 62; 1991 Act No. 168, Section 11; 1991 Act No. 171, Part II, Section 9A(1); 1993 Act No. 181, Section 146; 1996 Act No. 458, Part II, Section 75; 1998 Act No. 334, Section 1; 2001 Act No. 74, Sections 1, 4 eff July 18, 2001; 2014 Act No. 242 (S.474), Section 1, eff July 1, 2014; 2017 Act No. 68 (H.3406), Section 2.A, eff July 1, 2017.

Effect of Amendment

2014 Act No. 242, Section 1, added paragraph (16).

2017 Act No. 68, Section 2.A, added (c), at the end of the undesignated paragraph following (16), relating to any amount that a season ticket holder is required to pay to a nonprofit athletic booster organization.

CROSS REFERENCES

Tax on theatrical shows, carnivals, etc., see Section 12‑23‑410 et seq.

Library References

Public Amusement and Entertainment 51 to 59.

Westlaw Topic No. 315T.

C.J.S. Entertainment and Amusement; Sports Sections 42 to 44, 46 to 47, 49 to 50, 61 to 64.

RESEARCH REFERENCES

ALR Library

31 ALR, Federal 2nd Series 237 , What Constitutes Plain, Speedy, and Efficient State Remedy Under Tax Injunction Act (28 U.S.C.A. S1341), Prohibiting Federal District Courts from Interfering With Assessment, Levy, or Collection of State Business...

United States Supreme Court Annotations

Tax legislation as violating Federal Constitution’s First Amendment ‑ Supreme Court cases. 103 L Ed 2d 951.

Attorney General’s Opinions

Discussion of whether Coastal Carolina University must pay the Horry County Hospitality Fee on theatrical performances, athletic events, food services, and the like. S.C. Op.Atty.Gen. (Feb. 27, 1998) 1998 WL 113846.

A charge to enter into a place for the purpose of playing bingo, whereby one is allowed to play a certain number of games, is subject to an admissions tax; a charge for a card to play bingo is subject to an admissions tax even though there is no charge to enter into the establishment where bingo is played. 1981 Op Atty Gen, No 81‑39, p 60 (April 21, 1981) 1981 WL 96565.

An excursion boat offering sight‑seeing or fishing is a place of amusement and the charges for admission thereto are taxable under the provisions of Section 12‑21‑2420 of the Code of Laws of South Carolina, 1976. 1981 Op Atty Gen, No 81‑30, p 50 (March 31, 1981) 1981 WL 96556.

An excursion boat offering a dance floor is a place of amusement and the charges for admission thereto are admissions that are taxable under Section 12‑21‑2420 of the 1976 Code of Laws. 1979 Op Atty Gen, No 79‑84, p 115 (June 28, 1979) 1979 WL 29089.

The Patriots Point Development Authority is required to collect admissions tax to the Naval and Maritime Museum in Charleston; the Authority is required to collect and remit sales tax on food, beverages, souvenirs and other items sold at the park or museum. 1974‑75 Op Atty Gen, No 4200, p 247 (November 24, 1975) 1975 WL 22497.

The amusement tax is not imposed on cable television companies when they charge homeowners for pay television movies. 1974‑75 Op Atty Gen, No 4150, p 218 (October 6, 1975) 1975 WL 22445.

A carnival operated for profit by an individual or a corporation is subject to the tax on general gate admissions imposed by Code 1962 Section 65‑802(3) [Code 1976 Section 12‑21‑2420(3)]. 1974‑75 Op Atty Gen, No 4068, p 146 (August 1, 1975) 1975 WL 22365.

The Richland Kiwanis Club is required to collect the admissions tax imposed in Code 1962 Section 65‑802 [Code 1976 Section 12‑21‑2420] in that it is not an eleemosynary and nonprofit corporation organized exclusively for religious, charitable, scientific or educational purposes. 1974‑75 Op Atty Gen, No 4053, p 129 (July 18, 1975) 1975 WL 22350.

Admission charges made by the University of South Carolina to events at the Coliseum are taxable. 1969‑70 Op Atty Gen, No 2921, p 167 (June 22, 1970) 1970 WL 12203.

Admission to park in State is taxed although entrance is in another state. The admissions tax must be paid for entrance to any park in South Carolina whether or not the entrance to such is in South Carolina or in another state. 1968‑69 Op Atty Gen, No 2792, p 286 (December 18, 1969) 1969 WL 10779.

The charters and other evidence may be used to determine the character of a corporation and whether such is not required to collect and pay the admission tax. 1967‑68 Op Atty Gen, No 2492, p 164 (August 15, 1968) 1968 WL 8889.

Country club not required to collect tax. An ordinary country club is a nonprofit organization or corporation and is not required to collect admissions tax. 1964‑65 Op Atty Gen, No 1900, p 185 (September 2, 1965) 1965 WL 8058.

NOTES OF DECISIONS

In general 1

Exemptions 3

Federal courts 2

1. In general

Owner and operator of movie theater who paid taxes pursuant to Section 12‑21‑2710, which imposes 20 percent tax on admissions to movie theaters when showing motion pictures rated “X” or not rated by Motion Picture Association of America and which was declared unconstitutional, was entitled to refund for taxes paid pursuant to that section, as while Section 12‑21‑2420 provides for tax on admissions to motion picture theaters and specifically states that the tax shall be paid by person or persons paying admissions price, Section 12‑21‑2710 contains no similar language and unless otherwise expressly provided, payment of taxes imposed by Chapter 21 of Code constitutes “condition precedent to engaging in any business or doing any act taxable under this chapter” (Section 12‑21‑150), and thus tax imposed by Section 12‑21‑2710 was to be paid by business establishment and business establishment is therefore entitled to seek refund now that tax has been held unconstitutional. Multi‑Cinema, Ltd. v. South Carolina Tax Com’n (S.C. 1987) 292 S.C. 411, 357 S.E.2d 6.

A bowling alley is a “place of amusement” subject to admissions tax under former Code 1962 Section 65‑802. Beach v. Livingston (S.C. 1966) 248 S.C. 135, 149 S.E.2d 328.

The admissions tax imposed by this section [former Code 1962 Section 65‑802] is required to be paid by the person or persons paying the admission price of a ticket. The statute requires the tax so imposed to be collected and remitted to the South Carolina Tax Commission by the person or persons collecting such admission price. Furman University v. Livingston (S.C. 1964) 244 S.C. 200, 136 S.E.2d 254.

The admissions tax imposed by this section [former Code 1962 Section 65‑802] is not paid by a university staging football games, but by the persons who see fit to attend such football games to which an admission fee is charged. The only duty enjoined on the university is to collect and remit the tax; it has no burden otherwise. The university is merely a collection agent for the State Tax Commission. Furman University v. Livingston (S.C. 1964) 244 S.C. 200, 136 S.E.2d 254.

2. Federal courts

A South Carolina movie theater operator challenging the constitutionality of Section 12‑21‑2710, imposing a 20 percent tax on “X” rated movies as compared with a 4 percent tax imposed by Section 12‑21‑2420 on other movies, could maintain an action in South Carolina courts pursuant to the Declaratory Judgments Act (Sections 15‑53‑10, et seq.), or pursuant to the State’s equity jurisdiction for injunctive relief. Accordingly, since adequate remedies existed in state court, a federal court action was barred. Eastern Federal Corp. v. Wasson (D.C.S.C. 1981) 525 F.Supp. 241. Courts 508(6)

3. Exemptions

In order to prove that charities are impliedly exempt from a tax, the implication must be plain; statutory language alleged to create exemptions from taxation will not be strained or liberally construed in favor of the taxpayer claiming the exemption. Fraternal Order of Police v. South Carolina Dept. of Revenue (S.C. 2002) 352 S.C. 420, 574 S.E.2d 717. Taxation 3638

**SECTION 12‑21‑2425.** Motorsports entertainment complex admissions license tax exemption.

(A) In addition to the exemptions allowed from the admissions license tax imposed pursuant to Section 12‑21‑2420 of the 1976 Code, there is also exempt from that tax for ten years beginning July 1, 2008, one‑half of the paid admissions to a motorsports entertainment complex.

(B) For purposes of the exemption allowed by this section, a motorsports entertainment complex means a motorsports facility, and its ancillary grounds and facilities, that satisfies all of the following:

(1) is a NASCAR‑sanctioned motor speedway or racetrack that hosted at least one NASCAR Sprint Cup Series race in 2012, and continues to host at least one NASCAR Sprint Cup Series race, or any successor race featuring the same NASCAR Cup series;

(2) has at least three scheduled days of motorsports events, and events ancillary and incidental thereto, each calendar year that are sanctioned by a nationally or internationally recognized governing body of motorsports that establishes an annual schedule of motorsports events;

(3) engages in tourism promotion.

HISTORY: 2008 Act No. 313, Section 5.A, eff July 1, 2008; 2013 Act No. 68, Section 1, eff for tax years beginning after 2012.

Editor’s Note

2013 Act No. 68, Section 2, provides as follows:

“SECTION 2. This act [amending subsection (B)(1)] takes effect for tax years beginning after 2012.”

Effect of Amendment

The 2013 amendment, rewrote subsection (B)(1). Former subsection (B)(1) read: “(1) has at least sixty thousand fixed seats for race patrons;”.

CROSS REFERENCES

Motorsports entertainment complex or tennis specific complex biennial license for purchase and sale for on‑premises consumption, see Section 61‑6‑2016.

Motorsports entertainment complex or tennis specific complex biennial permit for purchase and sale for on‑premises consumption, see Section 61‑4‑515.

Library References

Public Amusement and Entertainment 56.

Westlaw Topic No. 315T.

C.J.S. Entertainment and Amusement; Sports Sections 49, 61 to 64.

**SECTION 12‑21‑2430.** Certain ponds are not amusements.

No private pond shall be declared an amusement for tax purposes. But this section shall not apply to a pond stocked with fish from a State or Federal hatchery.

HISTORY: 1962 Code Section 65‑802.1; 1957 (50) 283.

Library References

Public Amusement and Entertainment 52.

Westlaw Topic No. 315T.

**SECTION 12‑21‑2440.** Application for license for place of amusement.

Before engaging in business every person operating a place of amusement within the State subject to the tax imposed by this article shall file with the department an application for a permanent license permitting him to engage in the business. The application for the license must be filed on blanks to be furnished by the department for that purpose and shall contain a statement including the name of the individual, the partnership, and each individual partner, or the corporation filing the application, the post‑office address, and the nature of the business.

HISTORY: 1962 Code Section 65‑803; 1952 Code Section 65‑803; 1942 Code Section 2531; 1932 Code Section 2531; 1928 (35) 1089; 1929 (36) 114; 1932 (37) 1493; 1934 (38) 1577; 1935 (39) 282; 1936 (39) 1377, 1591, 1771; 1938 (40) 1799; 1940 (41) 1921; 1986 Act No. 306, Section 3.

Library References

Public Amusement and Entertainment 12 to 43.

Westlaw Topic No. 315T.

C.J.S. Entertainment and Amusement; Sports Sections 11 to 29, 31 to 42, 44, 46 to 81.

**SECTION 12‑21‑2450.** Issuance and display of license.

Upon receipt of an application for a license to operate a place of amusement as set forth in this article the department shall issue to the applicant a license permitting him to operate such place of amusement without cost to the applicant. Such license shall be displayed at all times at or in such place of amusement in some conspicuous place easily seen by the public.

HISTORY: 1962 Code Section 65‑805; 1952 Code Section 65‑805; 1942 Code Section 2531; 1932 Code Section 2531; 1928 (35) 1089; 1929 (36) 114; 1932 (37) 1493; 1934 (38) 1577; 1935 (39) 282; 1936 (39) 1377, 1591, 1771; 1938 (40) 1799; 1940 (41) 1921.

Library References

Public Amusement and Entertainment 12 to 43.

Westlaw Topic No. 315T.

C.J.S. Entertainment and Amusement; Sports Sections 11 to 29, 31 to 42, 44, 46 to 81.

**SECTION 12‑21‑2460.** Licenses shall not be transferable; separate licenses for each place.

No license issued permitting the operation of a place of amusement shall be transferable and any license issued to any person who shall afterwards retire from business shall be null and void. A separate license shall be required for each separate place of amusement.

HISTORY: 1962 Code Section 65‑806; 1952 Code Section 65‑806; 1942 Code Section 2531; 1932 Code Section 2531; 1928 (35) 1089; 1929 (36) 114; 1932 (37) 1493; 1934 (38) 1577; 1935 (38) 282; 1936 (39) 1377, 1591, 1771; 1938 (40) 1799; 1940 (41) 1921.

Library References

Public Amusement and Entertainment 12 to 43.

Westlaw Topic No. 315T.

C.J.S. Entertainment and Amusement; Sports Sections 11 to 29, 31 to 42, 44, 46 to 81.

**SECTION 12‑21‑2470.** Penalties for operation without license.

If any person operates a place of amusement for which a license is required without having first secured the license and posted it in accordance with the provisions of this article he shall be guilty of a misdemeanor and, upon conviction, fined not less than twenty dollars nor more than one hundred dollars or imprisoned not less than ten days nor more than thirty days. Each day that such business is operated shall constitute a separate offense.

HISTORY: 1962 Code Section 65‑807; 1952 Code Section 65‑807; 1942 Code Section 2531; 1932 Code Section 2531; 1928 (35) 1089; 1929 (36) 114; 1932 (37) 1493; 1934 (38) 1577; 1935 (39) 282; 1936 (39) 1377, 1591, 1771; 1938 (40) 1799; 1940 (41) 1921.

Library References

Public Amusement and Entertainment 172.

Westlaw Topic No. 315T.

C.J.S. Entertainment and Amusement; Sports Sections 154 to 155.

**SECTION 12‑21‑2490.** Notice of license revocation and appeal process.

The department shall mail written notice of the revocation of the license or shall otherwise serve written notice thereof upon the person affected thereby and within ten days after the mailing of such notice or of service otherwise upon the person whose license has been revoked such person may appeal from the decision of the department thereon to the court of common pleas in the county in which he is licensed to carry on the business. Within ten days after the service of notice of revocation of license as provided in this section, and not thereafter, the person feeling aggrieved thereby and desiring to appeal shall serve upon the department a written notice of intention to appeal to the court of common pleas and within thirty days after the service of the notice on the department he shall serve upon the department his exceptions or objections to the revocation of the license.

HISTORY: 1962 Code Section 65‑809; 1952 Code Section 65‑809; 1942 Code Section 2531; 1932 Code Section 2531; 1928 (35) 1089; 1929 (36) 114; 1932 (37) 1493; 1934 (38) 1577; 1935 (39) 282; 1936 (39) 1377, 1591, 1771; 1938 (40) 1799; 1940 (41) 1921.

Library References

Public Amusement and Entertainment 14.

Westlaw Topic No. 315T.

C.J.S. Entertainment and Amusement; Sports Section 56.

**SECTION 12‑21‑2500.** Hearing on appeal; supersedeas; costs and disbursements.

The hearing before the circuit judge shall be had upon the exceptions and objections so served upon the department and the case shall be disposed of as provided by law for appeals from the courts of magistrates. Or, if the circuit judge should decide that the ends of justice would be better attained, he may hear the full controversy de novo and render judgment in accordance with the law and facts. Serving notice of appeal upon the department shall not act as a supersedeas unless the appellant shall file with the department a good and sufficient bond to be approved by the department, conditioned upon the faithful observance of the requirements of this article and for the payment of any costs that may be lawfully taxed. And the costs and disbursements shall be the same as are provided in cases of appeals to the circuit courts from magistrates’ courts.

HISTORY: 1962 Code Section 65‑810; 1952 Code Section 65‑810; 1942 Code Section 2531; 1932 Code Section 2531; 1928 (35) 1089; 1929 (36) 114; 1932 (37) 1493; 1934 (38) 1577; 1935 (39) 282; 1936 (39) 1377, 1591, 1771; 1938 (40) 1799; 1940 (41) 1921.

CROSS REFERENCES

Civil procedure, generally, see Section 15‑1‑10 et seq.

Library References

Public Amusement and Entertainment 14.

Westlaw Topic No. 315T.

C.J.S. Entertainment and Amusement; Sports Section 56.

**SECTION 12‑21‑2520.** Price of admission shall be printed on ticket.

No operator of a place of amusement shall sell or permit to be sold in his place of business any admission ticket without the price of admission printed thereon, nor shall he sell or permit to be sold any admission ticket at a price other than the price printed thereon. Provided, however, that upon written application to the department, the department may, in its discretion and for good cause, waive the requirements of this section.

HISTORY: 1962 Code Section 65‑815; 1952 Code Section 65‑815; 1942 Code Section 2531; 1932 Code Section 2531; 1928 (35) 1089; 1929 (36) 114; 1932 (37) 1493; 1934 (38) 1577; 1935 (39) 282; 1936 (39) 1377, 1591, 1771; 1938 (40) 1799; 1940 (41) 1921; 1977 Act No. 189.

Library References

Public Amusement and Entertainment 65.

Westlaw Topic No. 315T.

C.J.S. Entertainment and Amusement; Sports Sections 82 to 85, 87.

**SECTION 12‑21‑2530.** Method of collecting tickets; exception for season or subscription tickets.

As each patron is admitted to a place the paid admissions to which are subject to the tax imposed by Section 12‑21‑2420, his ticket shall be collected and immediately torn in two parts, approximately through the center, one half given to the patron and the other half retained by the ticket taker. The provisions of this section shall not apply to season tickets or tickets for a series of admissions issued on account of subscription.

HISTORY: 1962 Code Section 65‑817; 1952 Code Section 65‑817; 1942 Code Section 2531; 1932 Code Section 2531; 1928 (35) 1089; 1929 (36) 114; 1932 (37) 1493; 1934 (38) 1577; 1935 (39) 282; 1936 (39) 1377, 1591, 1771; 1938 (40) 1799; 1940 (41) 1921; 1959 (51) 144.

Library References

Public Amusement and Entertainment 65.

Westlaw Topic No. 315T.

C.J.S. Entertainment and Amusement; Sports Sections 82 to 85, 87.

**SECTION 12‑21‑2540.** Penalties for use of altered or counterfeit tickets or reuse of tickets.

(A) It is unlawful for a person to:

(1) alter, restore, or otherwise prepare in any manner an admission ticket with intent to use or cause it to be used after it has already been used;

(2) knowingly or wilfully buy, sell, offer for sale, or give away a restored or altered ticket to a person;

(3) knowingly use a restored or altered ticket or have in his possession an altered or restored ticket, which has been previously used for the purpose for which it was originally intended; or

(4) prepare, buy, sell, offer for sale, or have in his possession a counterfeit ticket.

(B) A person who violates the provisions of this section is guilty of a misdemeanor and, upon conviction, must be fined not more than one thousand dollars or imprisoned not more than two years, or both.

HISTORY: 1962 Code Section 65‑819; 1952 Code Section 65‑819; 1942 Code Section 2531; 1932 Code Section 2531; 1928 (35) 1089; 1929 (36) 114; 1932 (37) 1493; 1934 (38) 1577; 1935 (39) 282; 1936 (39) 1377, 1591, 1771; 1938 (40) 1799; 1940 (41) 1921; 1993 Act No. 184, Section 155.

Library References

Public Amusement and Entertainment 176.

Westlaw Topic No. 315T.

**SECTION 12‑21‑2550.** Tax payable monthly; failure to make correct return or failure to file.

(A) The license tax imposed by this article is due and payable in monthly installments on or before the twentieth day of each month. A person liable to the tax shall make a true and correct return to the department, in such form as it prescribes, showing the number and prices of admissions during the previous month, and remit the tax with the return.

(B) If a person fails to make a true and correct return or fails to file the return, the department shall make an estimate of the tax liability from the best information available, and issue a proposed assessment for the taxes, including penalties and interest.

HISTORY: 1962 Code Section 65‑820; 1952 Code Section 65‑820; 1942 Code Section 2531; 1932 Code Section 2531; 1928 (35) 1089; 1929 (36) 114; 1932 (37) 1493; 1934 (38) 1577; 1935 (39) 282; 1936 (39) 1377, 1591, 1771; 1938 (40) 1799; 1940 (41) 1921; 1984 Act No. 287; 1998 Act No. 432, Section 9; 1999 Act No. 114, Section 4.

CROSS REFERENCES

Civil penalties and damages applicable to certain return or statement filings, see Section 12‑54‑43.

Criminal penalties applicable to certain return or statement filings, see Section 12‑54‑44.

Library References

Public Amusement and Entertainment 12.

Westlaw Topic No. 315T.

C.J.S. Entertainment and Amusement; Sports Sections 11 to 20, 22 to 25, 29, 33 to 42, 47 to 48, 51.

**SECTION 12‑21‑2575.** Methods of accounting for admissions other than tickets.

In lieu of the issuance of tickets as provided for in this article, the department may authorize or approve other methods of accounting for paid admissions.

HISTORY: 1992 Act No. 361, Section 13.

Library References

Public Amusement and Entertainment 12.

Westlaw Topic No. 315T.

C.J.S. Entertainment and Amusement; Sports Sections 11 to 20, 22 to 25, 29, 33 to 42, 47 to 48, 51.

ARTICLE 19

Coin‑Operated Machines and Devices and Other Amusements

**SECTION 12‑21‑2703.** Repealed by 1999 Act No. 125, Section 8, eff July 1, 2000.

Editor’s Note

Former Section 12‑21‑2703 was entitled “Licensed coin‑operated machines may be operated only at location licensed under sales and use tax provisions” and was derived from 1993 Act No. 164, Part II, Section 19C.

**SECTION 12‑21‑2710.** Types of machines and devices prohibited by law; penalties.

It is unlawful for any person to keep on his premises or operate or permit to be kept on his premises or operated within this State any vending or slot machine, or any video game machine with a free play feature operated by a slot in which is deposited a coin or thing of value, or other device operated by a slot in which is deposited a coin or thing of value for the play of poker, blackjack, keno, lotto, bingo, or craps, or any machine or device licensed pursuant to Section 12‑21‑2720 and used for gambling or any punch board, pull board, or other device pertaining to games of chance of whatever name or kind, including those machines, boards, or other devices that display different pictures, words, or symbols, at different plays or different numbers, whether in words or figures or, which deposit tokens or coins at regular intervals or in varying numbers to the player or in the machine, but the provisions of this section do not extend to coin‑operated nonpayout pin tables, in‑line pin games, or to automatic weighing, measuring, musical, and vending machines which are constructed as to give a certain uniform and fair return in value for each coin deposited and in which there is no element of chance.

Any person violating the provisions of this section is guilty of a misdemeanor and, upon conviction, must be fined not more than five hundred dollars or imprisoned for a period of not more than one year, or both.

HISTORY: 1986 Act No. 308, Section 4; 1997 Act No. 155, Part II, Section 54B; 1999 Act No. 125, Section 1; 1999 Act No. 125, Section 8.

Editor’s Note

Licensure under Section 12‑21‑2720 is no longer effective after June 30, 2000.

1999 Act No. 125, Part VI, Section 23, subsections (C) and (D), provide as follows:

“(C) Part I takes effect July 1, 2000;

“(D) If Part I takes effect, the South Carolina Department of Revenue, upon application, shall refund to any person holding a license for the operation of video game machines, on a pro rata basis, the portion of any license fee previously paid to the department for licenses that extend beyond June 30, 2000;”

CROSS REFERENCES

Beer, ale, porter, and wine, prohibited acts, see Section 61‑4‑580.

Destruction of unlawful devices, etc., see Section 12‑21‑2712.

Special events or activities., see Section 61‑2‑180.

Library References

Gaming 68(3).

Westlaw Topic No. 188.

C.J.S. Gaming Sections 154, 164.

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25 ALR, Federal 2nd Series 207 , Propriety of Federal Court’s Abstention, Under Burford v. Sun Oil Co., 319 U.S. 315, 63 S. Ct. 1098, 87 L. Ed. 1424 (1943), as to Claim that State or Local Statute or Regulation, or Application Thereof, Violates...

Encyclopedias

S.C. Jur. Appeal and Error Section 73, Exceptions to the Second Requirement of Obtaining a Ruling Below.

S.C. Jur. Constitutional Law Section 12.1, “Home Rule”‑The Power of Municipalities to Enact Regulations and Ordinances.

S.C. Jur. Gaming Section 2, Background.

S.C. Jur. Gaming Section 12, Machines.

S.C. Jur. Gaming Section 21, Under State Law.

S.C. Jur. Gaming Section 30, Vending Machines and Other Devices.

S.C. Jur. Gaming Section 32, Forfeitures.

Attorney General’s Opinions

Any machine which contains a game or games prohibited by Section 2‑21‑2710 is illegal per se, notwithstanding the existence of other games which also might be programmed for play on the same machine. S.C. Op.Atty.Gen. (June 6, 2011) 2011 WL 2648721.

If a law enforcement officer determines that a video game machine does not simulate the game of poker, but some other card game, then he or she must determine whether any other express enumeration contained in Section 12‑21‑2710 is applicable (such as slot machine, etc.). If no expressly enumerated device is apparent, then the officer must determine if the game is one pertaining to games of chance. In any of these instances, the machine is per se illegal. S.C. Op.Atty.Gen. (June 6, 2011) 2011 WL 2648721.

Section 12‑21‑2710 expressly prohibits as per se illegal a machine that simulates the game of poker. S.C. Op.Atty.Gen. (June 6, 2011) 2011 WL 2648721.

Discussion of whether a machine which contains games which simulate the play of card games (such as poker) is illegal per se pursuant to Section 12‑21‑2710. S.C. Op.Atty.Gen. (April 29, 2005) 2005 WL 1024601.

The appropriate test to apply when determining whether a game is a game of chance or a game of skill is the Dominant Factor test. S.C. Op.Atty.Gen. (May 5, 2003) 2003 WL 21108489.

Discussion of the legality of a video machine that is similar to the Chess Challenge game, but has race cars rather than chess pieces. S.C. Op.Atty.Gen. (Aug. 28, 2002) 2002 WL 31341815.

The appropriate test to apply when determining whether a game is a game of chance or a game of skill is the Dominant Factor test. S.C. Op.Atty.Gen. (Aug. 28, 2002) 2002 WL 31341812.

Discussion of the legality of the Chess Challenge video machine. S.C. Op.Atty.Gen. (July 25, 2002) 2002 WL 1925750.

Discussion of the legality of the Chess Challenge video machine. S.C. Op.Atty.Gen. (April 23, 2002) 2002 WL 1340413.

Discussion of the legality of the FREESPIN (R) and FREEDRAW (R) Collectors Card Vending Machines with their Promotion Free Spin/Free Draw Game Feature. S.C. Op.Atty.Gen. (March 8, 2002) 2002 WL 735343.

Discussion of the legality of the redemption machine, Cadillac Jack or racing machine video gaming machines. S.C. Op.Atty.Gen. (Aug. 2, 2001) 2001 WL 957740.

Discussion of the legality of the Domino Pete gaming device. S.C. Op.Atty.Gen. (March 14, 2001) 2001 WL 564577.

Discussion of the legality of the in‑line pin game machines. S.C. Op.Atty.Gen. (Dec. 7, 2000) 2000 WL 33120661.

Discussion of the legality of a South Carolina company placing gambling devices, otherwise illegal under South Carolina law, in another state where they are used by players to win tickets or prizes, and these tickets or prizes are then brought into South Carolina where the gambler receives a cash payout representing the player’s winnings. S.C. Op.Atty.Gen. (Aug. 3, 2000) 2000 WL 1205950.

As of July 1, 2000, video gambling machines cannot be played, possessed or permitted in any form. By July 1, the machines must not just be out of working order or out of sight, but out of state. S.C. Op.Atty.Gen. (May 8, 2000) 2000 WL 1205949.

Discussion of the legality of the Lucky Shamrock video machine. S.C. Op.Atty.Gen. (Feb. 29, 2000) 2000 WL 356794.

Cash payoffs from play of video poker machine constitute violation of state law. Until Supreme Court rules in case of State v. Blackmon, it would be inappropriate for Attorney General’s office to comment as to legality of paying off on coin‑operated poker machine. Any prosecutorial decision with respect to specific case is matter for local solicitor. 1990 Op Atty Gen No. 90‑70 (December 11, 1990) 1990 WL 482457.

Prior opinion dated September 26, 1980, concluding that “Casino Night” operations violate several statutory provisions is applicable to proposed “Monte Carlo Night”. (Decided under former Section 52‑15‑10.) 1984 Op Atty Gen, No. 84‑44, p. 106 (April 13, 1984) 1984 WL 159851.

A coin‑operated device in which skill and judgment are non‑dominant factors and which gives no uniform and fair return for every coin deposited constitutes an illegal gambling device as proscribed by Section 52‑15‑10 of the 1976 Code of Law. (Decided under former Section 52‑15‑10.) 1978 Op Atty Gen, No 78‑170, p 197; 1978 Op Atty Gen, No 78‑201, p 226 (December 5, 1978) 1978 WL 22669.

A bead dispensing machine which upon payment of a quarter dispenses different playing card symbols that are cashed in for various returns with the proprietor of the tavern wherein it is located is prohibited by former Section 52‑15‑10. 1978 Op Atty Gen, No 78‑197, p 221 (November 17, 1978) 1978 WL 22665.

Furniture used in gambling operation is not a gambling device subject to confiscation. (Decided under former Section 52‑15‑10.) 1967‑68 Op Atty Gen, No 2491, p 163 (August 14, 1968) 1968 WL 8888.

Manufacture of gambling devices to be used only outside State. The manufacture of “tip boards” in this State is unlawful, since it necessarily involves the illegal possession of these devices, even if they are to be shipped and used only outside of South Carolina. (Decided under former Section 52‑15‑10.) 1965‑66 Op Atty Gen, No 2061, p 152 (June 7, 1966) 1966 WL 8527.

Pinball machines may not be ordered destroyed, being lawful devices under State law, thus, a municipal ordinance which makes pinball machines unlawful and provides for their destruction is invalid because repugnant to the policy of the State. (Decided under former Section 52‑15‑21‑10.) 1964‑65 Op Atty Gen, No 1788, p 24 (January 21, 1965) 1965 WL 7954.

NOTES OF DECISIONS

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1. In general

Gambling activities aboard day cruise company’s United States flag ship, which occurred when ship was beyond state’s three‑mile territorial waters, were not prohibited by amendments to gambling statutes proscribing possession of gaming machines; language of intent clause of act amending the statutes indicated that the legislature did not intend to ban day cruises. Stardancer Casino, Inc. v. Stewart (S.C. 2001) 347 S.C. 377, 556 S.E.2d 357. Gaming And Lotteries 255(1)

Possessing gambling machines was illegal even if they were not operational and even though slot machines became computerized after enactment of the statute prohibiting possession. State v. 192 Coin‑Operated Video Game Machines (S.C. 2000) 338 S.C. 176, 525 S.E.2d 872, rehearing denied, certiorari denied 121 S.Ct. 62, 531 U.S. 820, 148 L.Ed.2d 28. Gaming And Lotteries 239

2. Constitutional issues

This section (former Section 52‑15‑10.) is constitutional. Durant v Bennett (1931, DC SC) 54 F2d 634. State ex rel. Atty. Gen v Kizer (1932) 164 SC 383, 162 SE 444, 81 ALR 722.

Provision of South Carolina statute prohibiting certain gaming devices that barred possession of any “other device pertaining to games of chance of whatever name or kind,” which did not implicate constitutionally protected rights, had plainly legitimate sweep and more than conceivable application as it was interpreted by state courts and enforced, and therefore provision was not unconstitutionally vague on its face under Due Process Clause. Martin v. Lloyd (C.A.4 (S.C.) 2012) 700 F.3d 132. Constitutional Law 4509(13); Gaming And Lotteries 206(7)

Simple formula governed whether catchall provision in South Carolina statutes prohibiting certain gaming devices that barred possession of any “other device pertaining to games of chance of whatever name or kind” applied to particular device, in that game in which skill predominated was permissible and game in which chance predominated was prohibited, and therefore statutes did not violate Equal Protection Clause by requiring developer and operators of gaming devices to risk criminal prosecution, imprisonment, fines, and forfeiture to gain determination as to whether proposed game was legal. Martin v. Lloyd (C.A.4 (S.C.) 2012) 700 F.3d 132. Constitutional Law 3781; Gaming And Lotteries 206(7)

State laws restricting gambling within South Carolina represented well‑recognized exercise of state police power, since such laws were aimed at promoting welfare, safety, and morals of South Carolinians, and, thus, respect for state prerogatives dictated a cautious preemption analysis, one which was reluctant to imply a broad ouster of state authority. Casino Ventures v. Stewart (C.A.4 (S.C.) 1999) 183 F.3d 307, certiorari denied 120 S.Ct. 793, 528 U.S. 1077, 145 L.Ed.2d 669. States 18.13

There is no basis for finding federal field preemption of South Carolina’s restrictions on gambling on vessels, since maritime matters and gambling are not fields subject to exclusive federal control, but, rather, federal law in those fields respects both system of dual sovereignty and important regulatory interests of the states, and combined field of maritime gambling also leaves room for state regulation. Casino Ventures v. Stewart (C.A.4 (S.C.) 1999) 183 F.3d 307, certiorari denied 120 S.Ct. 793, 528 U.S. 1077, 145 L.Ed.2d 669. Gaming And Lotteries 206(1); States 18.15

Johnson Act does not preempt state laws prohibiting gambling and gambling devices, as lifting of federal restrictions on gambling outside state territorial waters does not preempt state gambling prohibitions within those waters, and, by enacting Johnson Act amendments, Congress extended the reach of state police power beyond state territorial waters, by allowing states to criminalize the use of gambling devices on the high seas if state has enacted a statute that prohibits the use of gambling devices on “cruises to nowhere.” Casino Ventures v. Stewart (C.A.4 (S.C.) 1999) 183 F.3d 307, certiorari denied 120 S.Ct. 793, 528 U.S. 1077, 145 L.Ed.2d 669. Gaming And Lotteries 206(1); States 18.15

Video gaming machine is “contraband per se,” not “derivative contraband,” at the moment of seizure, even though the machine ultimately may be shown to be lawful in a post‑seizure hearing before a magistrate and, thus, the owner has no constitutional right to jury trial in civil forfeiture proceeding. Mims Amusement Co. v. South Carolina Law Enforcement Div. (S.C. 2005) 366 S.C. 141, 621 S.E.2d 344. Jury 19(15)

Provision of the Gambling Devices Transportation Act permitting transport of a gambling device into a state where it is legal did not preempt state statute prohibiting possession and operation of gambling devices; the federal statute anticipated state legislation, and compliance with both the state and federal statutes was not impossible. State v. 192 Coin‑Operated Video Game Machines (S.C. 2000) 338 S.C. 176, 525 S.E.2d 872, rehearing denied, certiorari denied 121 S.Ct. 62, 531 U.S. 820, 148 L.Ed.2d 28. Gaming And Lotteries 255(3); States 18.15

In an action pursuant to Section 52‑15‑20, the Circuit Court properly found that an amendment to Section 52‑15‑10 that added in‑line pin games and video games to the machines governed by its provisions related not only to a definition of the machines involved, but also dealt with license fees to be collected, all of which was germane to the matter of appropriating money and raising revenue, and thus the amended section did not violate SC Const Art III, Section 17, which should be liberally construed so as to uphold legislation if practicable. Furthermore, the Court properly found that Sections 52‑15‑10 and 16‑19‑60, regulating coin‑operated machines, are not in conflict with SC Const Act XVII Sections 7 and 8, where, although the machines might be used for the purpose of gambling, like decks of cards or dice, there was no contention that the machines were used for that purpose or any other illegal purpose, so that a lottery, as contemplated by the constitution, was simply not involved. (Decided under former statute.) Powell v. Red Carpet Lounge (S.C. 1984) 280 S.C. 142, 311 S.E.2d 719.

In an action pursuant to former Section 52‑15‑20, the Circuit Court properly found that former Sections 52‑15‑10 and 16‑19‑60, regulating coin‑operated machines, are not in conflict with SC Const Act XVII Sections 7 and 8, where, although the machines might be used for the purpose of gambling, like decks of cards or dice, there was no contention that the machines were used for that purpose or any other illegal purpose, so that a lottery, as contemplated by the constitution, was simply not involved. Powell v. Red Carpet Lounge (S.C. 1984) 280 S.C. 142, 311 S.E.2d 719.

An analysis of this section’s wording convinces the court that a man of reasonable intelligence is given fair notice of the machines proscribed; that the statute cannot be used in a capricious or discriminatory manner; and that the personal liberties guaranteed by the Bill of Rights are satisfied thereunder. (Decided under former statute.) State v. DeAngelis (S.C. 1971) 257 S.C. 44, 183 S.E.2d 906.

Owner of concession in army camp shipped pinball machines from North Carolina to army camp by truck. Upon arrival the camp facilities were closed so they were stored outside in a store until morning, where they were seized by the sheriff under this section. The fact that they were in interstate commerce does not prevent enforcement of the police power of the State. (Decided under former statute.) State v. Appley (S.C. 1945) 207 S.C. 284, 35 S.E.2d 835, 162 A.L.R. 1184.

2.5. Construction with other laws

Gambling Cruise Act did not authorize indian tribe to offer video poker on its reservation; Act did not alter statewide ban on video poker or authorize utilization of video poker devices anywhere in state’s territorial limits, and tribe specifically agreed that it was allowed to offer gambling on its reservation to same extent allowed by state law. Catawba Indian Nation v. State (S.C. 2014) 407 S.C. 526, 756 S.E.2d 900. Indians 337(2)

3. Illegal gambling devices

Before 1949 amendment a pin table machine was illegal under this section. (Decided under former statute.) Alexander v Hunnicutt (1941) 196 SC 364, 13 SE2d 630. Cannon v Odom (1941) 196 SC 371, 13 SE2d 633. Ingram v Bearden (1948) 212 SC 399, 47 SE2d 833. Holliday v Governor of South Carolina (1948, DC SC) 78 F Supp 918, affd 335 US 803, 93 L Ed 360, 69 S Ct 56.

Machine confiscated from convenience store was not “used for gambling” under statute governing licensed machines, and therefore was not an illegal gaming device; machine did not involve a game of chance, in that a good player could win every time. South Carolina Law Enforcement Div. v. 1‑Speedmaster S/N 00218 (S.C.App. 2011) 397 S.C. 94, 723 S.E.2d 809. Gaming And Lotteries 253

Pull‑tab cards and game machines dispensing them were illegal gambling devices under statute prohibiting “pull boards,” although dispensers did not resemble slot machines; sole function of the game cards was to provide a game of chance, in the form of a cash prize, to players who deposited a dollar in the card dispenser, and payout amount and profits were predetermined by the deck of cards placed in the machines. Ward v. West Oil Co., Inc. (S.C. 2010) 387 S.C. 268, 692 S.E.2d 516. Gaming And Lotteries 253

Gaming system operators’ contract with convenience store owner to place pull tab machines in stores was void ab initio since the card and dispensing machines were illegal gambling devices, and, thus, operators could not pursue breach of contract action, despite claims that they could not have anticipated Supreme Court decision in similar case, they relied on supplier’s assurances of legality, and owner would be unjustly enriched by keeping profits. Ward v. West Oil Co., Inc. (S.C. 2010) 387 S.C. 268, 692 S.E.2d 516. Gaming And Lotteries 255(2)

Pre‑paid, long distance telephone cards and electronic phone card dispensers violated statute governing illegal gambling devices; statute declared illegal any pull board or other device pertaining to games of chance, when printing phone card rolls, computer randomly determined which game piece attached to which phone card would be winner, such that phone card rolls presented element of chance in phone card dispensers and caused cards and dispensers to violate statute, dispensers were like slot machines and not traditional vending machines, and phone card itself contained element of chance, which violated statute. Sun Light Prepaid Phonecard Co., Inc. v. State (S.C. 2004) 360 S.C. 49, 600 S.E.2d 61, rehearing denied, certiorari denied 125 S.Ct. 1069, 543 U.S. 1120, 160 L.Ed.2d 1068. Gaming And Lotteries 253

Magistrates’ orders and returns stating that gambling machines were illegal slot machines under statutory and case law were sufficiently detailed, even though they failed to state the extent of the examination and most machines were inoperable; the owner admitted illegality, and the magistrate was not required to test the machines. State v. 192 Coin‑Operated Video Game Machines (S.C. 2000) 338 S.C. 176, 525 S.E.2d 872, rehearing denied, certiorari denied 121 S.Ct. 62, 531 U.S. 820, 148 L.Ed.2d 28. Gaming And Lotteries 368

A coin‑operated video‑machine was an illegal video slot machine where upon the deposit of a coin, the machine displayed images that rotated in separate independent vertical lines, slowed and then stopped, and if a combination of images matched horizontally, vertically or in some cases, diagonally, the operator would be credited with free replays. State v. One Coin‑Operated Video Game Mach. (S.C. 1996) 321 S.C. 176, 467 S.E.2d 443, rehearing denied.

The machine, referred to as a “monkey machine,” is operated by electricity; no skill is required in playing it. It would appear to be quite similar to that which is often called a slot machine or a “one‑armed bandit,” except that the machine here involved does not have an automatic payoff feature. It is obviously not a pin table machine with free play feature as exempted from the statute. (Decided under former statute.) State v. DeAngelis (S.C. 1971) 257 S.C. 44, 183 S.E.2d 906.

The legislature, by the enactment of this section and Code 1962 Section 5‑622 condemned any devices pertaining to games of chance. (Decided under former statute.) Squires v. South Carolina Law Enforcement Division (S.C. 1967) 249 S.C. 609, 155 S.E.2d 859.

The statute does not require that the gambling devices be operative or in complete repair before they are subject to seizure or destruction. (Decided under former statute.) Squires v. South Carolina Law Enforcement Division (S.C. 1967) 249 S.C. 609, 155 S.E.2d 859.

Coin‑operated nonpayout pin tables with a free play feature are exempt from this section; hence, from the confiscation provisions of Code 1962 Section 5‑622. (Decided under former statute.) See Alexander Amusement Co. v. State (S.C. 1965) 246 S.C. 530, 144 S.E.2d 718.

The devices permitted to be confiscated under Code 1962 Section 5‑622 are limited to those pertaining to games of chance prohibited by this section, or those in violation of any other law of this State. Alexander Amusement Co. v. State (S.C. 1965) 246 S.C. 530, 144 S.E.2d 718.

Where the amount of amusement given to player of a machine is determined by chance or hazard, such machine is a gambling device, thus, a slot machine which awards free games contingent upon the score recorded is an illegal gambling device. Alexander v. Martin (S.C. 1939) 192 S.C. 176, 6 S.E.2d 20. Gaming And Lotteries 366

A machine may be unlawful even though it indicates in advance exactly what it will dispense, and although the tokens issued have no trade value; thus, a slot machine which gave a package of mints, and at irregular intervals issued tokens in varying amounts, was held to constitute a gambling device in violation of this section. However, machine dispensing only gum or placing coin therein is not a gambling device. Harvie v. Heise (S.C. 1929) 150 S.C. 277, 148 S.E. 66, appeal dismissed 49 S.Ct. 351, 279 U.S. 822, 73 L.Ed. 976, appeal dismissed, certiorari denied 49 S.Ct. 478, 279 U.S. 824, 73 L.Ed. 977, appeal dismissed 49 S.Ct. 480, 279 U.S. 876, 73 L.Ed. 1010.

A slot machine operated with nickels, which, whenever a nickel is deposited, gives chewing gum, etc., but might also give in addition a number of trade checks indicated in advance, is an unlawful machine under this section in that it does not give a certain and uniform return in value for each coin deposited. Griste v. Burch (S.C. 1919) 112 S.C. 369, 99 S.E. 703. Gaming And Lotteries 239

4. Parts and subassemblies

Machine parts, subassemblies, and the dies and molds used to make such parts, are subject to seizure and destruction under this section and Code 1962 Section 5‑622, as it would abort the legislative purpose to hold that an assembled gambling device is the only one that is condemned and subject to seizure and destruction and to permit the subassemblies and component parts, and the dies and molds for the making of such to escape the condemnation of the statutes. (Decided under former statute.) Squires v. South Carolina Law Enforcement Division (S.C. 1967) 249 S.C. 609, 155 S.E.2d 859.

5. Elements of offense

State, at post‑seizure hearing, was not required to prove illegal gambling machines were operable. Union County Sheriff’s Office v. Henderson (S.C. 2011) 395 S.C. 516, 719 S.E.2d 665. Gaming And Lotteries 368

The criminal defense of reliance on expert advice was inapplicable to forfeiture of illegal gambling machines, where the owner was not being prosecuted and intent was not an element of the statute prohibiting possession. State v. 192 Coin‑Operated Video Game Machines (S.C. 2000) 338 S.C. 176, 525 S.E.2d 872, rehearing denied, certiorari denied 121 S.Ct. 62, 531 U.S. 820, 148 L.Ed.2d 28. Forfeitures 66; Gaming And Lotteries 367

The statute contains no requirement that in order to constitute a violation of it an objectionable machine must be kept for the purpose of operation and it was proper for the legislature, in order to prevent the use of a device for gambling, to prohibit its possession or ownership. (Decided under former statute.) Squires v. South Carolina Law Enforcement Division (S.C. 1967) 249 S.C. 609, 155 S.E.2d 859.

The legislature, in order to prevent the use of a device for gambling, may prohibit its possession or ownership, and this section did not make the intended use for gambling a prerequisite to the crime. (Decided under former statute.) State v. Appley (S.C. 1945) 207 S.C. 284, 35 S.E.2d 835, 162 A.L.R. 1184.

6. Effect of licensing

The licensing of unlawful machines by the State Tax Commission cannot make a lawful machine out of a gambling device, and the payment of the license does not authorize the operation of machines which come within the prohibition of this section. (Decided under former statute.) Alexander v Martin (1939) 192 SC 176, 6 SE2d 20. Alexander v Hunnicutt (1941) 196 SC 364, 13 SE2d 630. Cannon v Odom (1941) 196 SC 371, 13 SE2d 633. Ingram v Bearden (1948) 212 SC 399, 47 SE2d 833.

7. Seizure and destruction

Orders, finding that video gaming machines located in convenience store were illegal and ordering their destruction in civil forfeiture proceeding against seized machines, were admissible in administrative proceeding on store owner’s appeal from Department of Revenue’s revocation of store’s off premises beer and wine permit based on violation of statute prohibiting permit holders from knowingly allowing crimes to be committed on licensed premises; orders were in rem determinations about illegal character of video gaming machines seized from convenience store. South Carolina Department of Revenue v. Meenaxi, Inc. (S.C.App. 2016) 417 S.C. 639, 790 S.E.2d 792. Forfeitures 87

“Cherry Master” and “8‑Liner” video gambling machines were “contraband per se,” rather than “derivative contraband,” and were subject to forfeiture regardless of use or operability. State v. 192 Coin‑Operated Video Game Machines (S.C. 2000) 338 S.C. 176, 525 S.E.2d 872, rehearing denied, certiorari denied 121 S.Ct. 62, 531 U.S. 820, 148 L.Ed.2d 28. Forfeitures 55; Gaming And Lotteries 366

The owner of a slot machine, which is unlawful under this section [Code 1962 Section 5‑621], cannot, in an action in claim and delivery, recover the machine from the sheriff after seizure. Griste v. Burch (S.C. 1919) 112 S.C. 369, 99 S.E. 703. Gaming And Lotteries 368

7.5. Estoppel

Indian tribe’s declaratory judgment action seeking determination on effect of Gambling Cruise Act on tribe’s gambling rights was not precluded by doctrine of res judicata, since issue as to effect of Act on tribe’s rights was not actually decided in prior action regarding tribe’s gambling rights, even if contention was one that could have been raised; ruling that was entitled to res judicata effect was determination made in prior action that tribe’s video poker rights were affected by future changes in state law. Catawba Indian Nation v. State (S.C. 2014) 407 S.C. 526, 756 S.E.2d 900. Judgment 550; Judgment 588; Judgment 713(2)

Doctrine of collateral estoppel did not preclude indian tribe’s declaratory judgment action to determine effect of Gambling Cruise Act on tribe’s gambling rights, since issue decided in prior action regarding tribe’s gambling rights was not the same issue asserted in later declaratory judgment action; in later action, tribe sought declaratory judgment as to interpretation and import of Act on its gambling rights, Act was never raised by parties or addressed by court in prior action, and review of Act was not necessary in reaching determination in prior action. Catawba Indian Nation v. State (S.C. 2014) 407 S.C. 526, 756 S.E.2d 900. Judgment 715(3)

8. Federal courts

Equal protection challenge against state statute that criminalized the keeping or operating of certain video game machines, brought by manufacturer and owner/operator of video poker machines, involved no difficult question of state law, so as to warrant federal court’s invoking Burford abstention doctrine; state’s high court had held that person of reasonable intelligence was given fair notice of which machines were proscribed, and if state law enforcement was found to treat parties similarly situated under statute differently, remaining question, i.e. whether impermissible purpose motivated that different treatment, was purely federal. Martin v. Stewart (C.A.4 (S.C.) 2007) 499 F.3d 360, certiorari denied 128 S.Ct. 2960, 554 U.S. 918, 171 L.Ed.2d 885, on remand 2011 WL 1261543. Federal Courts 2646

Due process vagueness challenge against state statute that criminalized the keeping or operating of coin‑operated video game machines and “other device[s] pertaining to games of chance” involved no difficult question of state law, so as to warrant federal court’s invoking Burford abstention doctrine; state’s high court had expressly held that statutory text was to be given its ordinary meaning, and remaining question, namely whether statute’s ordinary meaning was unconstitutionally vague, was matter of federal law. Martin v. Stewart (C.A.4 (S.C.) 2007) 499 F.3d 360, certiorari denied 128 S.Ct. 2960, 554 U.S. 918, 171 L.Ed.2d 885, on remand 2011 WL 1261543. Federal Courts 2646

Rooker‑Feldman doctrine did not bar federal district court’s consideration of Sections 1983 takings clause action brought by distributor of video gaming machines challenging state statute prohibiting possession of such machines, since distributor had not been party to earlier state‑court action asserting similar challenge. Holliday Amusement Co. of Charleston, Inc. v. State of South Carolina (C.A.4 (S.C.) 2005) 401 F.3d 534, certiorari denied 126 S.Ct. 357, 546 U.S. 822, 163 L.Ed.2d 65, on remand 2006 WL 1285105. Courts 509.3(2)

A South Carolina movie theater operator challenging the constitutionality of Section 12‑21‑2710, imposing a 20 percent tax on “X” rated movies as compared with a 4 percent tax imposed by Section 12‑21‑2420 on other movies, could maintain an action in South Carolina courts pursuant to the Declaratory Judgments Act (Sections 15‑53‑10, et seq.), or pursuant to the State’s equity jurisdiction for injunctive relief. Accordingly, since adequate remedies existed in state court, a federal court action was barred. (Decided under former Section 12‑21‑2710.) Eastern Federal Corp. v. Wasson (D.C.S.C. 1981) 525 F.Supp. 241. Courts 508(6)

9. Sufficiency of evidence

Substantial evidence supported administrative law court’s determination that convenience store owner knowingly allowed illegal video gaming machines in the store in violation of statute, prohibiting holders of permits authorizing sale of beer or wine from knowingly allowing criminal acts on licensed premises; magistrate judge determined that machines were illegal in civil forfeiture proceeding, owner of machines instructed owner of store to unplug machines and empty money from machines on day that agent inspected store, and owner of machines took money from machines every week and split it with owner of store. South Carolina Department of Revenue v. Meenaxi, Inc. (S.C.App. 2016) 417 S.C. 639, 790 S.E.2d 792. Intoxicating Liquors 108.5

Evidence was sufficient to support trial court’s findings that video game machines were illegal gambling devices, subject to destruction, even though illegal game could not be played on six of the seven machines at time of post‑seizure hearing; video showed confidential informant (CI), who testified, playing illegal game on one of the machines during state’s undercover operation, and evidence established that illegal games were installed on machines and that machines had been altered to allow “quick” deletion of games. Union County Sheriff’s Office v. Henderson (S.C. 2011) 395 S.C. 516, 719 S.E.2d 665. Gaming And Lotteries 368; Gaming And Lotteries 386(14)

9.5. Admissibility of evidence

Testimony by special law enforcement agent who conducted regulatory alcohol beverage license inspection of convenience store, concerning his experience with illegal video gaming machines and coupons issued by machines, was admissible as lay opinion testimony in administrative proceeding on store owner’s appeal from Department of Revenue’s revocation of store’s off premises beer and wine permit; agent was testifying as to his knowledge as law enforcement officer based on his previous observations. South Carolina Department of Revenue v. Meenaxi, Inc. (S.C.App. 2016) 417 S.C. 639, 790 S.E.2d 792. Intoxicating Liquors 108.10(6)

Report prepared by special law enforcement agent after conducting regulatory alcoholic beverage license inspection of convenience store containing illegal video gaming machines was generally admissible under business records exception to rule against hearsay in administrative proceeding on store owner’s appeal from Department of Revenue’s revocation of store’s off premises beer and wine permit; agent testified that he documented inspection of store in report and he normally kept reports in ordinary course of business, and report’s stamp indicated that agent prepared report within one month after inspection. South Carolina Department of Revenue v. Meenaxi, Inc. (S.C.App. 2016) 417 S.C. 639, 790 S.E.2d 792. Intoxicating Liquors 249

Admission of special law enforcement agent’s opinion contained in report, which agent prepared after conducting regulatory alcoholic beverage license inspection of convenience store containing illegal video gaming machines, that was excluded by business records exception to hearsay rule was harmless error in administrative proceeding on store owner’s appeal from Department of Revenue’s revocation of store’s off premises beer and wine permit; other evidence showed that the machines were illegal, including agent’s testimony about the games the machines offered and order finding machines illegal in civil forfeiture proceeding. South Carolina Department of Revenue v. Meenaxi, Inc. (S.C.App. 2016) 417 S.C. 639, 790 S.E.2d 792. Intoxicating Liquors 108.5

Convenience store clerk’s statements, which he made to special law enforcement agent during regulatory alcohol beverage license inspection of convenience store containing illegal video gaming machines, were admissible as statements by party’s agent in administrative proceeding on store owner’s appeal from Department of Revenue’s revocation of store’s off premises beer and wine permit; clerk identified himself as store clerk, clerk was behind the counter when agent entered store, and clerk’s statements related to her boss’s actions with the machines found in the store. South Carolina Department of Revenue v. Meenaxi, Inc. (S.C.App. 2016) 417 S.C. 639, 790 S.E.2d 792. Intoxicating Liquors 108.10(6)

10. Review

Law Enforcement Division, seeking interpretation of statute that would make any machine with a free play feature illegal, failed to preserve issue for appellate review in proceeding in which Division appealed magistrate’s finding that machine confiscated from convenience store was not an illegal gaming device; Division raised issue at hearing before magistrate, but magistrate failed to address argument in its final order, and although filing of motion to alter or amend with magistrate preserved issue for review by circuit court, there was no ruling from circuit court as to issue. South Carolina Law Enforcement Div. v. 1‑Speedmaster S/N 00218 (S.C.App. 2011) 397 S.C. 94, 723 S.E.2d 809. Gaming And Lotteries 368

Legality of pull‑tab cards and machines was appropriate for Supreme Court review, even though the issue was not previously raised or ruled upon during course of gaming business operators’ suit against convenience store owner for breach of contract; Supreme Court would not enforce illegal contract. Ward v. West Oil Co., Inc. (S.C. 2010) 387 S.C. 268, 692 S.E.2d 516. Appeal And Error 173(6)

**SECTION 12‑21‑2712.** Seizure and destruction of unlawful machines, devices, etc.

Any machine, board, or other device prohibited by Section 12‑21‑2710 must be seized by any law enforcement officer and at once taken before any magistrate of the county in which the machine, board, or device is seized who shall immediately examine it, and if satisfied that it is in violation of Section 12‑21‑2710 or any other law of this State, direct that it be immediately destroyed.

HISTORY: 1986 Act No. 308 Section 4; 1999 Act No. 125, Section 2.

CROSS REFERENCES

Coin‑operated machines or devices not being subject to confiscation due to violation, see Section 12‑21‑2721.

Library References

Searches and Seizures 30.

Westlaw Topic No. 349.

C.J.S. Searches and Seizures Sections 62, 87 to 89.

RESEARCH REFERENCES

ALR Library

25 ALR, Federal 2nd Series 207 , Propriety of Federal Court’s Abstention, Under Burford v. Sun Oil Co., 319 U.S. 315, 63 S. Ct. 1098, 87 L. Ed. 1424 (1943), as to Claim that State or Local Statute or Regulation, or Application Thereof, Violates...

Encyclopedias

S.C. Jur. Gaming Section 30, Vending Machines and Other Devices.

Attorney General’s Opinions

A coin‑operated device in which skill and judgment are non‑dominant factors and which gives no uniform and fair return for every coin deposited constitutes an illegal gambling device as proscribed by Section 52‑15‑10 of the 1976 Code of Laws. 1978 Op Atty Gen, No 78‑201, p 226 (December 5, 1978) 1978 WL 22669.

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Jurisdiction 2

Notice 1

1. Notice

Magistrate’s ruling that gaming machines before the court were legal games of skill was not void for lack of controversy or notice to state of proceedings; county was given opportunity to present evidence that machines were illegal, and forfeiture statute did not require notification of state upon seizure of gaming machines. Allendale County Sheriff’s Office v. Two Chess Challenge II (S.C. 2004) 361 S.C. 581, 606 S.E.2d 471. Forfeitures 98; Gaming And Lotteries 368

2. Jurisdiction

Magistrate lacked jurisdiction to rule that all gaming machines “operating in an identical manner” to machines before the court were legal, in forfeiture proceeding, where forfeiture statute only allowed magistrate to rule on machines before the court. Allendale County Sheriff’s Office v. Two Chess Challenge II (S.C. 2004) 361 S.C. 581, 606 S.E.2d 471. Forfeitures 118; Gaming And Lotteries 368

3. Claim and delivery

The owner of a slot machine, which is unlawful under this section [Code 1962 Section 5‑621], cannot, in an action in claim and delivery, recover the machine from the sheriff after seizure. Griste v. Burch (S.C. 1919) 112 S.C. 369, 99 S.E. 703. Gaming And Lotteries 368

**SECTION 12‑21‑2714.** Use of slug or any false, counterfeited, mutilated, etc. coin to operate automatic vending machine or other machine requiring coin for operation.

(A) It is unlawful for a person to operate, cause to operate, or attempt to operate an automatic vending machine, slot machine, coin‑box telephone, or other receptacle designed to receive lawful coin of the United States of America in connection with the sale, use, or enjoyment of property or service by means of a slug or any false, counterfeited, mutilated, sweated, or foreign coin, or by any means not lawfully authorized by the owner, lessee, or licensee of the receptacle.

(B) It is unlawful for a person to take, obtain, or receive from or in connection with any receptacle designed to receive lawful coin of the United States of America in connection with the sale, use, or enjoyment of property or service any goods, wares, merchandise, gas, electric current, or other article of value or the use or enjoyment of any telephone or telegraph facilities, or service, or of any musical instrument, phonograph, or other property, without depositing in and surrendering to the receptacle lawful coin of the United States of America in the amount required by the owner, lessee, or licensee of the receptacle.

(C) A person who violates the provisions of this section is guilty of a misdemeanor and, upon conviction, must be fined in the discretion of the court or imprisoned not more than two years.

HISTORY: 1986 Act No. 308 Section 4; 1993 Act No. 184, Section 156.

Library References

False Pretenses 15.

Westlaw Topic No. 170.

C.J.S. False Pretenses Section 33.

**SECTION 12‑21‑2716.** Manufacture, sale, or other disposition of slug, device, or substance, etc. for fraudulent operation of coin‑operated machine; penalties.

A person who, with intent to cheat or defraud the owner, lessee, licensee, or other person entitled to the contents of an automatic vending machine, slot machine, coin‑box telephone, or other receptacle, depository, or contrivance designed to receive lawful coin of the United States of America in connection with the sale, use, or enjoyment of property or service or who, knowing that the same is intended for unlawful use, manufactures for sale, or sells or gives away any slug, device, or substance intended or calculated to be placed or deposited in the automatic vending machine, slot machine, coin‑box telephone, or other receptacle, depository, or contrivance is guilty of a felony and, upon conviction, must be fined in the discretion of the court or imprisoned not more than five years.

HISTORY: 1986 Act No. 308 Section 4; 1993 Act No. 184, Section 17.

**SECTION 12‑21‑2718.** Records.

Every person required to obtain a license required under Sections 12‑21‑2720 and 12‑21‑2730 shall maintain records showing the manufacturers’ serial number, model, or type of machine.

HISTORY: 1986 Act No. 308 Section 4.

**SECTION 12‑21‑2720.** License for coin‑operated devices or machines; license tax; maximum municipal license charges; special one‑time interim fees.

(A) Every person who maintains for use or permits the use of, on a place or premises occupied by him, one or more of the following machines or devices shall apply for and procure from the South Carolina Department of Revenue a license effective for two years for the privilege of making use of the machine in South Carolina and shall pay for the license a tax of fifty dollars for each machine in item (1), two hundred dollars for each machine in item (2), and four thousand dollars for each machine in item (3):

(1) a machine for the playing of music or kiddy rides operated by a slot or mechanical amusement devices and juke boxes in which is deposited a coin or thing of value. A machine on which an admissions tax is imposed is exempt from the C.O.D. license provisions of this section.

(2) a machine for the playing of amusements or video games, without free play feature, or machines of the crane type operated by a slot in which is deposited a coin or thing of value and a machine for the playing of games or amusements, which has a free play feature, operated by a slot in which is deposited a coin or thing of value, and the machine is of the nonpayout pin table type with levers or “flippers” operated by the player by which the course of the balls may be altered or changed. A machine required to be licensed under this item is exempt from the license fee if an admissions tax is imposed.

(3) a machine of the nonpayout type, or in‑line pin game, operated by a slot in which is deposited a coin or thing of value except machines of the nonpayout pin table type with levers or flippers” operated by the player by which the course of the balls may be altered or changed.

(B) No municipality may limit the number of machines within the boundaries of the municipality. A municipality may by ordinance impose a license fee on machines licensed pursuant to subsection (A)(3) of this section in an amount not exceeding ten percent of three thousand six hundred dollars of the license fee imposed pursuant to subsection (A) for the equivalent license period.

(C) The owner or operator of any coin‑operated device subject to licensing under Section 12‑21‑2720(A)(3) and which has multi‑player stations, shall purchase a separate license for each such station.

(D) A county may by ordinance impose a license fee on machines licensed pursuant to subsection (A)(3) of this section located in an unincorporated area of the county in an amount not exceeding ten percent of three thousand six hundred dollars of the license fee imposed pursuant to subsection (A) for the equivalent license period.

(E) The Department of Revenue is authorized to assess an additional fee of fifty dollars on each Class Two coin‑operated machine license authorized in this section. These funds must be collected by the Department of Revenue and sent to the State Law Enforcement Division to offset the cost of video gaming enforcement. The State Law Enforcement Division shall retain, expend, and carry forward these funds.

HISTORY: 1986 Act No. 308 Section 4; 1986 Act No. 540, Part II, Section 26A; 1987 Act No. 170, Part II, Section 3A; 1990 Act No. 612, Section 4; 1991 Act No. 171, Part II, Section 14A; 1992 Act No. 361, Section 14; 1992 Act No. 501, Part II, Section 10B; 1993 Act No. 164, Part II, Sections 19D, 59A, 60A; 1993 Act No. 181, Section 148; 1994 Act No. 497, Part II, Section 39; 1995 Act No. 145, Part II, Section 67C2; 1997 Act No. 155, Part II, Section 54C; 1999 Act No. 125, Section 3; 2007 Act No. 96, Section 2, eff June 15, 2007.

Editor’s Note

1999 Act No. 125, Part II, Section 9(4) effective July 2, 1999, provides as follows:

“(4) In addition to all license taxes and fees imposed by the State on video games with a free play feature pursuant to Section 12‑21‑2720(A)(3) of the 1976 Code imposing such licenses and fees, there is imposed a one‑time surcharge license fee of fifty dollars for each such licensed machine due and payable to the Department of Revenue on or before September 1, 1999. Failure to remit the surcharge in a timely manner is deemed failure to pay the license tax imposed pursuant to Section 12‑21‑2720(A)(3). The revenues of this fee shall be used to defray the expenses of the statewide referendum required by this act.”

In Joytime Distributors and Amusement Co., Inc., v. The State of South Carolina, 338 S.C. 634, 528 S.E.2d 647 (1999), the Supreme Court of South Carolina stated:

“Part II, Section 9(4) of Act 125 provides for a one‑time surcharge license fee of $50 per licensed machine to be used to defray the costs of the referendum called for in Part II. Joytime states it paid the one‑time surcharge fee on each license it holds under protest and contends that the fee imposed by Part II, Section 9(4) violates various portions of the constitution. Because we have held that the referendum called for in Part II is unconstitutional, Joytime is entitled to a refund of the surcharge fees it has paid. . . .”

1999 Act No. 125, Part VI, Section 23, subsections (C) and (D), provide as follows:

“(C) Part I takes effect July 1, 2000;

“(D) If Part I takes effect, the South Carolina Department of Revenue, upon application, shall refund to any person holding a license for the operation of video game machines, on a pro rata basis, the portion of any license fee previously paid to the department for licenses that extend beyond June 30, 2000;”

CROSS REFERENCES

Civil penalties and damages applicable to certain return or statement filings, see Section 12‑54‑43.

Coin‑operated machines or devices not being subject to confiscation due to violation, see Section 12‑21‑2721.

Criminal penalties applicable to certain return or statement filings, see Section 12‑54‑44.

Fees for licensure of coin‑operated machines and devices and other amusements to be prorated on basis of fee imposed under this section, see Section 12‑21‑2734.

Issuance of a temporary license, see Section 12‑21‑2722.

Licensing of machine, under this section, affects penalty for licensing violations, see Section 12‑21‑2738.

Maintenance of records relating to coin‑operated machines, see Section 12‑21‑2750.

Maintenance of records showing the manufacturer’s serial number, model, or type of machine, see Section 12‑21‑2718.

Penalties for certain uses of machines or devices licensed pursuant to this section, see Section 16‑19‑40.

Regulations relating to coin‑operated devices, see S.C. Code of Regulations R. 117‑300.

Requirement of, and cost of, an operator’s license for devices described in this section, see Section 12‑21‑2728.

Requirement that information identifying owner or operator of machine be attached to the machine, see Section 12‑21‑2748.

Library References

Public Amusement and Entertainment 28, 55.

Westlaw Topic No. 315T.

C.J.S. Entertainment and Amusement; Sports Sections 12, 15, 19.

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. Gaming Section 18, Licensing.

S.C. Jur. Gaming Section 29, Coin‑Operated Machines.

Attorney General’s Opinions

Local law enforcement officers may enforce Sections 12‑21‑2720(a)(3) and 12‑21‑2738. S.C. Op.Atty.Gen. (May 23, 1997) 1997 WL 323785.

The 1994 amendments to Section 12‑21‑2720 prohibit the operation of the video poker machines on watercraft which are temporarily docked or plying the waters of South Carolina. Permanently docked vessels or watercraft would not be subject to the provisions of this amendment as long as the operator complies with local and state statutes. 1994 Op Atty Gen, No. 94‑42, p. 96 (June 29, 1994) 1994 WL 378022.

No refund is necessary for any unused portion of a license found invalid since licenses are for the individual video machines and do not sanction a particular location. The operator is responsible for locating the machines in areas which are permitted by local and state statute. 1994 Op Atty Gen, No. 94‑42, p. 96 (June 29, 1994) 1994 WL 378022.

The operation of video gambling machines upon a floating casino situated in South Carolina territorial waters violate both the State constitutional and statutory prohibitions against lotteries as well as the intent of the Video Game Machines Act. 1994 Op Atty Gen, No. 94‑21, p. 51 (March 24, 1994) 1994 WL 136196.

A municipality may tax the machines or devices described in this section (former Section 52‑15‑210) at a maximum rate of $12.50 per year. 1964‑65 Op Atty Gen, No 1874, p 139 (July 6, 1965) 1965 WL 8032.

NOTES OF DECISIONS

In general 1

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1. In general

It is within legislature’s broad police power to regulate ownership and operation of coin‑operated devices; in fact, the State’s power to suppress gambling is practically unrestrained. South Carolina Dept. of Revenue & Taxation v. Rosemary Coin Machines, Inc. (S.C.App. 1998) 331 S.C. 234, 500 S.E.2d 176, rehearing denied, certiorari granted, reversed 339 S.C. 25, 528 S.E.2d 416. Gaming And Lotteries 319(1)

License fee provided by statute governing licensing of coin‑operated machines is not a tax. South Carolina Dept. of Revenue & Taxation v. Rosemary Coin Machines, Inc. (S.C.App. 1998) 331 S.C. 234, 500 S.E.2d 176, rehearing denied, certiorari granted, reversed 339 S.C. 25, 528 S.E.2d 416. Public Amusement And Entertainment 55; Taxation 2002

Statute regulating licensing of coin‑operated gaming machines, and requiring separate licenses for each station of multi‑player machines, was not a penal statute; statute did not provide for penalty or forfeiture, but was enacted to suppress a public wrong. South Carolina Dept. of Revenue & Taxation v. Rosemary Coin Machines, Inc. (S.C.App. 1998) 331 S.C. 234, 500 S.E.2d 176, rehearing denied, certiorari granted, reversed 339 S.C. 25, 528 S.E.2d 416. Gaming And Lotteries 319(1)

2. Construction and application

Amendment to license fee provision of statute governing the licensing of coin‑operated gaming machines, which required separate license for each station of a multi‑player machine, applied prospectively; amendment was not remedial or procedural and did not address retroactivity. South Carolina Dept. of Revenue v. Rosemary Coin Machines, Inc. (S.C. 2000) 339 S.C. 25, 528 S.E.2d 416. Gaming And Lotteries 205(3); Gaming And Lotteries 207

Language of amendment to license fee provision of statute governing the licensing of coin‑operated gaming machines which requires separate license for each station of a multi‑player machine, is clear and without need for construction. South Carolina Dept. of Revenue & Taxation v. Rosemary Coin Machines, Inc. (S.C.App. 1998) 331 S.C. 234, 500 S.E.2d 176, rehearing denied, certiorari granted, reversed 339 S.C. 25, 528 S.E.2d 416. Gaming And Lotteries 326

Amendment to license fee provision of statute governing the licensing of coin‑operated gaming machines, which required separate license for each station of a multi‑player machine, applied retroactively to license for multi‑player video blackjack machine that was in effect at time amendment was adopted; license fee provision was not a tax, or penal statute, and legislature had discretion under its police power to modify license agreement for public good at any time. South Carolina Dept. of Revenue & Taxation v. Rosemary Coin Machines, Inc. (S.C.App. 1998) 331 S.C. 234, 500 S.E.2d 176, rehearing denied, certiorari granted, reversed 339 S.C. 25, 528 S.E.2d 416. Gaming And Lotteries 207

3. Local regulations

State statute providing that no municipality may limit number of video poker machines within its boundaries did not expressly preempt city ordinance providing that up to five such machines were permitted as accessory uses in certain districts, but only if they did not produce gross proceeds exceeding 40% of combined gross proceeds produced by accessory use and permitted principal use; while ordinance effectively limited location of video game machines in city, it did not limit number of machines within municipality. Bugsy’s, Inc. v. City of Myrtle Beach (S.C. 2000) 340 S.C. 87, 530 S.E.2d 890. Zoning And Planning 1033

General Assembly’s comprehensive scheme regulating many aspects of video poker machines did not impliedly preempt all municipal zoning ordinances that impact businesses which have video game poker. Bugsy’s, Inc. v. City of Myrtle Beach (S.C. 2000) 340 S.C. 87, 530 S.E.2d 890. Zoning And Planning 1033

Even if state statute providing that no video poker machine may be licensed or relicensed in any location where “primary and substantial” portion of establishment’s gross proceeds was from such machines were less restrictive than city ordinance providing that up to five such machines were permitted as accessory uses in certain districts, but only if such machines did not produce gross proceeds exceeding 40% of combined gross proceeds produced by accessory use and permitted principal use, statute and ordinance were neither inconsistent nor irreconcilable with each other, as definitions were for different purposes; statute’s “primary and substantial” definition governed which establishments could obtain machine licenses, while ordinance’s 40% gross proceeds requirement governed where those establishments could be located within city. Bugsy’s, Inc. v. City of Myrtle Beach (S.C. 2000) 340 S.C. 87, 530 S.E.2d 890. Zoning And Planning 1033

City zoning ordinance imposing restrictions upon businesses operating video poker machines did not improperly criminalize operation of such machines; although ordinance provided criminal penalties for its violation, it did not criminalize operation of video game machines, but merely provided criminal penalties for violation of provisions of zoning ordinance, and so long as businesses complied with requirements of zoning ordinance, they could operate video game machines. Bugsy’s, Inc. v. City of Myrtle Beach (S.C. 2000) 340 S.C. 87, 530 S.E.2d 890. Zoning And Planning 1091

Two year amortization period in city zoning ordinance imposing restrictions upon businesses operating video poker machines was reasonable, as record showed that business which challenged ordinance was allowed to recoup rental cost of its machines; zoning administrator testified that in determining appropriate amortization period, he considered cost of such machines, that he believed machine cost between $3,500 and $8,000, that he used “high amount,” and that he learned on day of hearing that machine costs $7,500. Bugsy’s, Inc. v. City of Myrtle Beach (S.C. 2000) 340 S.C. 87, 530 S.E.2d 890. Zoning And Planning 1091

**SECTION 12‑21‑2721.** Confiscation of coin‑operated machines.

Coin‑operated machines or devices licensed pursuant to Section 12‑21‑2720 are not subject to confiscation under Section 12‑21‑2712 due to any violation of Sections 16‑19‑30, 16‑19‑40, 16‑19‑50, or 16‑19‑130.

HISTORY: 1987 Act No. 170, Part II, Section 3B.

Library References

Searches and Seizures 30.

Westlaw Topic No. 349.

C.J.S. Searches and Seizures Sections 62, 87 to 89.

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. Gaming Section 29, Coin‑Operated Machines.

**SECTION 12‑21‑2722.** Temporary licenses; county or state fair; fees; duration.

In lieu of the license required under Sections 12‑21‑2720, 12‑21‑2728, and 12‑21‑2730 the department may issue a temporary license to persons making application to operate machines defined in Sections 12‑21‑2720 and 12‑21‑2730 at a recognized county or state fair. The temporary license is the total amount of license fees required on all machines for which application is made, based upon one‑twenty‑fourth of the biennial license required under Sections 12‑21‑2720, 12‑21‑2728, and 12‑21‑2730. The license is valid for the specific location designated on the license and the number of machines for which application was made and expires when the designated fair officially ends.

HISTORY: 1986 Act No. 308 Section 4; 1992 Act No. 501, Part II, Section 10C.

Library References

Public Amusement and Entertainment 28, 55.

Westlaw Topic No. 315T.

C.J.S. Entertainment and Amusement; Sports Sections 12, 15, 19.

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. Gaming Section 18, Licensing.

**SECTION 12‑21‑2724.** Operation may be presumed lawful by department.

Upon application being made for a license to operate any machine or apparatus under this article, the department may presume that the operation of the machine or apparatus is lawful and when a license has been issued for the operation thereof the sum paid for the license may not be refunded notwithstanding that the operation of the machine or apparatus is prohibited.

HISTORY: 1986 Act No. 308 Section 4.

Library References

Public Amusement and Entertainment 28, 55.

Westlaw Topic No. 315T.

C.J.S. Entertainment and Amusement; Sports Sections 12, 15, 19.

**SECTION 12‑21‑2726.** Display of license.

Every person who maintains for use or permits the use of, on a place or premises occupied by him, a machine subject to the license imposed by this article by way of proof of licensing must have a current license displayed conspicuously on the front of the machine.

HISTORY: 1986 Act No. 308 Section 4; 1987 Act No. 170, Part II, Section 3D; 1993 Act No. 181, Section 149; 1993 Act No. 164, Part II, Section 19E; 1999 Act No. 125, Section 4.

Editor’s Note

1999 Act No. 125, Part VI, Section 23, subsections (C) and (D), provide as follows:

“(C) Part I takes effect July 1, 2000;

“(D) If Part I takes effect, the South Carolina Department of Revenue, upon application, shall refund to any person holding a license for the operation of video game machines, on a pro rata basis, the portion of any license fee previously paid to the department for licenses that extend beyond June 30, 2000;”

CROSS REFERENCES

Further provisions concerning attachment of a license to a machine, see Section 12‑21‑2732.

Maintenance of records relating to coin‑operated machines, see Section 12‑21‑2750.

Requirement that information identifying owner or operator of machine be attached to the machine, see Section 12‑21‑2748.

Library References

Public Amusement and Entertainment 28, 55.

Westlaw Topic No. 315T.

C.J.S. Entertainment and Amusement; Sports Sections 12, 15, 19.

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. Gaming Section 18, Licensing.

**SECTION 12‑21‑2728.** Requirement of, and cost of, operator’s license for coin‑operated devices; cancellation of license for failure to remit taxes.

(A) In addition to all other licenses required by this chapter, a person who owns or operates devices described in Sections 12‑21‑2720 and 12‑21‑2730 shall obtain an operator’s license biennially as follows:

(1) fifty dollars for devices in Sections 12‑21‑2720(A)(1) and 12‑21‑2730;

(2) two hundred dollars for devices in Section 12‑21‑2720(A)(2);

(3) two thousand dollars for devices in Section 12‑21‑2720(A)(3).

(B) Only one license is required regardless of the number or type of devices owned or operated, and the cost of that license is the highest fee enumerated in this section for a device owned or operated.

(C) The licenses provided by this section are subject to Section 12‑21‑2734 and are a condition precedent to engaging in or the continuing operation of machines described in this chapter. Failure to remit taxes to the State is justification for the cancellation of the license provided in this section.

HISTORY: 1986 Act No. 308 Section 4; 1986 Act No. 540, Part II, Section 41; 1992 Act No. 501, Part II, Section 10D.

Editor’s Note

1999 Act No. 125, Part VI, Section 23, subsections (C) and (D), provide as follows:

“(C) Part I takes effect July 1, 2000;

“(D) If Part I takes effect, the South Carolina Department of Revenue, upon application, shall refund to any person holding a license for the operation of video game machines, on a pro rata basis, the portion of any license fee previously paid to the department for licenses that extend beyond June 30, 2000;”

CROSS REFERENCES

Temporary licenses, generally, see Section 12‑21‑2722.

Library References

Public Amusement and Entertainment 28, 55.

Westlaw Topic No. 315T.

C.J.S. Entertainment and Amusement; Sports Sections 12, 15, 19.

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. Gaming Section 18, Licensing.

Attorney General’s Opinions

The license required by Section 52‑15‑245 on all locations having ten or more coin‑operated devices is not transferable from one location to another. 1982 Op Atty Gen, No 82‑67, p 68 (November 9, 1982) 1982 WL 155036.

**SECTION 12‑21‑2730.** License for billiard or pocket billiard table, foosball table, bowling lane table, or skeeball table.

Every person owning or operating a billiard or pocket billiard table, foosball table, bowling lane table, or skeeball table for profit shall apply for and procure from the department a license for the privilege of operating the table and pay for the license a biennial tax of fifty dollars for each table owned or operated.

The license in this section must be issued and is valid in accordance with Section 12‑21‑2734.

HISTORY: 1986 Act No. 308 Section 4; 1992 Act No. 501, Part II, Section 10E.

CROSS REFERENCES

Attachment of a license to a permanent, nontransferable part of the machine, see Section 12‑21‑2732.

Civil penalties and damages applicable to certain return or statement filings, see Section 12‑54‑43.

Criminal penalties applicable to certain return or statement filings, see Section 12‑54‑44.

Issuance of a temporary license, see Section 12‑21‑2722.

Maintenance of records showing the manufacturer’s serial number, model, or type of machine, see Section 12‑21‑2718.

Requirement of, and cost of, an operator’s license for devices described in this section, see Section 12‑21‑2728.

Library References

Public Amusement and Entertainment 28.

Westlaw Topic No. 315T.

C.J.S. Entertainment and Amusement; Sports Sections 12, 15, 19.

Attorney General’s Opinions

Discussion of operating hours for a Game Room containing pool tables. S.C. Op.Atty.Gen. (Oct. 29, 1997) 1997 WL 783388.

A coin‑operated less than regulation‑size pool or billiard table is subject to the same regulations as regulation‑size pool or billiard table; an amusement place with less than regulation‑size pool or billiard tables may be subject to the provisions of former 1962 Code Sections 5‑501 and 5‑513 [1976 Code Sections 52‑11‑10 and 52‑11‑130], if it is a pool or billiard room. 1975‑76 Op Atty Gen, No 4360, p 192 (May 31, 1976) 1976 WL 22979.

A municipality may enact a valid ordinance requiring that pool tables in business establishments cease operation after 11:00 P.M. (Decided under former Section 52‑11‑40.) 1975‑76 Op Atty Gen, No 4271, p 88 (February 26, 1976) 1976 WL 22891.

A municipality can impose a tax on coin‑operated pool tables. (Decided under former Sections 52‑11‑190 and 52‑15‑250.) 1967‑68 Op Atty Gen, No 2464, p 129 (June 10, 1968) 1968 WL 8863.

A municipality is authorized to prohibit the operation of poolrooms by the provision of this section. (Decided under former Section 52‑11‑40.) 1967‑68 Op Atty Gen, No 2464, p 129 (June 10, 1968) 1968 WL 8863.

A town may by ordinance prohibit poolrooms from operating inside its limits. (Decided under former Section 52‑11‑40.) 1967‑68 Op Atty Gen, No 2457, p 120 (May 22, 1968) 1968 WL 8858.

The term “principal business,” as used by the Supreme Court in the case of Melody Music Co. v McLeod (1966) 248 SC 545, 151 SE2d 749, relates to the issue as to where the business constitutes that of a billiard or pocket billiard room within the provision of this chapter and means that if the chief, leading, main, most considerable and important activity of the business is the operation of billiard or pocket billiard tables, then, in that event, the same constitutes a billiard or pocket billiard room. (Decided under former Sections 52‑11‑10 and 52‑11‑130.) 1966‑67 Op Atty Gen, No 2218, p 13 (January 23, 1967) 1967 WL 12859.

NOTES OF DECISIONS

In general 2

Constitutional issues 1

1. Constitutional issues

This section (former Section 52‑11‑40) is constitutional. Fowler v. City of Anderson (S.C. 1925) 131 S.C. 473, 128 S.E. 410.

2. In general

The operation of a billiard or pocket billiard table, such as is described in and licensed under former Code 1962 Section 5‑665, in places in which the principal business is something other than the operation of billiard or pocket billiard tables, is not subject to the provisions of subsection (6) of this section and former Code 1962 Section 5‑513. Melody Music Co. v. McLeod (S.C. 1966) 248 S.C. 545, 151 S.E.2d 749.

A municipality is authorized to prohibit the operation of pool rooms in accordance with the provisions of this section. (Decided under a former statute.) Fowler v. City of Anderson (S.C. 1925) 131 S.C. 473, 128 S.E. 410.

**SECTION 12‑21‑2732.** Attachment of license to a permanent, nontransferable part of machine.

Every person who maintains for use, or permits the use, on any place or premises occupied by him, any machines subject to the license imposed by Section 12‑21‑2730 shall see that the proper state license is attached to a permanent, nontransferable part of the machine before its operation is commenced.

HISTORY: 1986 Act No. 308, Section 4.

CROSS REFERENCES

Further provisions concerning attachment of a license to a machine, see Section 12‑21‑2726.

Library References

Public Amusement and Entertainment 28.

Westlaw Topic No. 315T.

C.J.S. Entertainment and Amusement; Sports Sections 12, 15, 19.

**SECTION 12‑21‑2734.** Annual licenses required; expiration; prorating fee; liability for penalties.

(A) Every person subject to payment of tax under this article, in advance on or before the first day of June every two years or before doing an act taxable under this article, shall apply for and obtain from the department a license for the privilege of engaging in the business and shall pay the tax levied for it. All licenses expire May thirty‑first the second year of which the license is valid following the date of issue.

(B) As an alternative to the license required in subsection (A), a person may be granted a nonrefundable license beginning April first and to expire September thirtieth, following the date of issue, which may not be prorated. The fee for this six‑month license is one‑fourth the biennial license fee.

(C) As an alternative to the license required in subsection (A) or (B), a person may be granted a nonrefundable license beginning March first and to expire October thirtieth, following the date of issue, which may not be prorated. The fee for this eight‑month license is one‑third the biennial license fee.

(D) If a license required in subsection (A) is purchased after June thirtieth, the license fee must be prorated on a twenty‑four month basis with each month representing one twenty‑fourth of the license fee imposed under Section 12‑21‑2720(A). Failure to obtain or renew a license as required by this article makes the person liable for the penalties imposed in this article.

HISTORY: 1986 Act No. 308 Section 4986; 1987 Act No. 170, Part II, Section 3 (A) to (C); 1992 Act No. 501, Part II, Section 10F; 2001 Act No. 8, Section 1, eff February 20, 2001.

Editor’s Note

1999 Act No. 125, Part VI, Section 23, subsections (C) and (D), provide as follows:

“(C) Part I takes effect July 1, 2000;

“(D) If Part I takes effect, the South Carolina Department of Revenue, upon application, shall refund to any person holding a license for the operation of video game machines, on a pro rata basis, the portion of any license fee previously paid to the department for licenses that extend beyond June 30, 2000;”

CROSS REFERENCES

Provision that operator’s licenses for coin‑operated devices are subject to the requirements of this section, see Section 12‑21‑2728.

Library References

Public Amusement and Entertainment 28.

Westlaw Topic No. 315T.

C.J.S. Entertainment and Amusement; Sports Sections 12, 15, 19.

**SECTION 12‑21‑2736.** Unlawful operation of gambling machine or device not made lawful by issuance of license.

The issuance of a license under the provisions of this article by the department does not make lawful the operation of any gambling machine or device, the operation of which is made unlawful under the laws of this State.

HISTORY: 1986 Act No. 308 Section 4.

Library References

Public Amusement and Entertainment 28.

Westlaw Topic No. 315T.

C.J.S. Entertainment and Amusement; Sports Sections 12, 15, 19.

**SECTION 12‑21‑2738.** Penalties for failure to comply.

A person who fails, neglects, or refuses to comply with the terms and provisions of this article or who fails to attach the required license to any machine, apparatus, billiard, or pocket billiard table, as herein required, is subject to a penalty of fifty dollars for each failure, and the penalty must be assessed and collected by the department.

If the violation under this section relates to a machine licensed pursuant to Section 12‑21‑2720(A)(3), the applicable penalty amount is two thousand five hundred dollars. This penalty must be deposited to the credit of the general fund of the State.

HISTORY: 1986 Act No. 308 Section 4; 1993 Act No. 164, Part II, Section 19F; 1997 Act No. 53, Section 8A; 1997 Act No. 114, Section 6.

Library References

Public Amusement and Entertainment 28, 55.

Westlaw Topic No. 315T.

C.J.S. Entertainment and Amusement; Sports Sections 12, 15, 19.

**SECTION 12‑21‑2740.** License tax or penalties as constituting lien.

Any license tax or penalties herein provided are a first preferred lien upon any and all of the property of the person charged therewith and the department may issue its execution therefor as is provided in Section 12‑21‑3020.

HISTORY: 1986 Act No. 308, Section 46.

Library References

Public Amusement and Entertainment 28, 55.

Westlaw Topic No. 315T.

C.J.S. Entertainment and Amusement; Sports Sections 12, 15, 19.

**SECTION 12‑21‑2742.** Confiscation of unlicensed machine, device, etc.

In addition to the penalties above provided, any machine, apparatus, billiard, or pocket billiard table not having attached thereto the required license, or which is improperly licensed, must be seized and confiscated by the department, its agents or employees, and sold at public auction after thirty days’ advertisement. Upon payment of the license required, the department may, within its discretion, return any property so seized and confiscated and compromise any penalty assessed.

HISTORY: 1986 Act No. 308, Section 4.

Library References

Searches and Seizures 30.

Westlaw Topic No. 349.

C.J.S. Searches and Seizures Sections 62, 87 to 89.

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. Auctions and Auctioneers Section 23, Statutes Governing Auctions of Particular Properties.

S.C. Jur. Gaming Section 29, Coin‑Operated Machines.

**SECTION 12‑21‑2744.** Repossession of seized property; bond; court action to set aside seizure.

The owner or person from whom the property is seized may at any time within five days after the seizure repossess the property by filing with the department a bond in cash or a bond executed by a surety company authorized to do business in this State in double the amount of the tax and penalties due. Within ten days thereafter the person must bring action in a court of competent jurisdiction to have the seizure set aside; otherwise the bond so filed must be declared forfeited by the department.

HISTORY: 1986 Act No. 308, Section 4.

Library References

Searches and Seizures 30.

Westlaw Topic No. 349.

C.J.S. Searches and Seizures Sections 62, 87 to 89.

**SECTION 12‑21‑2746.** Levy of additional local license tax.

Municipalities and counties may levy a license tax on the business taxed under this article, but in no case may a tax so levied exceed one‑half of the amount levied by the State before March 28, 1956.

HISTORY: 1986 Act No. 308, Section 4.

Library References

Public Amusement and Entertainment 55.

Westlaw Topic No. 315T.

Attorney General’s Opinions

Discussion of the authority of the City of Beaufort with respect to charging fees for the operation of video games machines. S.C. Op.Atty.Gen. (Oct. 17, 1995) 1995 WL 805829.

The county council of Florence is given authority to impose county license taxes upon businesses and occupations within the county and may impose a license for the privilege of owning and operating vending machines and coin‑operated devices within the limitation provided in this section. 1970‑71 Op Atty Gen, No 3096, p 41 (February 22, 1971) 1971 WL 17471.

A municipality can impose a tax on coin‑operated pool tables. 1967‑68 Op Atty Gen, No 2464, p 129 (June 10, 1968) 1968 WL 8863.

A municipality or county cannot, under the provisions of this section, impose and collect a license tax on a cigarette vending machine. 1967‑68 Op Atty Gen, No 2426, p 80 (February 29, 1968) 1968 WL 8829.

Municipalities may impose a license tax on billiard or pocket billiard tables that measure not more than three and one half feet wide and seven feet long provided the same do not exceed five dollars. 1966‑67 Op Atty Gen, No 2374, p 223 (October 2, 1967) 1967 WL 8682.

Municipalities may impose a license tax on pinball and coin‑operated music machines provided the same does not exceed twelve dollars and fifty cents. 1966‑67 Op Atty Gen, No 2374, p 223 (October 2, 1967) 1967 WL 8682.

No municipality may levy a business tax for the operation of small billiard tables of more than five dollars per annum per table. (Decided under former Section 52‑15‑360.) 1965‑66 Op Atty Gen, No 1986‑A, p 363 (March 1, 1966) 1966 WL 9325.

**SECTION 12‑21‑2748.** Attachment of information identifying owner or operator of machine.

Any person who owns or operates devices described in Sections 12‑21‑2720 and 12‑21‑2730 must have attached to the machine information identifying the owner or operator of the machine. The identification must be placed on an area of the machine which is visible for inspection purposes. This identification is a condition precedent before the machines may be operated on location. Failure to comply with this requirement subjects the violator to the penalty and enforcement provisions of this chapter and of Chapter 54 as applicable.

HISTORY: 1987 Act No. 170, Part II, Section 3B.

Library References

Public Amusement and Entertainment 28.

Westlaw Topic No. 315T.

C.J.S. Entertainment and Amusement; Sports Sections 12, 15, 19.

**SECTION 12‑21‑2750.** Records relating to machines.

Every person required to obtain a license or required by Section 12‑21‑2720 and Section 12‑21‑2730 shall maintain records showing manufacturer’s serial number, model or type of machine, and the location of the machine. The taxpayer shall maintain information relating to the payment of any monies or compensation made to any persons as part of a lease or contractual agreement to operate the machine on the premises of the person. Information required by this section must be available on demand for inspection by a representative of the commission.

HISTORY: 1987 Act No. 170, Part II, Section 3B.

Library References

Public Amusement and Entertainment 28.

Westlaw Topic No. 315T.

C.J.S. Entertainment and Amusement; Sports Sections 12, 15, 19.

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. Constitutional Law Section 12.1, “Home Rule”‑The Power of Municipalities to Enact Regulations and Ordinances.

S.C. Jur. Gaming Section 2, Background.

ARTICLE 21

Collection and Enforcement Generally

**SECTION 12‑21‑2810.** Enforcement rules and regulations.

The department shall prescribe rules and regulations for the enforcement of this chapter, including rules and regulations governing the stamping of any articles or commodities enumerated in this chapter and the collection of the tax on bottled soft drinks handled by persons operating on interstate common carriers.

HISTORY: 1962 Code Section 65‑851; 1952 Code Section 65‑851; 1942 Code Sections 2527, 2531, 2538, 2555‑2; 1932 Code Sections 2527, 2538, 2555‑2, 2556; 1928 (35) 1089; 1929 (36) 114; 1930 (36) 1358; 1932 (37) 1493; 1934 (38) 1577; 1935 (39) 244, 282, 365; 1936 (39) 1377, 1591, 1771; 1937 (40) 539; 1938 (40) 1761, 1799, 2925; 1940 (41) 1921.

CROSS REFERENCES

General exemptions from property taxes, see Section 12‑37‑220.

Library References

Taxation 3635.

Westlaw Topic No. 371.

C.J.S. Taxation Sections 2153, 2158.

**SECTION 12‑21‑2820.** Regulations as to breaking packages, forms and kinds of containers, and affixing of stamps.

Regulations of the department shall provide the methods of breaking packages, forms and kinds of containers and methods of affixing stamps that shall be employed by persons subject to the taxes imposed by this chapter which will make possible the enforcement of payment by inspection.

HISTORY: 1962 Code Section 65‑852; 1952 Code Section 65‑852; 1942 Code Sections 2528, 2534; 1932 Code Sections 2528, 2534; 1928 (35) 1089; 1930 (36) 1358; 1932 (37) 1319; 1937 (40) 539.

CROSS REFERENCES

Tax on tobacco, ammunition, and playing cards, see Section 12‑21‑610 et seq.

Library References

Taxation 3635.

Westlaw Topic No. 371.

C.J.S. Taxation Sections 2153, 2158.

**SECTION 12‑21‑2830.** Record required of gross receipts; record subject to inspection; violations.

Every person subject to a tax imposed by this chapter shall keep a record showing the value and the gross receipts derived from engaging in any business taxable under this chapter as shall be required by the department and such record shall at all times be subject to inspection by any agent of the department. If any person required under the provisions of this chapter to keep any records, books or papers (a) fails to keep such true and correct records, books or papers, either or all, (b) fails or refuse to submit them for the inspection of the department or its duly authorized agent or (c) willfully makes a false or fraudulent return, such person shall be guilty of a misdemeanor and, upon conviction, shall be subject to a fine of not less than fifty dollars nor more than two hundred dollars or imprisonment of not less than thirty days or more than twelve months or both, in the discretion of the court.

HISTORY: 1962 Code Section 65‑853; 1952 Code Section 65‑853; 1942 Code Sections 2539, 2542; 1932 Code Sections 2539, 2542; 1928 (35) 1089.

Library References

Taxation 3688.

Westlaw Topic No. 371.

C.J.S. Taxation Section 2189.

**SECTION 12‑21‑2860.** Department authorized to conduct inspections.

The department may enter upon the premises of any taxpayer or the business premises of any other person and examine or cause to be examined by any agent or representative designated by it for that purpose any books, papers, records, memoranda, commodities or other things bearing upon the amount of taxes payable and secure from such taxpayer or other person any other information directly or indirectly concerned in the enforcement of this chapter.

HISTORY: 1962 Code Section 65‑856; 1952 Code Section 65‑856; 1942 Code Sections 2526, 2529, 2546; 1932 Code Sections 2526, 2529, 2546, 2556; 1928 (35) 1089; 1930 (36) 1354; 1947 (45) 106.

Library References

Taxation 3686.

Westlaw Topic No. 371.

C.J.S. Taxation Sections 2189, 2191 to 2193.

**SECTION 12‑21‑2870.** Unstamped or untaxed goods constitute contraband which is subject to confiscation; time limits established; sale at auction.

Cigarettes found at any point within the State which have been within the State for a period of twenty‑four hours or longer in possession of any retailer or for a period of seventy‑two hours or longer in possession of any wholesaler or jobber, not having affixed to the package the stamps as required, or on which the tax has not been paid, or of any person importing, receiving, or acquiring cigarettes for use or consumption within the State, not having affixed to the package the stamp as required or on which the tax has not been paid are declared to be contraband goods and may be seized by the department, its employees or any peace officer of the State without a warrant and the goods must be delivered to the department.

HISTORY: 1962 Code Section 65‑857; 1952 Code Section 65‑857; 1942 Code Section 2527, 2538; 1932 Code Sections 2527, 2538; 1928 (35) 1089; 1930 (36) 1358; 1935 (39) 244, 365; 1937 (40) 539; 1938 (40) 2925; 1956 (49) 1841; 1966 (54) 2591; 1968 (55) 2855; 1976 Act No. 543, Section 1; 1984 Act No. 512, Part II, Section 6H.

Library References

Taxation 3711.

Westlaw Topic No. 371.

C.J.S. Taxation Sections 1025, 2219 to 2220.

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. Auctions and Auctioneers Section 23, Statutes Governing Auctions of Particular Properties.

Attorney General’s Opinions

Stamps not required on containers of cigars. The legislature, by 1968 Act No. 1263, has evidenced its intent not to require stamps upon containers of cigars. Therefore, the License Tax Division cannot by regulation require such. 1968‑69 Op Atty Gen, No 2673, p 97 (April 29, 1969) 1969 WL 10674.

**SECTION 12‑21‑2880.** Commodities bearing illegible or unsatisfactory business license meter impressions shall be subject to confiscation.

When the use of business license meter impressions in lieu of revenue stamps, on cigarettes or other commodities required by law to carry State revenue stamps, has been permitted by the department, any such article upon which such meter impression is illegible or in the opinion of the department unsatisfactory shall be subject to confiscation by the department.

HISTORY: 1962 Code Section 65‑857.1; 1954 (48) 1566.

Library References

Taxation 3711.

Westlaw Topic No. 371.

C.J.S. Taxation Sections 1025, 2219 to 2220.

**SECTION 12‑21‑2890.** Confiscation and sale of vehicles transporting unstamped or untaxed goods.

Any vehicle, not a common carrier, which may be used for the transportation for the purpose of sale of unstamped or untaxed articles as enumerated in Section 12‑21‑2870 shall likewise be subject to confiscation and sale in the same manner as provided for unstamped or untaxed goods, wares or merchandise.

HISTORY: 1962 Code Section 65‑858; 1952 Code Section 65‑858; 1942 Code Sections 2527, 2538; 1932 Code Sections 2527, 2538; 1928 (35) 1089; 1930 (36) 1358; 1935 (39) 244, 365; 1937 (40) 539; 1938 (40) 2925; 1976 Act No. 543, Section 2.

Library References

Taxation 3711.

Westlaw Topic No. 371.

C.J.S. Taxation Sections 1025, 2219 to 2220.

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. Auctions and Auctioneers Section 23, Statutes Governing Auctions of Particular Properties.

**SECTION 12‑21‑2900.** Proceedings against seized property deemed in rem.

A proceeding against goods, wares, merchandise or other property seized under the provisions of this chapter shall be considered a proceeding in rem unless otherwise provided in this chapter.

HISTORY: 1962 Code Section 65‑859; 1952 Code Section 65‑859; 1942 Code Sections 2527, 2538; 1932 Code Sections 2527, 2538; 1928 (35) 1089; 1930 (36) 1358; 1935 (39) 244, 365; 1937 (40) 539; 1938 (40) 2925.

Library References

Taxation 3711.

Westlaw Topic No. 371.

C.J.S. Taxation Sections 1025, 2219 to 2220.

**SECTION 12‑21‑2910.** List and appraisal of certain confiscated goods.

In all cases of seizure of any goods, wares, merchandise or other property made as being subject to forfeiture under provisions of this chapter which in the opinion of the officer or person making the seizure are of the appraised value of one hundred dollars or more, such officer or person shall cause a list containing a particular description of the goods, wares, merchandise or other property seized to be prepared in duplicate and an appraisement thereof to be made by three sworn appraisers to be selected by him, who shall be respectable and disinterested citizens of the State residing within the county wherein the seizure was made. Such list and appraisement shall be properly attested by such officer or person and such appraisers, for which service each of such appraisers shall be allowed the sum of one dollar per day, not exceeding two days, to be paid by the department out of any revenue received by it from the sale of the confiscated goods or the compromise which may be effected. If such goods so seized are believed by the officer making the seizure to be of less value than one hundred dollars, no appraisement shall be made.

HISTORY: 1962 Code Section 65‑860; 1952 Code Section 65‑860; 1942 Code Sections 2527, 2538; 1932 Code Sections 2527, 2538; 1928 (35) 1089; 1930 (36) 1358; 1935 (39) 244, 365; 1937 (40) 539; 1938 (40) 2925; 1982 Act No. 426, Section 1.

Library References

Taxation 3711.

Westlaw Topic No. 371.

C.J.S. Taxation Sections 1025, 2219 to 2220.

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. Auctions and Auctioneers Section 23, Statutes Governing Auctions of Particular Properties.

**SECTION 12‑21‑2920.** Notice of seizure.

Any such officer or person shall then proceed to publish a notice for three weeks in the case of all such goods except syrup and bottled soft drinks and two weeks in the case of syrup and bottled soft drinks, in writing, at three places in the county in which the seizure was made, describing the articles and stating the time, place and cause of their seizure and requiring any person claiming them to appear and make such claim in writing within fifteen days in the case of syrup and bottled soft drinks and within thirty days in the case of other goods from the date of the first publication of such notice.

HISTORY: 1962 Code Section 65‑861; 1952 Code Section 65‑861; 1942 Code Sections 2527, 2538; 1932 Code Sections 2527, 2538; 1928 (35) 1089; 1930 (36) 1358; 1935 (39) 244, 365; 1937 (40) 539; 1938 (40) 2925.

Library References

Taxation 3711.

Westlaw Topic No. 371.

C.J.S. Taxation Sections 1025, 2219 to 2220.

**SECTION 12‑21‑2930.** Claim of goods; delivery upon bond.

Any person claiming such goods, wares, merchandise or other property so seized as contraband within the time specified in the notice may file with the department a claim in writing, stating his interest in the articles seized, and may execute a bond to the department in a penal sum equal to double the value of the goods so seized, but in no case less than the sum of one hundred dollars, with sureties to be approved by the clerk of court in the county in which the goods are seized, conditioned that in the case of condemnation of the articles so seized the obligors shall pay to the department the full value of the goods so seized and all costs and expenses of the proceedings to obtain such condemnation, including a reasonable attorney’s fee. Upon the delivery of such bond to the department it shall transmit it with the duplicate list or description of the goods seized to the solicitor of the circuit in which such seizure was made and the solicitor shall prosecute the case to secure the forfeiture of such goods, wares, merchandise, or other property in the court having jurisdiction. Upon the filing of the bond aforesaid the goods shall be delivered to the claimant pending the outcome of such case.

HISTORY: 1962 Code Section 65‑862; 1952 Code Section 65‑862; 1942 Code Sections 2527, 2538; 1932 Code Sections 2527, 2538; 1928 (35) 1089; 1930 (36) 1358; 1935 (39) 244, 365; 1937 (40) 539; 1938 (40) 2925.

Library References

Taxation 3711.

Westlaw Topic No. 371.

C.J.S. Taxation Sections 1025, 2219 to 2220.

NOTES OF DECISIONS

Mandamus 1

1. Mandamus

Mandamus is a proper remedy to compel officers to return goods seized as contraband after the execution of a proper bond where they refuse to do so. (Decided under former statute.) Fort Sumter Hotel v. South Carolina Tax Commission (S.C. 1942) 201 S.C. 50, 21 S.E.2d 393.

In a mandamus proceeding to compel the tax commissioners to deliver to the owner seized cigars, proper bond having been posted by the owner, the court held that the Commission could properly refuse to return the property for the reason that it was the sole evidence in a pending criminal case against the owner. (Decided under former statute.) Saleeby v. Query (S.C. 1939) 192 S.C. 120, 5 S.E.2d 577.

**SECTION 12‑21‑2940.** Forfeiture and sale when no claim is interposed or bond given.

If no claim is interposed or no bond given within the time specified in this article, such goods, wares, merchandise or other property shall be forfeited without further proceedings and shall be sold as provided in this chapter.

HISTORY: 1962 Code Section 65‑863; 1952 Code Section 65‑863; 1942 Code Sections 2527, 2538; 1932 Code Sections 2527, 2538; 1928 (35) 1089; 1930 (36) 1358; 1935 (39) 244, 365; 1937 (40) 539; 1938 (40) 2925.

Library References

Taxation 3711.

Westlaw Topic No. 371.

C.J.S. Taxation Sections 1025, 2219 to 2220.

**SECTION 12‑21‑2950.** Sales of goods worth less than one hundred dollars.

When goods are seized in quantities of less value than one hundred dollars they may be advertised with other quantities at Columbia by the department and disposed of as provided in this chapter.

HISTORY: 1962 Code Section 65‑864; 1952 Code Section 65‑864; 1942 Code Sections 2527, 2538; 1932 Code Sections 2527, 2538; 1928 (35) 1089; 1930 (36) 1358; 1935 (39) 244, 365; 1937 (40) 539; 1938 (40) 2925; 1982 Act No. 426, Section 2.

Library References

Taxation 3711.

Westlaw Topic No. 371.

C.J.S. Taxation Sections 1025, 2219 to 2220.

**SECTION 12‑21‑2960.** Department may compromise confiscations or return goods upon payment in amount of assessed value.

The department may in its discretion return any goods confiscated under this chapter or any part thereof when it is shown that there was no intention to violate the provisions of this chapter. And when any goods, wares or merchandise are confiscated under the provisions of this chapter, the department may, in its discretion, return such goods to the person from whom they were confiscated if such person shall pay to the department or its duly authorized representative an amount equal to the assessed value of the goods confiscated and in such cases no advertisement shall be made or notices posted in connection with such confiscation.

HISTORY: 1962 Code Section 65‑865; 1952 Code Section 65‑865; 1942 Code Sections 2527, 2538; 1932 Code Sections 2527, 2538; 1928 (35) 1089; 1930 (36) 1358; 1935 (39) 244, 365; 1937 (40) 539; 1938 (40) 2925.

Library References

Taxation 3711.

Westlaw Topic No. 371.

C.J.S. Taxation Sections 1025, 2219 to 2220.

**SECTION 12‑21‑2970.** Disposition of proceeds of sale of confiscated goods.

The proceeds of sales made under this chapter shall be turned over to the State Treasurer by the department as other funds collected by the department, except that the cost of confiscation and sale shall be paid out of the proceeds derived from such sale before making remittance to the State Treasurer.

HISTORY: 1962 Code Section 65‑866; 1952 Code Section 65‑866; 1942 Code Sections 2527, 2538; 1932 Code Sections 2527, 2538; 1928 (35) 1089; 1930 (36) 1358; 1935 (39) 244, 365; 1937 (40) 539; 1938 (40) 2925.

Library References

Taxation 3711.

Westlaw Topic No. 371.

C.J.S. Taxation Sections 1025, 2219 to 2220.

**SECTION 12‑21‑2975.** Donation of certain confiscated goods to Department of Mental Health; not to be advertised and sold.

All soft drinks, playing cards, cigarettes and tobacco products confiscated under this chapter shall be donated to the Department of Mental Health for patient use. The items listed in this section shall not be subject to the advertisement and sale provisions as provided for in this chapter.

HISTORY: 1982 Act No. 426, Section 3.

Library References

Taxation 3711.

Westlaw Topic No. 371.

C.J.S. Taxation Sections 1025, 2219 to 2220.

**SECTION 12‑21‑2980.** Possession of unstamped cigarettes as prima facie evidence of violation.

The location of any cigarettes in the place of business of any person required by the provisions of this chapter to stamp them is prima facie evidence that they are intended for sale.

HISTORY: 1962 Code Section 65‑867; 1952 Code Section 65‑867; 1942 Code Sections 2528, 2537; 1928 (35) 1089; 1932 (37) 1319; 1937 (40) 539; 1966 (54) 2591; 1968 (55) 2855; 1984 Act No. 512, Part II, Section 6I.

Library References

Taxation 3692.

Westlaw Topic No. 371.

C.J.S. Taxation Sections 2194 to 2196.

**SECTION 12‑21‑2990.** Right to demand court trial in certain cases; department shall give written notice of violation.

Within ten days after notification in writing by the department, or its duly authorized agent, to any person of his failure properly to affix the required stamps or crowns to any article or commodity or within ten days after written notification to any person that he has sold any article or commodity requiring stamps without having the stamps properly attached thereto as required by this chapter the person charged or to be charged with such omission may, within such time and not thereafter, demand a trial of the issue before a court of competent jurisdiction in the manner provided by law for the trial of civil actions or civil suits. The written notice required in this section may be served by mail. When it is so served the paper must be deposited in the post office addressed to the person on whom it is to be served at his last known place of residence and the postage paid. The ten days’ time provided in this section shall begin to run from the date of mailing. Any such notice may also be personally served by any agent of the department or any other person by delivering it to the person charged or by leaving it in the place of business of such person.

HISTORY: 1962 Code Section 65‑868; 1952 Code Section 65‑868; 1942 Code Sections 2528, 2537; 1928 (35) 1089; 1932 (37) 1319; 1937 (40) 539.

Library References

Taxation 3711.

Westlaw Topic No. 371.

C.J.S. Taxation Sections 1025, 2219 to 2220.

**SECTION 12‑21‑3000.** Lien of judgment.

Any judgment rendered in favor of the department in any civil action or suit shall be a first preferred lien for taxes upon all property of the taxpayer and in the event of nonpayment shall be filed in the office of the clerk of court in the county in which it was rendered and execution may be issued by the department as provided by law. But the lien provided for in this section shall not have priority over any bona fide lien recorded before the judgment is rendered on any property belonging to the taxpayer other than that directly pertaining to and used in the conduct of the business in which such penalty was incurred.

HISTORY: 1962 Code Section 65‑869; 1952 Code Section 65‑869; 1942 Code Sections 2528, 2537; 1928 (35) 1089; 1932 (37) 1319; 1937 (40) 539.

Library References

Taxation 3696.

Westlaw Topic No. 371.

C.J.S. Taxation Section 2216.

**SECTION 12‑21‑3010.** Taxes and penalties deemed a debt; lien; priorities.

The taxes and penalties imposed by this chapter shall be deemed a debt owing to the State by the person against whom they shall be charged and shall be a lien upon all property of such person, but such lien shall be valid, so as to affect the rights of purchasers for value, mortgagees or judgment or other lien creditors, only from the time when the warrant is entered upon the transcript of judgments in the county, in the case of real estate where the real estate is situate and in the case of personal property where the taxpayer resides or possesses personal property, if the taxpayer be a resident of this State, or, if the taxpayer be a nonresident, where the personal property is situate. But license taxes or penalties imposed under this chapter shall be a first preferred lien upon any and all of the personal property of the taxpayer used or to be used in the business and shall also rank in priority above all other liens on taxpayer’s property used in such business and incurred after the beginning of such business.

HISTORY: 1962 Code Section 65‑870; 1952 Code Section 65‑870; 1942 Code Sections 2530, 2531, 2540, 2542; 1932 Code Sections 2530, 2531, 2540, 2542; 1928 (35) 1089; 1929 (36) 114; 1932 (37) 1493; 1934 (38) 1577; 1935 (39) 282; 1936 (39) 1377, 1591, 1771; 1938 (40) 1799; 1940 (41) 1921; 1957 (50) 616.

Library References

Taxation 3696.

Westlaw Topic No. 371.

C.J.S. Taxation Section 2216.

NOTES OF DECISIONS

Priority 1

1. Priority

Assignee of purchase‑money mortgage on automobile used in soft drink bottling business took mortgage subject to this section [former Code 1962 Section 65‑870], making soft drink license tax lien superior to all other liens on bottler’s property. Motor Dealers’ Credit Corp. v. Heise (S.C. 1932) 166 S.C. 389, 164 S.E. 900. Intoxicating Liquors 93; Licenses 31

**SECTION 12‑21‑3070.** Penalties for improper use, alteration or reuse of stamps, and for failure to pay tax, make any report or submit required information.

(A) It is unlawful for a person to:

(1) fraudulently cut, tear, or remove from any vellum, parchment, paper, instrument, or writing upon which a tax is imposed by this chapter any adhesive stamp used pursuant to this chapter;

(2) fraudulently use, join, fix, or place to, with, or upon any vellum, parchment, paper, instrument, or writing upon which a tax is imposed by this chapter any:

(a) adhesive stamp which has been cut, torn, or removed from any other vellum, parchment, paper, instrument, or writing upon which a tax is imposed by this chapter;

(b) adhesive stamp of insufficient value; or

(c) forged or counterfeited stamp;

(3) wilfully remove or alter the cancellation or defacing marks of, or prepare, any adhesive stamp, with intent to use or cause it to be used, after it has already been used, or knowingly or wilfully buy, sell, offer for sale, or give away a washed or restored stamp to a person for use;

(4) have in his possession a washed, restored, or altered stamp which has been removed from any vellum, parchment, paper, instrument, or writing, or from the articles to which it had previously been affixed;

(5) buy, sell, offer for sale or have in his possession or knowingly or wilfully prepare a counterfeit stamp; or

(6) reuse a stamp which previously has been used for the purpose of indicating the payment of a tax imposed by this chapter.

(B) A person who violates the provisions of subsection (A) is guilty of a misdemeanor and, upon conviction, must be fined not more than five thousand dollars or imprisoned not more than two years, or both.

(C) It is unlawful for a person, officer, or employee of a corporation, or a member or employee of a partnership, with intent to evade a lawful requirement of this chapter or a lawful requirement of the department under the provisions of this chapter to:

(1) fail to pay a tax, make a report, or submit required information by the provisions of this chapter; or

(2) make a false or fraudulent statement or report, or supply false or fraudulent information.

(D) A person who violates the provisions of subsection (C) is guilty of a misdemeanor and, upon conviction, must be fined not more than five thousand dollars or imprisoned not more than two years, or both.

HISTORY: 1962 Code Section 65‑876; 1952 Code Section 65‑876; 1942 Code Sections 2524, 2528; 1932 Code Sections 2524, 2528; 1928 (35) 1089; 1932 (37) 1319; 1937 (40) 539; 1977 Act No. 52; 1993 Act No. 184, Section 157.

Library References

Taxation 3711.

Westlaw Topic No. 371.

C.J.S. Taxation Sections 1025, 2219 to 2220.

**SECTION 12‑21‑3080.** Penalty for interference with enforcement or refusal to allow inspection.

Any person subject to this tax engaging in or permitting such practices as are prohibited by regulations of the department or in any other practice which makes it difficult to enforce the provisions of this chapter by inspection and any person who shall, upon demand of any officer or agent of the department, refuse to allow full inspection of the premises or any part thereof or who shall hinder or in anywise delay or prevent such inspection when demand is made therefor shall be guilty of a misdemeanor and shall, upon conviction, be fined not less than twenty dollars nor more than two hundred dollars for each offense or imprisoned for a period not less than ten nor exceeding sixty days, or both, in the discretion of the court.

HISTORY: 1962 Code Section 65‑877; 1952 Code Section 65‑877; 1942 Code Sections 2526, 2534; 1932 Code Sections 2526, 2534; 1928 (35) 1089; 1930 (36) 1354, 1358.

Library References

Taxation 3711.

Westlaw Topic No. 371.

C.J.S. Taxation Sections 1025, 2219 to 2220.

ARTICLE 24

Bingo Tax Act

CROSS REFERENCES

Lotteries or raffles unlawful unless authorized, see Section 33‑57‑100.

**SECTION 12‑21‑3910.** Short title.

This article may be cited as the “Bingo Tax Act of 1996”.

HISTORY: 1996 Act No. 449, Section 1.

**SECTION 12‑21‑3920.** Definitions.

As used in this article:

(1) “Bingo” or “game” means a specific game of chance, commonly known as bingo, in which prizes are awarded on the basis of designated numbers or symbols on a card conforming to numbers and symbols selected at random.

(2) “Department” means the South Carolina Department of Revenue.

(3) “Card” means a printed or nonprinted design on which there are arranged five horizontal rows and five vertical columns forming twenty‑five squares. Numbers are printed in twenty‑four of the squares, and the term “free”, “free square”, or “ free space” is printed in the square or space located in the center of the card. The five columns are denominated from left to right by the respective letters of the word “B‑I‑N‑G‑O”. Each square in the “B” column contains a number from one through fifteen inclusive; each square in the “I” column contains a number from sixteen through thirty inclusive; except for the center space which is marked as free, each square in the “N” column contains a number from thirty‑one through forty‑five inclusive; each square in the “G” column contains a number from forty‑six through sixty inclusive; and each square in the “O” column contains a number from sixty‑one through seventy‑five inclusive. A number may not appear twice on the same card. A nonprinted design is a bingo ticket for use only with an electronic dabber. The bingo ticket is a perforated two‑part ticket and must bear a sequential serial ticket number, the South Carolina state seal, denomination, number of faces authorized for download or activation, the Department of Revenue issued organization license number, and other information that may be required by the department. The ticket must have designated blanks for entry of the date sold and electronic dabber unit number supplied. Bingo tickets must be printed by a bingo ticket manufacturer licensed by the department and must be sold only by a distributor licensed by the department. Bingo tickets must meet the design and requirements of the department. Bingo tickets may be used only by a promoter or nonprofit organization if the ticket has been approved by the department. A license for a bingo ticket manufacturer costs one thousand dollars. A manufacturer of bingo cards or electronic dabbers or site systems, a distributor, a promoter, or a nonprofit organization may not have an interest, direct or indirect, in a bingo ticket manufacturer. The bingo ticket manufacturer must maintain records as required by the department.

(4) “Promoter” means an individual, corporation, partnership, or organization licensed as a professional solicitor by the Secretary of State who is hired by a nonprofit organization to manage, operate, or conduct the licensee’s bingo game. The person hired under written contract is considered the promoter.

(5) “Nonprofit organization” means an entity which is organized and operated exclusively for charitable, religious, or fraternal purposes and which is exempt from federal income taxes pursuant to Internal Revenue Code Section 501(c)(3), 501(c)(4), 501(c)(7), 501(c)(8), 501(c)(10), or 501(c)(19).

(6) “Session” means a consecutive series of games which must occur only between the hours of 12:00 p.m. and 2:00 a.m. No more than one session, limited to twelve hours, may occur during the permitted fourteen‑hour period. Regardless of the starting time within the permitted period, the session may not extend beyond 2:00 a.m. These limitations do not apply to games operated by state or county fairs.

(7) “Fair” means a recognized annual state or county fair. The fair must be recognized by the governing body of the county in which it is held, or in the case of the State, by the South Carolina Agricultural and Mechanical Society.

(8) “Ball” means a ball, disk, square, or other object upon which is printed a letter and number which corresponds to the letter and number of a square on a bingo card.

(9) “Cage” means a device, whether operated manually or by air blower, in which bingo balls are placed before the bingo game begins.

(10) “Caller” means the house representative who is responsible for drawing bingo balls and announcing the configuration and the result of each drawing to the players.

(11) “Drawing” means the indiscriminate selection of a single ball from the cage.

(12) “House” means the nonprofit organization and promoter licensed with the department.

(13) “Marker” means a device which indicates the number called.

(14) “Master‑board” means the receptacle used by the house to display balls which are drawn during the bingo game.

(15) “Player” means one who participates in a game of bingo other than as an agent, promoter, or representative of the house.

(16) “Fund” means the Parks and Recreation Development Fund.

(17) “Building” means a structure surrounded by exterior walls or permanent firewalls.

(18) “Manufacturer” means a person who manufactures bingo cards for use in this State and who is approved by the department.

(19) “Distributor” means a person who brings or sells bingo cards in this State and who is approved by the department.

(20) “Electronic dabber” means a hand‑held electronic device that allows a player to store, display, and mark bingo card faces that have been downloaded or activated as authorized by the bingo ticket. All electronic dabbers must be tested and approved by an independent testing facility to be determined by the department within forty‑five days of a written request. All costs for testing are the responsibility of the manufacturer wishing to sell, lease, rent, or otherwise distribute the electronic dabber in South Carolina for the conduct of bingo. The sole and exclusive determination as to whether an electronic dabber meets the requirements of this chapter rests with the department in its sole discretion. If this determination is appealed, the promoter and nonprofit organization may not use the electronic dabber during the pendency of the appeal.

(21) “Site system” means a computer accounting system commonly referred to as a point of sale system used in conjunction with electronic dabbers. This computer software must be used at a site by an organization which allows a bingo ticket purchased from a licensed distributor to authorize the download or activation of faces into the electronic dabbers, accounts for gross proceeds, and provides accounting information on all activity for one year from the end of the quarter in which the activity occurred. All site systems and electronic dabbers must be tested and approved by an independent testing facility to be determined by the department within forty‑five days of written request. All costs for testing are the responsibility of the manufacturer wishing to sell, lease, rent, or otherwise distribute the site system in South Carolina for the conduct of bingo. The sole and exclusive determination as to whether a site system meets the requirements of this chapter rests with the department in its sole discretion. If this determination is appealed, the promoter and nonprofit organization may not use the site system during the pendency of the appeal.

HISTORY: 1996 Act No. 431, Section 34.A; 1996 Act No. 449, Section 1; 2002 Act No. 334, Section 16A, eff October 1, 2002; 2004 Act No. 172, Sections 2, 3, eff August 2, 2003; 2010 Act No. 263, Section 2, eff June 11, 2010.

**SECTION 12‑21‑3930.** Conditions under which bingo not considered lottery.

The game of bingo is not a lottery when:

(1) the nonprofit organization conducting the game has completed the application as described in Section 12‑21‑3940 and the application has been approved by the department;

(2) the promoter under contract with the nonprofit organization is licensed properly with the department;

(3) the nonprofit organization presents to the department upon application a certified copy of the statement issued by the Internal Revenue Service exempting it from federal income taxation;

(4) the game is conducted in accordance with the provisions of Sections 12‑21‑3990 and 12‑21‑4000 and approved cards are used.

HISTORY: 1996 Act No. 449, Section 1.

Library References

Gaming 4.

Westlaw Topic No. 188.

C.J.S. Gaming Sections 26 to 42.

NOTES OF DECISIONS

Constitutional issues 1

1. Constitutional issues

Amendment to State Constitution deeming bingo a non‑lottery game when conducted by certain non‑profit organizations makes a limited exception for bingo, as a lottery, from State’s constitutional prohibition against lotteries. Fraternal Order of Police v. South Carolina Dept. of Revenue (S.C. 2002) 352 S.C. 420, 574 S.E.2d 717. Gaming And Lotteries 232; Gaming And Lotteries 233

**SECTION 12‑21‑3935.** Video poker play prohibited.

Nothing in this article may be construed to allow video poker play and the prohibitions regarding video poker in Sections 12‑21‑2710, 16‑19‑40, and 16‑19‑50 apply.

HISTORY: 2004 Act No. 172, Section 9, eff August 2, 2003.

**SECTION 12‑21‑3940.** License to conduct bingo.

(A) Before conducting a game of bingo, a nonprofit organization shall file with the department a written application in a form prescribed by the department, executed and notarized which must include:

(1) the name, address, and telephone number of the applicant and sufficient facts relating to its incorporation and organization to enable the department to determine whether it is an authorized organization;

(2) a copy of the organization’s corporate charter and the Internal Revenue Service’s statement exempting the applicant from federal income taxes;

(3) the names, addresses, and telephone numbers of the organization’s officers;

(4) the place and time the applicant intends to conduct bingo under the license for which it applied;

(5) the specific purpose to which the bingo net proceeds are to be devoted;

(6) the designation of a “promoter” as defined by this article;

(7) a copy of any contract or lease between a promoter and the nonprofit organization;

(8) the name, address, telephone number, birth date, and Social Security number of each person who will work at the proposed bingo games and receive compensation for the work, the nature of the work to be performed, and a statement as to whether or not the person has been convicted within the last twenty years of a state or federal felony, gambling offense, criminal fraud, or a crime that has a sentence of two or more years;

(9) other information considered necessary by the department.

(B) Upon application for a license, the department has forty‑five days to approve or reject the application based on the requirements of this article.

(C) The nonprofit organization does not need to apply for renewal of the license as long as there are no changes in the operation or location of the game. Changes in information supplied on the original application must be forwarded to the department, in writing, within thirty days of the change. In the case of a change in the place and time, notice must be given thirty days before the change.

HISTORY: 1996 Act No. 431, Section 34.A; 1996 Act No. 449, Section 1; 2004 Act No. 172, Section 7, eff August 2, 2003; 2010 Act No. 263, Section 1, eff June 11, 2010; 2016 Act No. 254 (H.5034), Section 2, eff June 7, 2016.

Effect of Amendment

2016 Act No. 254, Section 2, in (B), substituted “forty‑five days” for “thirty days”.

Library References

Gaming 68(3).

Westlaw Topic No. 188.

C.J.S. Gaming Sections 154, 164.

**SECTION 12‑21‑3950.** Promoter’s license.

(A) A promoter under contract with a licensed nonprofit organization to manage, operate, or conduct a game shall file a written application for a promoter’s license in a form prescribed by the department, executed and notarized, which must include:

(1) the name, address, telephone number, and Social Security number of the promoter or of each officer if the promoter is a corporation;

(2) a copy of the promoter’s contract or lease with the nonprofit organization. A contract must exist between the sponsoring organization and the promoter detailing all expenses;

(3) the name, address, telephone numbers, and Social Security number of any person working for the promoter at the bingo game and receiving compensation for the work;

(4) a notarized statement as to whether or not the applicant for a promoter’s license or any of his employees have been convicted within the last twenty years of a state or federal felony, gambling offense, criminal fraud, or a crime that has a sentence of two or more years.

(B) Upon application for a license, the department has forty‑five days to approve or reject the application based on the requirements of this article.

(C) A promoter shall file a renewal application each year submitting any changes in information and documentation previously submitted as required by this section. The promoter is required to notify the department, in writing, of any changes in the information supplied on the application within thirty days of the change.

(D) The license authorized by this section is for the privilege of engaging in business as a bingo promoter and must be purchased from the department at a cost of one thousand dollars a year.

A promoter shall obtain a promoter’s license for each organization for which he operates bingo games.

HISTORY: 1996 Act No. 431, Section 34.A; 1996 Act No. 449, Section 1; 2002 Act No. 334, Section 16B, eff October 1, 2002.

Library References

Gaming 4.

Westlaw Topic No. 188.

C.J.S. Gaming Sections 26 to 42.

**SECTION 12‑21‑3955.** Designation of member as promoter.

If a nonprofit organization intending to operate a Class AA or B license does not contract with an outside promoter, the organization shall designate a member as the promoter.

HISTORY: 1996 Act No. 449, Section 1.

Library References

Gaming 4.

Westlaw Topic No. 188.

C.J.S. Gaming Sections 26 to 42.

**SECTION 12‑21‑3960.** Liability for taxes, interest, penalties and fines.

The promoter and the nonprofit organization are jointly and severally liable for all taxes, penalties, interest, and fines imposed by this article and Chapter 54 of this title.

HISTORY: 1996 Act No. 449, Section 1.

Library References

Gaming 4.

Westlaw Topic No. 188.

C.J.S. Gaming Sections 26 to 42.

**SECTION 12‑21‑3970.** Promoter’s license required for each licensee.

For each licensed nonprofit organization the promoter manages, operates, or conducts bingo, the promoter must purchase a promoter’s license as provided in Section 12‑21‑3950 before operating or conducting bingo. No promoter is permitted more than five licenses. This license must be prominently displayed at the location where bingo is conducted.

HISTORY: 1996 Act No. 449, Section 1.

Library References

Gaming 4.

Westlaw Topic No. 188.

C.J.S. Gaming Sections 26 to 42.

**SECTION 12‑21‑3980.** Transfer or other disposition of license.

(A) The promoter’s license authorized by this article must not be transferred to another person, organization, entity, or corporation. The promoter’s license, upon written application to the department, may be transferred to a new location for the remainder of the license period if the licensed nonprofit organization has applied for a location transfer as provided in subsection (B) of this section. The written application must be on a form prescribed by the department and must state, under penalties of perjury, that the information on the transfer application and the original license application is true and correct, or, in the case of the original application, is still valid and unchanged. No additional license fee is required with respect to the transfer of the location and the promoter may not conduct bingo at the new location until the new license is issued.

(B) The nonprofit organization’s license authorized by this article must not be transferred to another nonprofit organization and is valid and continues in force so long as the nonprofit organization to which it is issued continues to conduct the bingo games at the location authorized by the license.

The nonprofit organization’s license, upon written application to the department, may be transferred to a new location. The written application must be on a form prescribed by the department and must state, under penalties of perjury, that the information on the transfer application and the original license application is true and correct or, in the case of the original application, is still valid and unchanged. The nonprofit organization cannot operate at the new location until the new license is issued.

(C) No promoter or nonprofit organization may lease, sell, rent, lend to, or exchange with another person, organization, corporation, or other entity a promoter’s or bingo license issued pursuant to this article.

HISTORY: 1996 Act No. 449, Section 1.

Library References

Gaming 4.

Westlaw Topic No. 188.

C.J.S. Gaming Sections 26 to 42.

**SECTION 12‑21‑3990.** Manner of playing bingo.

(A) The game of bingo must be played in the following manner:

(1) Bingo is played by more than one player and a caller who is associated with the house. Each player must pay face value for each card to be played during the course of a game and may purchase the card for a specified number of games. All cards sold for a game must sell for face value and cards may not be given to players as prizes or for free. After the player has purchased a card or cards for a specified number of games, the house cannot require or accept an additional payment or consideration by the player in order to complete the specified number of games.

(2) Before each game begins, the caller shall announce to the players the configuration or configurations that will win the game. A configuration consists of a number of grids covered in the manner announced by the caller. Any method of playing the games is allowed if the method is announced before each game’s beginning including, but not limited to, wild card games. In addition, anytime before the conclusion of the game, the prize, specifically stating the dollar amount or value of merchandise awarded to the winner or winners for the game, must be announced.

(3) The prize must be awarded to the winner of that game without delay. For multiple winners, the prize must be divided equally among the winners. In the case of a merchandise prize, the cash value of the merchandise may be divided among the winners. Purchase receipts of merchandise awarded as prizes must be made available to players and the department for confirmation of value.

(4) The caller shall draw and announce numbers from the cage one at a time. If a player has a card with the called number on it, he may use a marker to cover the square which contains the number. After the number is announced, it must be indicated on the master‑board by the caller.

(5) When a player covers sufficient squares on a card to achieve the winning configuration, he may indicate to the caller. The caller shall require that the player’s card be checked against the master‑board in the presence of the other players to determine if the squares were covered accurately. If it is determined by the caller that the player accurately has covered the squares and achieved the preannounced configuration, the player is declared the winner. If it is determined that the player has not covered the squares accurately and achieved the preannounced configuration, play continues in that game.

(6) All devices, including the master‑board, used to show what numbers have been called during a game must not be intentionally changed, obstructed, or turned off by the promoter until the winners are verified.

HISTORY: 1996 Act No. 449, Section 1; 2002 Act No. 334, Section 16C, eff October 1, 2002; 2004 Act No. 172, Section 4, eff August 2, 2003; 2016 Act No. 254 (H.5034), Section 3, eff June 7, 2016.

Effect of Amendment

2016 Act No. 254, Section 3, in (A)(6), substituted “intentionally changed, obstructed, or turned off by the promoter” for “changed or turned off”.

Library References

Gaming 6.

Westlaw Topic No. 188.

C.J.S. Gaming Sections 51 to 52.

**SECTION 12‑21‑4000.** Procedures applicable to conduct of bingo.

In addition to the manner of play prescribed in Section 12‑21‑3990, the following procedures apply to the conduct of the game:

(1) Before the beginning of the first game, all seventy‑five balls must be displayed openly on the master‑board for the inspection of the players.

(2) Only one set of seventy‑five balls and only one master‑board is allowed in the room or area during the play of the game.

(3) Only one bet or payment is to be paid for each card.

(4) No bets or payments may be made while a game is in progress, except the sale of cards for subsequent games.

(5) Reserved.

(6) The house is required to identify the games for which a card may be used before the card is purchased.

(7) Before the start of play, the caller shall announce to all players the winning configuration of covered squares for that particular game.

(8) The prize must be awarded to the first person who successfully achieves the winning configuration of covered squares. All winning configurations must be verified using an electronic verifying system and must be displayed on the monitor for all players to see.

(9) Balls must be selected randomly by an indiscriminate process.

(10) Only one number may be called at a time.

(11) All balls drawn remain on the master‑board until the conclusion of the game.

(12)(a) At least fifty percent of the gross proceeds of the sale of bingo cards taken in by the house during a single session must be returned to the players in the form of prizes. However, with respect to fair licenses, this requirement must be met during the course of the fair.

(b) A bingo operation may take in only two times more in gross proceeds than the prize for that session averaged on a quarterly basis. Amounts in excess of this limit are subject to a tax, in addition to any other bingo license taxes and fees equal to the amount of the excess. Each session that the gross proceeds are greater than twice the prize amounts paid constitutes a separate offense if the tax is unpaid. This excess proceeds tax must be remitted to the department on the organization’s quarterly bingo report and distributed as provided in Section 12‑21‑4190. Failure to remit this excess proceeds tax to the department shall result in immediate suspension of both the promoter’s license and the organization’s license. The department, after a conference with the promoter and organization, may permanently revoke the license of the promoter or the nonprofit organization, or both. If permanently revoked, the promoter, nonprofit organization, or any partner or member of the organization may no longer manage, conduct, or assist in any manner with a bingo operation in this State.

(13) The playing of bingo is restricted to the premises designated with the department by the sponsor organization.

(14) Bingo only may be played at the place designated by the bingo licensee on its original or amended application.

(15) The house may hold promotions of special events during a session offering players prizes other than from the play of bingo not to exceed two hundred dollars in cash or merchandise for each session. This amount is not to be paid out of the bingo account and is not included in total payouts for a session. There is no additional charge to players to participate in a special promotion. The promotion must not require any consideration for participation.

HISTORY: 1996 Act No. 449, Section 1; 2002 Act No. 334, Sections 16D, 16E, eff October 1, 2002; 2004 Act No. 172, Section 5, eff August 2, 2003; 2016 Act No. 254 (H.5034), Section 4, eff June 7, 2016.

Effect of Amendment

2016 Act No. 254, Section 4, in (15), substituted “not to exceed two hundred dollars” for “not to exceed one hundred dollars” in the first sentence, and substituted “require any consideration for participation” for “be a form of gambling or a game of chance” in the last sentence.

Library References

Gaming 6.

Westlaw Topic No. 188.

C.J.S. Gaming Sections 51 to 52.

**SECTION 12‑21‑4005.** Operation of bingo games; scope.

The operation of the bingo games excludes machines and lottery games, including video poker lottery games, prohibited by Sections 12‑21‑2710, 16‑19‑40, and 16‑19‑50. The operation of the bingo games also excludes raffles as defined in Section 33‑57‑110.

HISTORY: 2002 Act No. 334, Section 16L, eff October 1, 2002; 2016 Act No. 254 (H.5034), Section 5, eff June 7, 2016.

Effect of Amendment

2016 Act No. 254, Section 5, added the second sentence, relating to raffles.

**SECTION 12‑21‑4007.** Site system and electronic dabber specifications.

(A) A site system and an electronic dabber must meet the following specifications:

(1) A site system must:

(a) record a nonresetable electronic consecutive six digit receipt number for each transaction;

(b) issue a player a receipt for each transaction containing the:

(i) name of a site or organization;

(ii) date and time of transaction;

(iii) number of electronic bingo card images downloaded or activated;

(iv) selling price of a card or package, gross proceeds, and receipt number; and

(v) serial number of device issued to a player;

(c) print a summary report for each session containing:

(i) the date and time of the report;

(ii) the name of site;

(iii) the date of the session;

(iv) the sequential session number;

(v) the number of transactions;

(vi) the number of voided transactions;

(vii) the number of electronic bingo card images downloaded or activated;

(viii) the number of devices used;

(ix) the total gross proceeds; and

(x) any other information required by the department.

(2) An electronic dabber:

(a) must be a portable hand‑held unit and must not be wired directly to a site system;

(b) must be used in conjunction with a bingo ticket purchased from the house which entitles the player to mark his cards electronically rather than using paper cards and marking them manually;

(c) must have no more than one hundred eighty faces to be played on each game when used in a class “B” game and no more than three hundred faces to be played on each game when used in a class “AA” game;

(d) must require a player to manually enter each bingo number called;

(e) must display a player’s best card or a winning card and alert only that player through an audio or video method, or both, that the player has a winning card;

(f) must erase automatically all stored cards at the end of the last game of a session or when the device is turned off;

(g) must be downloaded or activated with new cards at the beginning of each session;

(h) must be used only for one unit for each player, at any time during the bingo session. A player may purchase additional cards to be marked manually, but not for use with an electronic dabber;

(i) must not be a video lottery machine, video gaming machine, or other device prohibited by Section 12‑21‑2710;

(j) must not be used or be capable of being used to play a game other than bingo as authorized by this article; and

(k) must not be used or be capable of being used in an activity prohibited by Section 16‑19‑40 or 16‑19‑50.

(B) The department’s representatives may examine and inspect any site system and related equipment, electronic dabber and related equipment, or other machine or device used in the conduct of bingo by the promoter, nonprofit organization, or player. The examination and inspection must include immediate access to the electronic dabber and unlimited inspection of all parts, equipment, and associated systems.

(C) A player may exchange a defective electronic dabber for another provided a disinterested player verifies that the electronic dabber is not functioning.

(D) The bingo ticket as defined in Section 12‑21‑3920(3) must be perforated and allows both the player and the house to retain a copy. The ticket must be sold at face value. Only the number of faces printed on the bingo ticket may be downloaded or activated into the electronic dabber, no more or less, and at no time may bingo cards be sold for use with an electronic dabber and bingo ticket in matching face value or for any other purpose. The bingo tickets must be purchased on a bingo voucher only through a distributor licensed in this State. The bingo ticket must be torn in two along the perforation required in this subsection and the player must be given one part of the ticket and the house must retain the other part of the ticket for its books and records.

(E) After completion of each session the organization shall generate an activity report containing the number of electronic dabbers used in the session along with the house receipts for each bingo ticket sold. This report must be printed and maintained with the daily reports of the bingo session held.

HISTORY: 2004 Act No. 172, Section 1, eff August 2, 2003.

Library References

Gaming 4.

Westlaw Topic No. 188.

C.J.S. Gaming Sections 26 to 42.

**SECTION 12‑21‑4009.** Limitations on use of electronic or mechanical devices.

The use of an electronic or mechanical device designed for a bingo game authorized pursuant to this chapter must be limited to a bingo promoter and the promoter’s employees or any other person authorized by law to conduct bingo only in order to facilitate bingo play in the location licensed for bingo play pursuant to law, and this machine must not dispense as a prize coins or currency. The operation of the bingo games excludes machines and lottery games, including video poker lottery games, prohibited by Sections 12‑21‑2710, 16‑19‑40, and 16‑19‑50.

HISTORY: 2004 Act No. 172, Section 1, eff August 2, 2003.

Library References

Gaming 6.

Westlaw Topic No. 188.

C.J.S. Gaming Sections 51 to 52.

**SECTION 12‑21‑4010.** Application of Section 12‑21‑3930 through 12‑21‑3950.

The provisions of Sections 12‑21‑3930 through 12‑21‑3950 do not apply to the holder of a fair bingo license. However, the department shall prescribe a separate application form for fairs to obtain a license.

HISTORY: 1996 Act No. 449, Section 1.

**SECTION 12‑21‑4011.** Indian tribe use of hardware technology.

Notwithstanding any provision of law, federally‑ recognized Indian tribes authorized to conduct bingo games in South Carolina may use hardwire technology for bingo play, if the hardwire technology complies with the same restrictions and meets the same requirements and testing required of electronic dabbers and site systems as provided in this chapter.

HISTORY: 2004 Act No. 172, Section 8, eff August 2, 2003.

Library References

Gaming 6.

Westlaw Topic No. 188.

C.J.S. Gaming Sections 51 to 52.

**SECTION 12‑21‑4020.** Classes of bingo licenses; taxes.

The following are the classes of bingo licenses:

(1) CLASS AA: An organization operating a bingo game offering prizes with a minimum payout of fifty thousand dollars a session shall obtain a Class AA bingo license at a cost of four thousand dollars. The prizes offered at any one session may not exceed two hundred fifty thousand dollars. The holder of a Class AA license may not conduct more than one bingo session a month.

(2) CLASS B: An organization operating a bingo game offering prizes, which do not exceed eight thousand dollars a session, shall obtain a Class B bingo license at a cost of one thousand dollars. The holder of a Class B license may not conduct more than five bingo sessions a week.

(3) CLASS C: An organization operating a bingo game and offering prizes of twenty dollars or less a game during a single session shall obtain a Class C bingo license at no cost. However, the organization may offer a prize in cash or merchandise of no more than one hundred fifty dollars for six jackpot games a session. The department, in its discretion, may allow certain Class C licenses to use hard bingo cards instead of the paper cards required by this article.

To qualify to play on hard cards, a bingo game conducted by a Class C license must meet the following criteria:

(a) be operated solely by volunteers;

(b) the person managing, conducting, or operating the bingo game must not be paid or otherwise be compensated and must be a designated member of the organization;

(c) remuneration, including wages or other compensation, must not be made to any individual or corporation;

(d) all equipment used to operate a game of bingo, including chairs, tables, and other equipment, must be owned by the charity;

(e) the organization may lease the building directly from the owner of the building or own the building in which the game of bingo is played. The organization may not lease or sublease the building from a person who is not the owner;

(f) the only expenses allowed to be paid from the proceeds of the game are utility bills, prizes, purchases of cards, payments for the lease of a building, purchases of equipment required to operate a game of bingo, and the charitable purposes of the organization;

(g) one hundred percent of the net proceeds from the operation of the game must be used for charitable purposes.

(4) CLASS D: A person, organization, or corporation desiring to conduct a bingo game at a fair as defined in Section 12‑21‑3920 and who offers prizes for each game of no more than fifty dollars in merchandise shall obtain only a temporary Class D bingo license at a cost of one hundred dollars for not more than ten days or two hundred dollars for more than ten days. The department, in its discretion, may allow certain Class D licensees to use hard bingo cards in lieu of the paper cards required by this article.

(5) CLASS E: An organization which has a game of bingo and operates exclusively by bona fide members who are residents of this State and who do so on a strictly volunteer basis and whose gross bingo proceeds do not exceed forty thousand dollars a calendar quarter, and where prizes do not exceed four thousand dollars a session shall obtain a Class E license from the department at a cost of five hundred dollars. If the gross bingo proceeds for any calendar quarter exceed thirty thousand dollars, the person or organization within ten days is required to obtain a Class B license from the department and comply with all requirements of a Class B license. The holder of a Class E license may not conduct more than one bingo session a week.

(6) CLASS F: An organization which has a game of bingo and operates exclusively by bona fide members who are residents of this State and who do so on a strictly volunteer basis and whose gross proceeds do not exceed forty thousand dollars a calendar quarter, and where prizes do not exceed four thousand dollars a session and where bingo proceeds are only used to pay the organization’s utility bills, to pay charges for bingo paper, and for the charitable purpose of the organization, shall obtain a Class F license from the department at the cost of one hundred dollars. The holder of a Class F license may not conduct more than one bingo session a week.

HISTORY: 1996 Act No. 449, Section 1; 1998 Act No. 285, Section 4A; 1998 Act No. 334, Section 3; 1998 Act No. 340, Section 4; 1998 Act No. 387, Section 6; 2002 Act No. 334, Section 16F, eff October 1, 2002.

Library References

Gaming 4.

Westlaw Topic No. 188.

C.J.S. Gaming Sections 26 to 42.

NOTES OF DECISIONS

Constitutional issues 1

1. Constitutional issues

Regulatory and revenue statutes, classifying licensed bingo operators as “bingo charities” and placing additional regulations and taxes on them that were not placed on other charities, were rationally related to legitimate purpose of preventing proliferation of crime and raising revenue to cover costs of regulation, and thus, statutory classifications, distinguishing between bingo operators based on the level of payouts, did not violate equal protection; the distinctions were justified in that license holders paying higher taxes and sales taxes on their gross proceeds were permitted to make larger prize payouts, which would, in turn, attract more players and raise more revenue. [Decided under former law.] Fraternal Order of Police v. South Carolina Dept. of Revenue (S.C. 2002) 352 S.C. 420, 574 S.E.2d 717. Charities 3; Constitutional Law 3576; Constitutional Law 3692; Constitutional Law 3698; Gaming And Lotteries 206(3); Taxation 3627

Statutes regulating and taxing bingo were rationally related to legitimate purpose of preventing proliferation of crime and raising revenue to cover costs of regulation, and thus, such statutes did not violate licensed bingo operators’ rights to due process of law, even if enforcement of the statutes could result in destroying a particular operator’s business. [Decided under former law.] Fraternal Order of Police v. South Carolina Dept. of Revenue (S.C. 2002) 352 S.C. 420, 574 S.E.2d 717. Constitutional Law 4285; Gaming And Lotteries 206(3); Taxation 3626

**SECTION 12‑21‑4030.** Entrance fee surcharges.

(A) A promoter or organization may not impose a charge, other than as provided in subsection (B), on a player of more than the face value of each card sold to play bingo.

(B)(1) A holder of a Class AA license shall impose an entrance fee of eighteen dollars;

(2) A holder of a Class B license shall impose an entrance fee of five dollars;

(3) A holder of a Class D or Class E license may impose a five‑dollar entrance fee; and

(4) A holder of a Class F license may impose a three‑dollar entrance fee.

(C) The entrance fees collected pursuant to subsection (B) are not required to be remitted as taxes and are not included in gross proceeds for purposes of the prize limitations provided in Section 12‑21‑4000(12)(a).

HISTORY: 1996 Act No. 449, Section 1; 1998 Act No. 285, Section 4B.

Library References

Gaming 8.

Westlaw Topic No. 188.

NOTES OF DECISIONS

In general 1

1. In general

General entrance fee imposed by section of statute governing entrance fee surcharges was not applicable to Indian tribe’s bingo operation; provision of state act, which gave tribe specific rights related to bingo and video poker or similar electronic play devices, stated that tribe must pay special bingo tax instead of admission or entrance fee, and imposition of statute against tribe’s bingo operation violated plain language of provision of state act. Catawba Indian Tribe of South Carolina v. State (S.C. 2007) 372 S.C. 519, 642 S.E.2d 751, rehearing denied, certiorari denied 128 S.Ct. 256, 552 U.S. 888, 169 L.Ed.2d 149. Indians 340

**SECTION 12‑21‑4040.** One license per person or organization.

No nonprofit organization may hold more than one bingo license.

HISTORY: 1996 Act No. 449, Section 1.

Library References

Gaming 4.

Westlaw Topic No. 188.

C.J.S. Gaming Sections 26 to 42.

**SECTION 12‑21‑4050.** Only one organization to operate bingo per building.

Only one nonprofit organization may operate or cause the operation of bingo in a building. This section applies to all buildings regardless of ownership, of primary use, or of original use.

HISTORY: 1996 Act No. 449, Section 1.

Library References

Gaming 6.

Westlaw Topic No. 188.

C.J.S. Gaming Sections 51 to 52.

**SECTION 12‑21‑4060.** Certain persons prohibited from managing or conducting bingo.

A person who has been convicted within the last twenty years of violating a state or federal criminal statute relating to gaming or gambling, or who has been convicted of any other crime that has a sentence of two or more years, or where applicable, whose promoter’s license has been revoked by the department is not permitted to manage or conduct a game or assist in any manner with the bingo operation.

HISTORY: 1996 Act No. 431, Section 34.A; 1996 Act No. 449, Section 1.

Editor’s Note

1996 Act No. 449, Section 1, and 1996 Act No. 431, Section 34.A, eff October 1, 1997, each effected this section in identical form.

Library References

Gaming 4, 6.

Westlaw Topic No. 188.

C.J.S. Gaming Sections 26 to 42, 51 to 52.

**SECTION 12‑21‑4070.** South Carolina domicile required for license.

No license, as provided by this article, may be issued to an organization, promoter, or individual that has not been domiciled in this State for at least three years immediately preceding the license application. In the case of the organization, the organization must also have been active in this State for at least two years.

HISTORY: 1996 Act No. 449, Section 1; 2005 Act No. 4, Section 1, eff November 4, 2004.

Library References

Gaming 4.

Westlaw Topic No. 188.

C.J.S. Gaming Sections 26 to 42.

**SECTION 12‑21‑4080.** Promoter to turn over proceeds; member to deposit proceeds.

(A) Upon completion of the session, the promoter or the organization member representative shall deposit the gross proceeds from the session less the amount paid out as prizes into the bingo checking account. If the promoter is authorized by the organization to make the session deposit, the promoter shall deliver to the organization representative evidence that the deposit was made in a timely manner. This evidence must be furnished no later than the next business day following the day of the bingo session on which the proceeds were obtained.

(B) The representative member of the nonprofit organization shall deposit the funds into the bingo checking or savings account as described in Section 12‑21‑4090. For purposes of this section, a member of the licensed nonprofit organization is any individual who holds a full membership in the organization as defined by the organization’s constitution, charter, articles of incorporation or by‑laws and has been a member of the organization for at least one year. The term also includes those individuals who are members of an auxiliary or recognized junior affiliate of the parent organization.

HISTORY: 1996 Act No. 449, Section 1; 2002 Act No. 334, Section 16G, eff October 1, 2002.

Library References

Gaming 4.

Westlaw Topic No. 188.

C.J.S. Gaming Sections 26 to 42.

**SECTION 12‑21‑4090.** Bingo checking and savings accounts.

(A) The provisions of this section apply to the licensed nonprofit organization which is responsible for the special checking and savings accounts established by this section. The provisions of this section do not apply to the holder of a Class D fair bingo license.

(B) The organization shall control all deposits, transfers, and disbursements from these accounts, including the payment of compensation to the promoter and employees of the promoter or organization working the bingo games.

(C) An organization receiving an annual license to conduct bingo shall establish and maintain one regular checking account designated the “bingo account” and also may maintain an interest‑bearing savings account designated the “bingo savings account”. All funds derived from the conduct of bingo, less the amount awarded as cash prizes, must be deposited in the bingo account. Other funds may not be deposited in the bingo account, unless there is a deficit, and then both the organization and promoter shall deposit a loan equal to fifty percent of the deficit. If the organization is unable to make the fifty percent contribution, the promoter may deposit one hundred percent of the deficit which the balance must be, at the election of the promoter and with the consent of the nonprofit organization, carried as either a loan or a charitable donation to the organization from the promoter. Each loan to an organization from the promoter must be authorized in writing by a duly authorized officer of the licensed nonprofit organization. The promoter only may have recourse to these loans from the funds in the charitable bingo account. Each loan deposited into the bingo checking account must be accounted for on the quarterly financial reports filed with the department. Detailed information substantiating these loans must be maintained by the organization. Deposits must be made no later than the next business day following the day of the bingo occasion on which the receipts were obtained. All accounts must be maintained in a financial institution in this State.

(D) All expenses related to the charitable bingo operation must be paid from the operations bingo account. Funds from the bingo account must be withdrawn by preprinted, consecutively numbered checks or withdrawal slips, jointly signed by a properly authorized representative of the licensed nonprofit organization and promoter and made payable to a person or organization or by electronic methods or recurring online payments. Electronic payments must be authorized by a duly authorized representative of the licensed nonprofit organization and promoter in writing. Checks must be imprinted with the words “Bingo Account” and must contain the organization’s bingo license number on the face of the check. There also must be noted on the face of the check or withdrawal slip the nature of the payment made. No check or slip may be made payable to “cash”, “bearer”, or a fictitious payee. All checks, including voided checks and slips, must be kept and accounted for.

(E) Funds received by the nonprofit organization from the department as a result of the sale of bingo cards must be deposited into a separate account and maintained separately from bingo funds and the bingo account referenced in this section.

(F) Checks drawn on the bingo account must be for one or more of the following purposes:

(1) payment of necessary and reasonable bona fide expenses incurred and paid in connection with the conduct of bingo;

(2) payment of necessary and reasonable compensation incurred and paid in connection with the conduct of bingo for personnel and promoters managing and conducting the game;

(3) disbursement of net proceeds derived from the conduct of bingo to charitable purposes or the purpose for which the organization was established;

(4) transfer of net proceeds derived from the conduct of bingo to the bingo savings account pending a disbursement to a charitable purpose.

(G) The disbursement of net proceeds on deposit in the bingo savings account to a charitable purpose must be made by transferring the intended disbursement back into the bingo account and then withdrawing the amount by a check drawn on that account as prescribed in this section.

(H) Proceeds given to a person or an organization for a charitable purpose must not be used by the donee:

(1) to pay for services rendered or materials purchased in connection with the conducting of bingo by the donor organization; or

(2) for a cause, an act, or an activity that does not constitute a charitable purpose or other purpose for which the organization was established if the activity is conducted by the donor organization.

(I) Gross proceeds derived from the conduct of bingo must not be commingled with other funds of the licensed organization.

(J) A licensed organization that has stopped conducting bingo and has unexpended bingo funds shall disburse those funds to a charitable purpose or other purposes for which the organization was established within one year after the date it ceases to conduct bingo. However, unexpended funds to be used for a building fund may be retained for this purpose. The organization shall file a report with the department showing the establishment of a building fund, the amount of money from the special account to be retained for that purpose, and other information the department may consider necessary. If the organization is identified as a fictitious charity after originally licensed, any payments due the charity revert to the general fund.

(K) Net proceeds must not be used directly or indirectly by a licensed authorized nonprofit organization to support or oppose a candidate or slate of candidates for public office, to support or oppose a measure submitted to a vote of the people, or to influence or attempt to influence legislation. The records of these accounts are available for inspection, upon demand, by the department.

HISTORY: 1996 Act No. 449, Section 1; 1998 Act No. 340, Section 5; 1998 Act No. 387, Section 7; 2002 Act No. 334, Section 16H, eff October 1, 2002; 2016 Act No. 254 (H.5034), Section 6, eff June 7, 2016.

Effect of Amendment

2016 Act No. 254, Section 6, amended (C) and (D), allowing the promoter to make certain contributions, requiring that all expenses related to the bingo operation must be paid from the operations bingo account, and allowing for electronic payments.

Library References

Gaming 4.

Westlaw Topic No. 188.

C.J.S. Gaming Sections 26 to 42.

**SECTION 12‑21‑4100.** Record keeping and reporting requirements.

(A) Each licensed nonprofit organization conducting bingo games shall submit quarterly to the department on the last day of the month following the close of the calendar quarter a report under oath containing the following information:

(1) the amount of the gross proceeds derived from the games;

(2) each item of expense incurred or paid;

(3) each item of an expenditure made or to be made, with a detailed description of the merchandise purchased or the services rendered;

(4) the net proceeds derived from the games;

(5) the use to which the proceeds have been or are to be applied;

(6) a list of prizes offered and given, with their respective values;

(7) excess proceeds as provided in Section 12‑21‑4000(12)(b);

(8) number of players at each session;

(9) other information considered necessary by the department.

(B) Each licensed nonprofit organization shall maintain records to substantiate the contents of each report.

(C) The department may revoke the license of an organization that fails to file the reports and information required in this article.

HISTORY: 1996 Act No. 449, Section 1.

Library References

Gaming 4, 6.

Westlaw Topic No. 188.

C.J.S. Gaming Sections 26 to 42, 51 to 52.

**SECTION 12‑21‑4110.** Department to administer provisions of article.

The department shall perform all functions incident to the administration, collection, enforcement, and operation of the tax and regulations imposed under this article. Local law enforcement officials are authorized to enforce the hours of operation.

HISTORY: 1996 Act No. 449, Section 1.

**SECTION 12‑21‑4120.** Clarification and conference requests.

An organization or a promoter seeking clarification on the play of or operation of a bingo game shall submit to the department’s bingo regulatory section a written request seeking a determination as to whether or not a certain or specific action constitutes a violation. A conference may be requested upon the receipt of the clarification request. The department shall respond, in writing, to the party requesting the clarification, citing specific statutes which disqualify an action and, when applicable, citing actions that are authorized pursuant to the laws of this State. A response or any failure to respond is not grounds for estoppel nor does it grant any rights to the organization or promoter seeking a clarification. An organization or a promoter found in violation of the provisions of this article and assessed additional taxes, penalties, fines, or interest is entitled to a conference upon request.

HISTORY: 1996 Act No. 449, Section 1; 2002 Act No. 334, Section 16I, eff October 1, 2002; 2004 Act No. 172, Section 6, eff August 2, 2003.

Library References

Gaming 57.

Westlaw Topic No. 188.

C.J.S. Gaming Sections 108 to 109.

**SECTION 12‑21‑4130.** Seizure of bingo equipment and cards.

The department may seize bingo equipment or cards found in the possession of a promoter, a licensed nonprofit organization, or player which have been manufactured, altered, or changed in a manner so as to no longer make bingo a game of chance as defined in this article.

HISTORY: 1996 Act No. 449, Section 1.

Library References

Gaming 60.

Westlaw Topic No. 188.

C.J.S. Gaming Sections 110 to 112.

**SECTION 12‑21‑4140.** Penalties.

A penalty of up to five thousand dollars and revocation of the license at the discretion of the department may be imposed for a violation of this article. Each violation and each day in violation of a provision of this article constitutes a separate offense.

HISTORY: 1996 Act No. 449, Section 1.

Library References

Gaming 54.

Westlaw Topic No. 188.

C.J.S. Gaming Section 107.

**SECTION 12‑21‑4150.** Posing as bingo player; unauthorized bingo supplies.

A person who poses as a bingo player or a person who conspires to have a person pose as a bingo player with the intent to defraud regular customers of the game, or a person who is using unauthorized bingo supplies, is guilty of a felony and, upon conviction, must be imprisoned not more than five years or fined not more than five thousand dollars, or both.

HISTORY: 1996 Act No. 449, Section 1.

Library References

False Pretenses 17.

Westlaw Topic No. 170.

C.J.S. False Pretenses Section 34.

**SECTION 12‑21‑4160.** Inspection of books, papers, records, and other materials.

The department or its designated agent or representative may enter upon the premises where bingo is played or the business premises of another person and examine books, papers, records, memoranda, commodities, or other things bearing upon the amount of taxes or fees payable or the proper conduct of a game and secure from the taxpayer or other person information directly or indirectly for the enforcement of this article.

HISTORY: 1996 Act No. 449, Section 1.

Library References

Gaming 4.

Westlaw Topic No. 188.

C.J.S. Gaming Sections 26 to 42.

**SECTION 12‑21‑4170.** Compromise of criminal or civil action.

The department, in its discretion, may compromise a criminal or civil action arising under the provisions of this article either before or after prosecution has begun.

HISTORY: 1996 Act No. 449, Section 1.

Library References

Gaming 4, 62.

Westlaw Topic No. 188.

C.J.S. Gaming Sections 26 to 42, 131 to 137, 140 to 145, 166 to 168, 172 to 173, 176.

**SECTION 12‑21‑4180.** Collection of taxes and fees not to be stayed or prevented.

The collection of the taxes and fees imposed by this article must not be stayed or prevented by an injunction, writ, or order issued by a court or its judge.

HISTORY: 1996 Act No. 449, Section 1.

Library References

Gaming 4.

Westlaw Topic No. 188.

C.J.S. Gaming Sections 26 to 42.

**SECTION 12‑21‑4190.** Bingo card charges; distribution of revenues.

(A) The department shall charge and retain ten cents for each dollar of face value for each bingo card sold for AA, B, D, and E licenses. The department shall charge and retain five cents for each dollar of face value for each bingo card sold for an F license. The department shall charge and retain four cents for each dollar of face value for each bingo card sold for a C license.

(B) The revenue retained must be distributed as follows:

(1) twenty‑eight percent of the revenue must be distributed to the sponsoring charity for which the bingo cards were purchased. The department shall make the distribution to the sponsoring charity by the last day of the next month following the month the revenue was collected. Distributions pursuant to this subsection must be reduced by any delinquent debts as defined in the Setoff Debt Collection Act;

(2) seventy‑two percent pursuant to Section 12‑21‑4200.

(C) The provisions of subsection (B) do not apply to holders of Class F licenses. The entire amount of revenue remitted pursuant to Section 12‑21‑4190 by Class F licensees shall be distributed pursuant to Section 12‑21‑4200.

HISTORY: 1996 Act No. 449, Section 1; 1998 Act No. 285, Section 4C; 2006 Act No. 357, Section 1, eff July 1, 2007; 2006 Act No. 359, Section 1, eff July 1, 2006; 2016 Act No. 254 (H.5034), Section 7, eff June 7, 2016.

Effect of Amendment

2016 Act No. 254, Section 7, in (B)(1), substituted “twenty‑eight percent” for “twenty‑six percent” and “pursuant to this” for “under this”; and in (B)(2), substituted “seventy‑two percent” for “seventy‑four percent”.

Library References

Gaming 4, 6.

Westlaw Topic No. 188.

C.J.S. Gaming Sections 26 to 42, 51 to 52.

**SECTION 12‑21‑4200.** Disbursement of revenues.

The first nine hundred forty‑eight thousand dollars of the total revenues derived from the provisions of this article which is collected from bingo within this State must be deposited monthly in twelve equal amounts into an account in the Office of the State Treasurer and called “Division on Aging Senior Citizen Centers Permanent Improvement Fund”. All interest earned on monies in the Division on Aging Senior Citizen Centers Permanent Improvement Fund must be credited to this fund. Of the remaining revenue:

(1) Seven and five one‑hundredths percent of the annual revenue derived from the provisions of Section 12‑21‑4190(2) must be deposited with the State Treasurer to be credited to the account of the Division on Aging, Office of the Governor, but in no case shall this credit be less than six hundred thousand dollars. This amount must be allocated to each county for distribution in home community services for the elderly as follows:

(a) One‑half of the funds must be divided equally among the forty‑six counties.

(b) The remaining one‑half must be divided based on the percentage of the county’s population age sixty and above in relation to the total state population using the latest report of the United States Bureau of the Census.

The aging service providers receiving these funds must be agencies recognized by the Division on Aging, Office of the Governor and the area agencies on aging.

(2) Twenty and eight‑tenths percent of the annual revenue derived from the provisions of Section 12‑21‑4190(2), or two and one‑half million dollars each fiscal year, whichever is greater, must be deposited by the State Treasurer in a separate fund for the Department of Parks, Recreation and Tourism entitled the Parks and Recreation Development Fund. Interest earned by this fund must be added to it and credited to its various accounts in the same proportion that the annual allocation to each account bears to the total annual distribution to the fund. Unexpended amounts in the various fund accounts must be carried forward to succeeding fiscal years except as provided in Section 51‑23‑30. Fund proceeds must be distributed as provided in Chapter 23 of Title 51.

(3) Subject to the distribution in item (2), seventy‑two and fifteen one‑hundredths percent of the annual revenue derived from the provisions of Section 12‑21‑4190(2) must be deposited with the State Treasurer and credited to the general fund, except that the first one hundred thirty‑one thousand of such revenues each year must be transferred to the Commission on Minority Affairs.

HISTORY: 1996 Act No. 449, Section 1; 2004 Act No. 172, Section 11, eff August 2, 2003; 2006 Act No. 357, Section 2, eff July 1, 2007; 2006 Act No. 359, Section 2, eff July 1, 2006; 2016 Act No. 254 (H.5034), Section 8, eff June 7, 2016.

Effect of Amendment

2016 Act No. 254, Section 8, in (2), inserted “, or two and one‑half million dollars each fiscal year, whichever is greater,”; and in (3), substituted “Subject to the distribution in item (2), seventy‑two” for “Seventy‑two”.

Library References

Gaming 4.

Westlaw Topic No. 188.

C.J.S. Gaming Sections 26 to 42.

**SECTION 12‑21‑4210.** Sale or transfer of bingo cards.

Bingo cards may not be sold or transferred between licensed organizations, between distributors, or between manufacturers. All unused bingo cards may be returned to the department for refund and destruction. The department is required to refund only the amount retained by the department previously based on the face value of each card and does not include the manufacturer’s price or transportation charges to the consignee at destination and such additional charges. If an organization operating a bingo game ceases operation within fifteen days from the purchase of the last voucher and the voucher remains outstanding, the department shall accept the returned paper and credit the value of returned paper against the outstanding voucher. The organization then shall pay the balance of the voucher less the value of returned paper.

HISTORY: 1996 Act No. 449, Section 1; 2002 Act No. 334, Section 16J, eff October 1, 2002.

Library References

Gaming 4, 6.

Westlaw Topic No. 188.

C.J.S. Gaming Sections 26 to 42, 51 to 52.

**SECTION 12‑21‑4220.** Bingo card design and requirements.

Bingo cards shall meet the design and requirements of the department. The use of the cards is evidence of the payment of the license tax imposed upon bingo cards by this article.

HISTORY: 1996 Act No. 449, Section 1.

Library References

Gaming 4, 6.

Westlaw Topic No. 188.

C.J.S. Gaming Sections 26 to 42, 51 to 52.

**SECTION 12‑21‑4230.** Bonds.

Manufacturers, promoters, organizations, or distributors of bingo cards are required to furnish bond in an amount approved by the department to ensure faithful compliance with the regulations of the department.

HISTORY: 1996 Act No. 449, Section 1.

Library References

Gaming 4.

Westlaw Topic No. 188.

C.J.S. Gaming Sections 26 to 42.

**SECTION 12‑21‑4240.** License to manufacture, distribute or use bingo cards.

Each manufacturer, distributor, organization, or promoter must be licensed to manufacture or distribute, or use bingo cards. The department shall charge an annual license fee of five thousand dollars for each manufacturer and two thousand dollars for each distributor. A license issued by the department under this section is renewable annually unless canceled or terminated. No license issued under this section is transferable or assignable.

HISTORY: 1996 Act No. 449, Section 1.

Library References

Gaming 4.

Westlaw Topic No. 188.

C.J.S. Gaming Sections 26 to 42.

**SECTION 12‑21‑4250.** Dual roles.

A bingo card manufacturer may not be licensed to operate a game as a bingo card distributor or as a promoter. A bingo card distributor may not be a manufacturer, a licensed nonprofit organization, or promoter. A licensed nonprofit organization or a promoter may not be a manufacturer or distributor.

HISTORY: 1996 Act No. 449, Section 1.

Library References

Gaming 4.

Westlaw Topic No. 188.

C.J.S. Gaming Sections 26 to 42.

**SECTION 12‑21‑4260.** Background investigations.

A person licensed as a bingo manufacturer, distributor, organization, or promoter shall submit to a background investigation. This includes each partner of a partnership and each director and officer and all stockholders of ten percent or more in a parent or subsidiary corporation of a bingo card manufacturer, distributor, organization, or promoter. The department has sole discretion to issue a license based on the background investigation.

HISTORY: 1996 Act No. 449, Section 1.

Library References

Gaming 4.

Westlaw Topic No. 188.

C.J.S. Gaming Sections 26 to 42.

**SECTION 12‑21‑4270.** Application to obtain bingo cards.

Each licensed nonprofit organization or promoter, in the name of a licensed organization, may obtain bingo cards approved by the department by making application and remitting sixteen and one‑half percent of the total face value of the cards to be purchased. Payment to the State for the issuance of bingo cards must be made by check, certified check, any electronic method, or cash within fifteen days of receipt of the application. If payment is made by check and the check is returned by the bank for any reason, the organization or promoter then is required to make payment to the department by certified funds for the remainder of the time that the bingo session is in operation. Upon receipt of the application, the department shall notify a licensed distributor who has purchased bingo cards from a licensed manufacturer that the licensed distributor may release the face value of the bingo cards requested to the licensed organization or promoter. However, no additional bingo cards must be released until payment is received for the prior application of bingo cards. The department is required to set forth procedures to ensure that there is a crosscheck between manufacturers, distributors, and licensed nonprofit organizations or promoters. A quarterly return is required by each manufacturer, distributor, and licensed nonprofit organization or promoter on or before the last day of the month following the close of the calendar quarter outlining those items the department determines necessary to verify the sale and distribution of bingo cards. The sale of bingo cards and entrance fees provided by Section 12‑21‑4030 are not subject to the admissions tax provided by Section 12‑21‑2420.

HISTORY: 1996 Act No. 449, Section 1; 2002 Act No. 334, Section 16K, eff October 1, 2002.

Library References

Gaming 4.

Westlaw Topic No. 188.

C.J.S. Gaming Sections 26 to 42.

**SECTION 12‑21‑4275.** Prohibitions on bingo card or ticket transfers.

The transfer of a bingo card or ticket by a manufacturer or bingo ticket manufacturer to a person other than a licensed distributor is prohibited. The transfer of a bingo card or ticket by a distributor to a person other than a licensed bingo promoter or a licensed bingo nonprofit organization is prohibited. The transfer of a bingo card or ticket by a distributor to a promoter or bingo nonprofit organization that does not have a voucher covering the bingo ticket or bingo card is prohibited.

HISTORY: 2004 Act No. 172, Section 10, eff August 2, 2003.

**SECTION 12‑21‑4280.** Revocation of license.

(A) The department may revoke a license issued under this article if it finds that a licensed nonprofit organization is not in compliance with the exemption requirements of the Internal Revenue Code.

(B) A license revoked under this section must not be reissued until a new application is made and the department determines that the applicant is complying with the applicable provisions of the Internal Revenue Code.

(C) The department may promulgate regulations to enforce this section.

HISTORY: 1996 Act No. 449, Section 1.

Library References

Gaming 4.

Westlaw Topic No. 188.

C.J.S. Gaming Sections 26 to 42.

**SECTION 12‑21‑4295.** Proceeds expended within state.

Proceeds after expenses derived from the game of bingo within South Carolina must not be expended for the benefit of charitable organizations located outside this State.

HISTORY: 1996 Act No. 449, Section 1.

Library References

Gaming 4.

Westlaw Topic No. 188.

C.J.S. Gaming Sections 26 to 42.

**SECTION 12‑21‑4300.** Severability.

If any section, subsection, paragraph, subparagraph, sentence, clause, phrase, or word of this article is for any reason held to be unconstitutional or invalid, such holding shall not affect the constitutionality or validity of the remaining portions of this article, the General Assembly hereby declaring that it would have passed this article, and each and every section, subsection, paragraph, subparagraph, sentence, clause, phrase, and word thereof, irrespective of the fact that any one or more other sections, subsections, paragraphs, subparagraphs, sentences, clauses, phrases, or words hereof may be declared to be unconstitutional, invalid, or otherwise ineffective.

HISTORY: 2002 Act No. 334, Section 16L, eff October 1, 2002.

**SECTION 12‑21‑4320.** Bingo webpage.

(A) The department shall establish a bingo webpage on its own website, for the purpose of serving as a clearinghouse for information and access to the Bingo Tax Act and its implementation and regulation. The link also must contain access to information pertaining to licenses, the manner in which to file complaints, and clarifying issues the department finds in connection with violations of the Bingo Tax Act.

(B) In addition to the purposes set forth in subsection (A), the webpage also must include a process for submitting questions to the bingo division of the department.

HISTORY: 2016 Act No. 254 (H.5034), Section 1, eff June 7, 2016.

ARTICLE 25

The Marijuana and Controlled Substance Tax Act

**SECTION 12‑21‑5010.** Short title.

This article may be cited as “The Marijuana and Controlled Substance Tax Act”.

HISTORY: 1993 Act No. 164, Part II, Section 70A.

NOTES OF DECISIONS

In general 1

Constitutional issues 2

1. In general

The Marijuana and Controlled Substance Tax Act, Sections 12‑21‑5010 et seq., deters the illegal possession of controlled substances by imposing a relatively high tax on such substances; however, neither a high rate of taxation nor an obvious deterrent purpose automatically renders the tax a form of punishment. Matter of Neal (S.C. 1996) 321 S.C. 475, 469 S.E.2d 600.

2. Constitutional issues

The tax imposed by the Marijuana and Controlled Substance Tax Act, Sections 12‑21‑5010 et seq., on a defendant convicted of possession and distribution of illegal drugs is not a violation of the Double Jeopardy Clause because the tax is imposed whether or not the taxpayer has been arrested for possession of the controlled substance, and the tax is based on actual possession. Matter of Neal (S.C. 1996) 321 S.C. 475, 469 S.E.2d 600.

**SECTION 12‑21‑5020.** Definitions.

As used in this article:

(1) “Marijuana’ means any marijuana, whether real or counterfeit, as defined in Section 44‑53‑110, that is held, possessed, transported, transferred, sold, or offered to be sold in violation of the laws of this State.

(2) “Controlled substance” means a drug or substance, whether real or counterfeit, as defined in Section 44‑53‑110, that is held, possessed, transported, transferred, sold, or offered to be sold in violation of the laws of this State. “Controlled substance” does not include marijuana.

(3) “Dealer” means a person who in violation of the laws of this State manufactures, produces, ships, transports, or imports into South Carolina or in any manner acquires or possesses more than forty‑two and one‑half grams of marijuana, or seven or more grams of a controlled substance, or ten or more dosage units of a controlled substance which is not sold by weight.

(4) “Department” means the South Carolina Department of Revenue.

HISTORY: 1993 Act No. 164, Part II, Section 70A.

CROSS REFERENCES

Tax imposed on marijuana and controlled substances as defined in this section, see Section 12‑21‑5090.

**SECTION 12‑21‑5030.** Department to administer article, collect taxes; dealers not required to give identifying information.

The department shall administer the provisions of this article. Payments required by this article must be made to the department on the form provided by it. Dealers are not required to give their name, address, social security number, or other identifying information on the form. The department shall collect all taxes under this article.

HISTORY: 1993 Act No. 164, Part II, Section 70A.

Library References

Taxation 3635.

Westlaw Topic No. 371.

C.J.S. Taxation Sections 2153, 2158.

**SECTION 12‑21‑5040.** Department to promulgate regulations and adopt uniform system of stamps, labels, or other indicia for taxed marijuana and controlled substances.

The department may promulgate regulations necessary to enforce this article. The department shall adopt a uniform system of providing, affixing, and displaying official stamps, official labels, or other official indicia for marijuana and controlled substances on which a tax is imposed.

HISTORY: 1993 Act No. 164, Part II, Section 70A.

Library References

Taxation 3635.

Westlaw Topic No. 371.

C.J.S. Taxation Sections 2153, 2158.

**SECTION 12‑21‑5050.** Dealer not to possess taxed marijuana or controlled substance without evidence that tax was paid.

No dealer may possess any marijuana or controlled substance upon which a tax is imposed unless the tax has been paid on the marijuana or other controlled substance as evidenced by a stamp or other official indicia.

HISTORY: 1993 Act No. 164, Part II, Section 70A.

Library References

Taxation 3678.

Westlaw Topic No. 371.

C.J.S. Taxation Sections 2173, 2177.

**SECTION 12‑21‑5060.** Article not provide immunity from criminal prosecution.

Nothing in this article may provide immunity for a dealer from criminal prosecution pursuant to the laws of this State.

HISTORY: 1993 Act No. 164, Part II, Section 70A.

Library References

Taxation 3712.

Westlaw Topic No. 371.

C.J.S. Taxation Section 2221.

**SECTION 12‑21‑5070.** Person lawfully in possession not required to pay tax.

Nothing in this article requires persons lawfully in possession of marijuana or a controlled substance to pay the tax required under this article.

HISTORY: 1993 Act No. 164, Part II, Section 70A.

Library References

Taxation 3678.

Westlaw Topic No. 371.

C.J.S. Taxation Sections 2173, 2177.

**SECTION 12‑21‑5080.** Quantity measured by weight or dosage; diluted quantities.

For the purpose of calculating the tax under Section 12‑21‑5090, a quantity of marijuana or other controlled substance is measured by the weight of the substance whether pure, impure, or dilute, or by dosage units when the substance is not sold by weight, in the dealer’s possession. A quantity of a controlled substance is dilute if it consists of a detectable quantity of pure controlled substance and any excipients or fillers.

HISTORY: 1993 Act No. 164, Part II, Section 70A.

Library References

Taxation 3678.

Westlaw Topic No. 371.

C.J.S. Taxation Sections 2173, 2177.

**SECTION 12‑21‑5090.** Tax imposed; rate.

A tax is imposed on marijuana and controlled substances as defined in Section 12‑21‑5020 at the following rate:

(1) on each gram of marijuana, or portion of a gram, three dollars fifty cents;

(2) on each gram of controlled substance, or portion of a gram, two hundred dollars;

(3) on each fifty dosage units of a controlled substance that is not sold by weight, or portion of fifty dosage units, two thousand dollars.

HISTORY: 1993 Act No. 164, Part II, Section 70A.

CROSS REFERENCES

Measuring quantities of marijuana or other controlled substance for purpose of calculating tax under this section, see Section 12‑21‑5080.

Library References

Taxation 3678.

Westlaw Topic No. 371.

C.J.S. Taxation Sections 2173, 2177.

**SECTION 12‑21‑6000.** Violation is misdemeanor; imprisonment, fine, civil penalty.

(A) A dealer who violates this article must pay a penalty of one hundred percent of the tax in addition to the tax imposed by Section 12‑21‑5090. The penalty must be collected as part of the tax.

(B) In addition to the tax penalty imposed, a dealer distributing or possessing marijuana or controlled substances without affixing the appropriate stamps, labels, or other indicia is guilty of a misdemeanor and, upon conviction, must be imprisoned not more than five years or fined not more than ten thousand dollars, or both.

HISTORY: 1993 Act No. 164, Part II, Section 70A.

CROSS REFERENCES

Offenses specified in subsection (B) of this section as exempt from classification of felonies and misdemeanors, see Section 16‑1‑10.

Library References

Taxation 3711, 3712.

Westlaw Topic No. 371.

C.J.S. Taxation Sections 1025, 2219 to 2221.

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. Homicide Section 14, Definition of Murder.

S.C. Jur. Homicide Section 22, The Felony Murder Rule.

S.C. Jur. Sports Law Section 43, South Carolina Legislation.

**SECTION 12‑21‑6010.** Stamps, labels or other indicia to be purchased from department at face value.

Official stamps, labels, or other indicia to be affixed to all marijuana or controlled substances must be purchased from the department. The purchaser shall pay one hundred percent of face value for each stamp, label, or other indicia at the time of the purchase.

HISTORY: 1993 Act No. 164, Part II, Section 70A.

Library References

Taxation 3678.

Westlaw Topic No. 371.

C.J.S. Taxation Sections 2173, 2177.

**SECTION 12‑21‑6020.** Dealer to have indicia evidence tax payment affixed; indicia may be used once; taxes due and payable immediately upon acquisition or possession.

(A) When a dealer purchases, acquires, transports, or imports into this State marijuana or controlled substances on which a tax is imposed by Section 12‑21‑5090, and if the indicia evidencing the payment of the tax have not already been affixed, the dealer shall have them permanently affixed on the marijuana or controlled substance immediately after receiving the substance. Each stamp or other official indicia may be used only once.

(B) Taxes imposed upon marijuana or controlled substances by this article are due and payable immediately upon acquisition or possession in this State by a dealer.

HISTORY: 1993 Act No. 164, Part II, Section 70A.

Library References

Taxation 3678, 3689, 3697.

Westlaw Topic No. 371.

C.J.S. Taxation Sections 2173, 2177, 2190, 2206.

**SECTION 12‑21‑6030.** Assessment for dealer not possessing valid indicia is jeopardy assessment.

An assessment for a dealer not possessing valid stamps or other official indicia showing that the tax has been paid is considered a jeopardy assessment or collection, as provided in Article 3 of Chapter 53 of this title.

HISTORY: 1993 Act No. 164, Part II, Section 70A.

Library References

Taxation 3686.

Westlaw Topic No. 371.

C.J.S. Taxation Sections 2189, 2191 to 2193.

**SECTION 12‑21‑6040.** Confidentiality of information on report or return; limited evidentiary use; publication of statistics permitted; violations and penalties.

(A) The department or a public employee may not reveal facts contained in a report or return required by this article or any information obtained from a dealer. Information contained in a report or return or obtained from a dealer may not be used against the dealer in a criminal proceeding, unless independently obtained, except in connection with a proceeding involving taxes due under this article from the dealer making the return.

(B) A person who violates this section is guilty of a felony and, upon conviction, must be imprisoned not more than five years or fined not more than ten thousand dollars, or both.

(C) This section does not prohibit the department from publishing statistics that do not disclose the identity of dealers or the contents of particular returns or reports.

HISTORY: 1993 Act No. 164, Part II, Section 70A.

Library References

Taxation 3688, 3712.

Westlaw Topic No. 371.

C.J.S. Taxation Sections 2189, 2221.

**SECTION 12‑21‑6050.** Tax proceeds credited to general fund of state.

The department shall credit the proceeds of the tax levied by this article to the general fund of the State.

HISTORY: 1993 Act No. 164, Part II, Section 70A.

Library References

Taxation 3713.

Westlaw Topic No. 371.

C.J.S. Taxation Section 2222.

ARTICLE 27

The Tourism Infrastructure Admissions Tax Act

**SECTION 12‑21‑6510.** Short title.

This article may be cited as the “Tourism Infrastructure Admissions Tax Act”.

HISTORY: 1997 Act No. 109, Section 1.

**SECTION 12‑21‑6520.** Definitions.

As used in this article:

(1) “Additional infrastructure improvement” means a road or pedestrian access way, a right‑of‑way, a bridge, a water or sewer facility, an electric or gas facility, a landfill or waste treatment facility, a hospital or medical facility, a fire station, a school, a transportation facility, a telephone or communications system, or any similar infrastructure facility and facilities ancillary thereto. This improvement must be owned by the State or a political subdivision. For purposes of this section, it includes a publicly‑owned tourism or recreation facility.

(2) “Benefit period” means a fifteen‑year period commencing on the first day of the first month after the date on which the department approves the certification application.

(3) “Certification application” means an application submitted by a county or municipality to the department requesting that the department approve a major tourism or recreation facility or a major tourism or recreation area for the benefits available under Sections 12‑21‑6530 and 12‑21‑6540.

(4) “Council” means the Advisory Coordinating Council for Economic Development.

(5) “Department” means the South Carolina Department of Revenue.

(6) “Designated development area” means a contiguous area set aside by municipal or county ordinance in which one or more tourism or recreation facilities will be located. The term includes a downtown or waterfront redevelopment area, a local historic district, redevelopment of a closed military facility, or a newly designated economic development site.

(7) “Establishment” means either a major tourism or recreation facility or a tourism or recreation facility located within a major tourism or recreation area.

(8) “Fund” means the special tourism infrastructure development fund.

(9) “Grant application” means the application submitted to the council whereby a local government may apply to receive a grant from the fund.

(10) “Investment period” means any consecutive sixty‑month period, however, the same investment may not be counted more than once in determining whether the appropriate amount of investment has been made within any consecutive sixty‑month period.

(11) “Major tourism or recreation area” means a designated development area with one or more tourism or recreation facilities located therein in which an aggregate investment in land and capital assets of at least twenty million dollars is made in the designated development area for tourism or recreation facilities, or as otherwise provided in Section 12‑21‑6560, within the investment period. The full twenty million dollars must be invested before the certification application can be filed.

(12) “Major tourism or recreation facility” means a tourism or recreation facility in which an aggregate investment in land and capital assets of at least twenty million dollars is made at the facility, or as otherwise provided in Section 12‑21‑6560, within the investment period. The full twenty million dollars must be invested before the certification application can be filed.

(13) “Tourism or recreation facility” means a theme park, amusement park, historical, educational or trade museum, botanical or zoological garden, aquarium, cultural center, theater, motion picture production studio, convention center, arena, coliseum, auditorium, golf course, spectator or participatory sports facility or any other facility which is subject to collecting and remitting the tax on admissions.

(14) “Tourism or recreational facility” also means an aquarium or natural history exhibit or museum located within or directly contiguous to an extraordinary retail establishment as defined below. An extraordinary retail establishment is a single store located in South Carolina within two miles of an interstate highway or in a county with at least three and one‑half million visitors a year, and it must be a destination retail establishment which attracts at least two million visitors a year with at least thirty‑five percent of those visitors traveling at least fifty miles to the establishment. The extraordinary retail establishment must have a capital investment of at least twenty‑five million dollars including land, buildings and site preparation costs, and one or more hotels must be built to service the establishment within three years of occupancy. Only establishments which receive a certificate of occupancy after July 1, 2006, qualify. The Department of Parks, Recreation and Tourism shall determine and annually certify whether a retail establishment meets these criteria and its judgment is conclusive. The extraordinary retail establishment annually must collect and remit at least two million dollars in sales taxes but is not required to collect or remit admission taxes.

HISTORY: 1997 Act No. 109, Section 1; 2006 Act No. 384, Section 22.C, eff June 14, 2006; 2006 Act No. 386, Section 48.C, eff June 14, 2006; 2007 Act No. 116, Section 3.A, eff June 28, 2007, applicable for tax years beginning after 2007.

Editor’s Note

1997 Act No. 109, Section 4, provides as follows:

“SECTION 4. This act is effective with respect to projects with investment periods, as defined in Section 12‑21‑6520(10) of the 1976 Code as added by this act, ending after December 31, 1996.”

Attorney General’s Opinions

Land, buildings and site preparation costs should be included in the calculation of the twenty‑five million dollar capital investment required for an extraordinary retail establishment. Nothing in the plain language of the statute to suggest that it matters whether the store will lease the building or own it outright. S.C. Op.Atty.Gen. (September 7, 2012) 2012 WL 4283915.

Once an entity using the conditional certification process satisfies all requirements of that process and of section 12‑21‑6520(14) its certification may not be withdrawn during the benefit period and there is no need for annual certifications. The benefit period begins once the extraordinary retail establishment meets all requirements of section 12‑21‑6520(14), including the visitation, sales tax, and hotel requirements. S.C. Op.Atty.Gen. (September 7, 2012) 2012 WL 4283915.

When an applicant uses the certification application process, final approval for benefits comes from the South Carolina Department of Revenue. When an applicant uses the conditional certification process, final approval for benefits rests with Department of Parks, Recreation and Tourism, which must determine whether the requirements of section 12‑21‑6520(14) have been satisfied. S.C. Op.Atty.Gen. (September 7, 2012) 2012 WL 4283915.

The cost of constructing a hotel to service an extraordinary retail establishment may be included in the calculation of the twenty‑five million dollar capital investment required for that establishment. S.C. Op.Atty.Gen. (September 7, 2012) 2012 WL 4283915.

**SECTION 12‑21‑6530.** Portion of tax to be paid to county or municipality where establishment located; use of funds.

(A) During the benefit period, an amount equal to one‑fourth of the license tax paid on admissions to an establishment must be paid by the department to the county or municipality in which the establishment is located. This portion of the tax is to be used directly or indirectly for additional infrastructure improvements. If more than one infrastructure improvement is being considered at the same time, preference must be given to infrastructure improvements requested by the establishment generating the admissions tax, or other development occurring as a result of the creation or expansion of the major tourism or recreation facility or major tourism or recreation area.

(B) If the establishment is located in an unincorporated area of a county, the payment must be made to the county governing body and, if located within the corporate limits of a municipality, the payment must be made to the municipal governing body.

(C) The county or municipal governing body may share funds received from these payments with another county or municipal governing body to provide additional infrastructure facilities or services in support of the establishment that generates the tax on admissions responsible for the payments.

HISTORY: 1997 Act No. 109, Section 1.

Library References

Public Amusement and Entertainment 50.

Westlaw Topic No. 315T.

C.J.S. Entertainment and Amusement; Sports Sections 33 to 34, 36 to 43, 47 to 48, 51.

**SECTION 12‑21‑6540.** Portion of tax to be transferred to State Treasurer for deposit in special tourism infrastructure development fund; applications for grants; review of applications; guidelines.

(A) During the benefit period, in addition to the amount described in Section 12‑21‑6530, except as otherwise provided in Section 12‑21‑6590, an additional amount equal to one‑fourth of the license tax paid on admissions to an establishment must be transferred by the department to the State Treasurer to be deposited into the fund and distributed pursuant to the approval of the council.

(B) Deposits into the fund must be separated into special accounts based on which establishment generated the admissions tax subject to this section.

(C) Counties or municipalities within five miles of the major tourism or recreation facility or major tourism or recreation area may apply to the council for grants from the fund by submitting a grant application.

(D) Upon review of the grant application, the council shall determine the amount of monies to be received by each of the eligible counties or municipalities. All monies must be used directly or indirectly for additional infrastructure improvements. If more than one grant application is being reviewed at the same time, preference must be given to grant applications for infrastructure which directly or indirectly serve the establishment that generates the admissions tax or other development occurring as a result of the creation or expansion of the major tourism or recreation facility or major tourism or recreation area. One year after the end of the benefit period, the council, after consultation with the Department of Parks, Recreation and Tourism, may use these funds for any infrastructure in the State which it determines will aid tourism.

(E) Grants may run for more than one year and may be based upon a specified dollar amount or a percentage of the monies deposited annually into the fund. After approval of a grant application, the council may approve the release of monies to eligible counties and municipalities.

(F) The council shall adopt guidelines to administer the fund including, but not limited to, grant application criteria for review and approval of grant applications. Expenses incurred by the council in administering the fund may be paid from the fund.

HISTORY: 1997 Act No. 109, Section 1; 2007 Act No. 116, Section 4, eff June 28, 2007, applicable for tax years beginning after 2007.

Library References

Public Amusement and Entertainment 50.

Westlaw Topic No. 315T.

C.J.S. Entertainment and Amusement; Sports Sections 33 to 34, 36 to 43, 47 to 48, 51.

Attorney General’s Opinions

The South Carolina Department of Parks, Recreation and Tourism possesses the authority to request reimbursement from the special tourism infrastructure fund for its expenses incurred during the certification process as required by the Tourism Infrastructure Admissions Tax Act. S.C. Op.Atty.Gen. (Feb. 14, 2005) 2005 WL 469072.

**SECTION 12‑21‑6550.** Certification application to be filed in county or municipality where major tourism or recreation area located; request for classification.

In order to obtain the amounts provided in Sections 12‑21‑6530 and 12‑21‑6540:

(A) The county or municipality in which the major tourism or recreation facility or major tourism or recreation area is located must file with the Department of Parks, Recreation and Tourism a certification application. The Department of Parks, Recreation and Tourism shall review the application for completeness and accuracy and if necessary contact the county or municipality for additional information. A separate certification application must be filed for each tourism or recreation facility located in a tourism or recreation area. The certification application must be filed within one year of the end of the investment period.

(B) When the application is complete, the Department of Parks, Recreation and Tourism shall forward the application on to the department. The department shall notify the county or the municipality, in writing, if the certification application has been approved.

(C) A tourism or recreation facility for which a certification application has been filed must request a determination from the council as to the status of the tourism or recreation facility. The council must classify each tourism or recreation facility as a new tourism or recreation facility or an expansion to an existing tourism or recreation facility. If a tourism or recreation facility is classified as an expansion to an existing tourism or recreation facility, Section 12‑21‑6580 applies. The request for determination of classification must be included in the certification application. The department must forward a copy of the request to the council for its determination.

HISTORY: 1997 Act No. 109, Section 1; 2005 Act No. 145, Section 24.A, eff July 1, 2005.

Library References

Public Amusement and Entertainment 50.

Westlaw Topic No. 315T.

C.J.S. Entertainment and Amusement; Sports Sections 33 to 34, 36 to 43, 47 to 48, 51.

**SECTION 12‑21‑6560.** Factors for considering whether facility qualifies as major tourism or recreation facility or area.

In determining whether or not a particular facility qualifies as a major tourism or recreation facility or a major tourism or recreation area, the following items may be included in determining if the twenty million dollar investment has been met:

(1) secondary support facilities such as hotels, food, and retail services which are located within, or immediately adjacent to, the major tourism or recreation facility or the major tourism or recreation area and which directly support the major tourism or recreation facility or the major tourism and recreation area;

(2) private or public sector funds or a combination of private and public sector funds, spent on the major tourism or recreation facility or the major tourism or recreation area.

HISTORY: 1997 Act No. 109, Section 1.

Library References

Public Amusement and Entertainment 50.

Westlaw Topic No. 315T.

C.J.S. Entertainment and Amusement; Sports Sections 33 to 34, 36 to 43, 47 to 48, 51.

Attorney General’s Opinions

The cost of constructing a hotel to service an extraordinary retail establishment may be included in the calculation of the twenty‑five million dollar capital investment required for that establishment. S.C. Op.Atty.Gen. (September 7, 2012) 2012 WL 4283915.

**SECTION 12‑21‑6570.** Designated development area and boundaries to be determined by ordinance; maximum total acreage allowed; designated development area embracing contiguous lands within two or more county‑municipal entities.

(A) A designated development area and its boundaries must be determined by municipal ordinance, if located in a municipality, or by county ordinance, if located in an unincorporated county area, or by more than one ordinance by municipal or county governments, or both, if it embraces areas within two or more counties or municipalities. One or more designated development areas may be located within a municipality or unincorporated county area.

(B) The total aggregate amount of a single designated development area within any municipality or county may not exceed five percent of the total acreage of the municipality or unincorporated county area.

(C) If there is more than one designated development area within a county or municipality, the total acreage for all designated development areas within a municipality must not exceed ten percent of the total acreage of the municipality and the total acreage for all designated development areas within unincorporated areas of a county must not exceed ten percent of the total acreage of the county’s unincorporated areas.

(D) The acreage limitations for municipalities and unincorporated county areas do not apply to designated development areas created prior to the year 2005 and located on a closed federal military facility as defined by the Base Realignment and Closure department, and the acreage for an area where these conditions are met are in addition to the acreage limitations applicable to any other designated development areas within the same municipality or unincorporated county area.

(E) Two or more municipal or county governments or combination of these governments may adopt ordinances to designate a “designated development area” embracing contiguous lands within two or more of the involved county‑municipal entities, but the acreage for each involved municipality or county must not exceed five percent of the total acreage in each involved municipality or unincorporated county area.

(F) The boundaries of a designated development area must be determined prior to the date that the certification application is approved.

HISTORY: 1997 Act No. 109, Section 1.

Library References

Public Amusement and Entertainment 50.

Westlaw Topic No. 315T.

C.J.S. Entertainment and Amusement; Sports Sections 33 to 34, 36 to 43, 47 to 48, 51.

**SECTION 12‑21‑6580.** Expansion or improvement of facilities; calculation of admissions tax revenues subject to Sections 12‑21‑6530 and 12‑21‑6540.

If a major tourism or recreation facility or a major tourism and recreation area is expanded or improved with an additional twenty million dollar investment being made within an investment period, the amount of admissions tax revenues subject to Sections 12‑21‑6530 and 12‑21‑6540 for the benefit period is the amount in excess of the annual admissions tax revenues previously generated by the major tourism or recreation facility, or by all of the tourism or recreation facilities within the major tourism or recreation area, as appropriate. This amount is determined by using the average of the admissions tax revenues generated during the twenty‑four months preceding the date of the filing of the certification application.

HISTORY: 1997 Act No. 109, Section 1; 1998 Act No. 432, Section 10.

Library References

Public Amusement and Entertainment 50.

Westlaw Topic No. 315T.

C.J.S. Entertainment and Amusement; Sports Sections 33 to 34, 36 to 43, 47 to 48, 51.

**SECTION 12‑21‑6590.** Designation of extraordinary retail establishments; additional infrastructure improvements and other expenditures supporting construction or operation; application for conditional certification.

(A) The Department of Parks, Recreation and Tourism may designate no more than four extraordinary retail establishments as defined in Section 12‑21‑6520(14), and for purposes of this section, sales taxes must be substituted for admissions taxes wherever admission tax appears in this Tourism Infrastructure Admissions Tax Act. For purposes of this section, additional infrastructure improvements include any aquarium or natural history exhibits or museum located within or directly contiguous to the extraordinary retail establishment which are dedicated to public use and enjoyment under such terms and conditions as may be required by the municipality or county in which they are located. Additional infrastructure improvements also shall include site prep, construction of real or personal property, parking, roadways, ingress and egress, utilities, and other expenditures on the extraordinary retail establishment which directly support or service the aquarium or natural history museum or exhibits. The certification application made under this section must be executed by both the extraordinary retail establishment as well as the county or municipality.

(B) Prior to the completion of an extraordinary retail establishment, an entity may request that the county or municipality in which the facility is located provide an application for conditional certification to the Department of Parks, Recreation and Tourism. The Department of Parks, Recreation and Tourism may grant conditional certification to the entity as an extraordinary retail establishment based on reasonable projections that the facility will meet the requirements of Section 12‑21‑6520(14) within three years of the certificate of occupancy. If the Department of Parks, Recreation and Tourism grants the conditional certification to the entity as an extraordinary retail establishment, it shall forward the approval for conditional certification to the department. The department shall notify the entity and either the county or the municipality, as applicable, of the approval.

An applicant obtaining conditional certification as an extraordinary retail establishment under this section and satisfying the requirements of conditional certification by the dates provided therein, shall be deemed to satisfy all of the requirements of this article pertaining to qualification as an extraordinary retail establishment for the duration of the benefit period. The entity shall be deemed to constitute a major tourism or recreation facility under Section 12‑21‑6520(12) and shall be entitled to all of the benefits of this article for the duration of the benefit period without any further certification requirements. This subsection shall not be construed to allow an applicant to receive the benefits provided in this article prior to satisfying the requirements of the conditional certification and of Section 12‑21‑6520(14).

The Department of Parks, Recreation and Tourism shall develop application forms and adopt guidelines governing the conditional certification process.

(C) If an applicant obtains conditional certification and complies with both the conditional certification and Section 12‑21‑6520(14), then one‑half shall be substituted for one‑fourth in Section 12‑21‑6530(A), and no funds will be transferred to the council pursuant to Section 12‑21‑6540.

HISTORY: 2006 Act No. 384, Section 22.D, eff June 14, 2006; 2006 Act No. 386, Section 48.D, eff June 14, 2006; 2007 Act No. 116, Section 3.B, eff June 28, 2007, applicable for tax years beginning after 2007.

Editor’s Note

Identical versions of this section were added by both 2006 acts.

Library References

Public Amusement and Entertainment 50.

Westlaw Topic No. 315T.

C.J.S. Entertainment and Amusement; Sports Sections 33 to 34, 36 to 43, 47 to 48, 51.

Attorney General’s Opinions

Discussion of the term “additional infrastructure improvement.” S.C. Op.Atty.Gen. (Feb. 20, 2009) 2009 WL 580561.