
State of South Carolina
Department of Revenue
301 Gervais Street, P.O. Box 125, Columbia, South Carolina 29214

SC INFORMATION LETTER 98-10

SUBJECT: ADMINISTRATIVE PRONOUNCEMENT
Gambling at Locations Licensed for the Sale of Beer or Wine
(ABC)

DATE: June 30, 1998

SUPERSEDES: All previous documents and any oral directives in conflict herewith.

REFERENCE: S. C. Code Ann. Section 61-4-580 (Supp. 1997)

AUTHORITY: S. C. Code Ann. Section 12-4-320 (Supp. 1997)
SC Revenue Procedure #97-8

SCOPE: An Information Letter is a document issued for the purpose of disseminating general information or information concerning an administrative pronouncement.

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**NOTICE TO ALL PERSONS LICENSED
TO SELL BEER OR WINE**

Code Section 61-4-580 states in part:

No holder of a permit authorizing the sale of beer or wine or a servant, agent, or employee of the permittee may knowingly commit any of the following acts upon the licensed premises covered by the holder's permit:

* * * *

(3) permit gambling or games of chance;

Prior to the South Carolina Supreme Court's decision in State v. Blackmon, 304 S.C. 270, 403 S.E. 2d 660 (1991), agents of the South Carolina Alcoholic Beverage Control Commission ("ABC Commission") routinely wrote administrative violations against beer and wine locations for violating the predecessor to Section 61-4-580(3) when they observed payoffs on video poker machines or other forms of gambling. In Blackmon, the Supreme Court ruled that, due to an exception provided in the law, the gambling statute did not prohibit a grocery store owner from disbursing money to players who accumulated free plays on coin-operated nonpayout machines with free play features (video game machines). The statute merely prohibited the machines from disbursing money. After the decision in Blackmon, agents ceased making such cases with respect to payoffs on video poker machines since it was believed that Section 61-4-580(3) did not apply to legal gambling.

Upon restructuring of state government in 1993, the South Carolina Department of Revenue adopted the policies of the former ABC Commission, including its apparent interpretation that the "gambling" prohibited by Section 61-4-580(3) applied only to illegal gambling. This position was cast in substantial doubt by the South Carolina Supreme Court's decision in Berkebile v. Outen, 311 S.C. 50, 426 S.E. 2d 760 (1993) in which the court rejected the argument that the "gambling" described in another code section (Section 32-1-10) only included illegal gambling.

More recently, the Administrative Law Judge Division ("ALJD") has issued two separate, well reasoned decisions in which, based on the provisions of Code Section 61-4-580(3) and the Berkebile decision, beer and wine permits were denied to establishments making cash payouts to players of video game machines. See Anonymous, 98-ALJ-17-0008-CC (April 6, 1998) and Anonymous, 98-ALJ-17-0221-CC (June 16, 1998).

In light of the Berkebile decision, the two recent ALJD decisions, and the clear wording of the statute, it is obvious that the position adopted from the former ABC Commission that Section 61-4-580(3) applied only to illegal gambling was an incorrect interpretation of the law and that **all** gambling and games of chance, whether legal or illegal, are prohibited on premises licensed for the sale of beer and wine.

Effective August 1, 1998, all premises licensed to sell beer or wine which permit gambling or games of chance, including gambling through the use of video game machines authorized by the Video Game Machines Act, will be considered in violation of Section 61-4-580(3) and will be subject to all applicable penalties and enforcement provisions under the law. This conclusion applies regardless of who owns the video game machines and regardless of whether the beer and wine license and the video game machine licenses are held in the name of the same or different persons.