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

SC INFORMATION LETTER 98-19

SUBJECT: Gambling at Locations Licensed for the Sale of Beer or Wine -
Enforcement of Law Enjoined by the Courts
(ABC)

DATE: August 17, 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.

Information Letters issued to disseminate general information have no precedential value and do not represent the official position of the Department. Information Letters designated as administrative pronouncements are official advisory opinions of the Department.

**COURT ORDERS PUT BEER AND GAMBLING ENFORCEMENT ON HOLD
INDEFINITELY**

A. INJUNCTIONS: As discussed below, the Circuit Court has issued two separate injunctions which enjoin the SC Department of Revenue and the State Law Enforcement Division from enforcing S.C. Code Section 61-4-580(3), as detailed in SC Information Letter #98-10.

In one action, the Fifth Circuit Court, in Treasured Arts v. South Carolina Department of Revenue and South Carolina Law Enforcement Division, 98-CP-4028-14, issued a preliminary injunction on August 10, 1998 preventing the South Carolina Department of Revenue from taking any enforcement actions against businesses with beer and wine licenses which also sell telephone cards with scratch-off cash prizes. His order remains in effect until September 21, 1998 when a hearing is scheduled to determine if the statute prohibiting gambling or games of chance at businesses which sell beer and wine applies to the scratch-off cards issued by Treasured Arts Inc.

In another action, the Department of Revenue received on August 7, 1998 the preliminary injunction in Pearlstine Distributors, Inc, et. al. v. South Carolina Department of Revenue, 98-CP 10-3070, from the Ninth Circuit Court preventing the department from taking any enforcement actions against businesses with beer and wine licenses which also have video poker machines.

The injunction in the second action remains in effect until a trial is held on the issue, a decision is reached by the Fifth Circuit on the Department of Revenue's motion for a declaratory judgment, or the South Carolina Supreme Court issues a decision on the constitutionality of video poker. A hearing date has not been scheduled for the Department of Revenue's declaratory judgment motion, which has been pending since October, 1997.

In addition, Federal Judge Joseph Anderson has scheduled a hearing on September 2, 1998 in Columbia on several video poker questions, including the beer and wine issue.

The orders come as a result of the Department of Revenue's administrative pronouncement, SC Information Letter #98-10, on June 30, 1998 informing the more than 11,000 businesses with beer and wine licenses that state law prohibits gambling or games of chance in those businesses. The Department of Revenue issued the pronouncement after two recent decisions from the Administrative Law Judge Division which denied beer and wine licenses to businesses because they had video poker machines.

Pursuant to the various orders and until such time as this matter is resolved by the courts, the department will issue beer and wine permits for new locations, as well as beer and wine permits for locations renewing their permit, for locations operating video game machines in accordance with the Video Game Machines Act and locations selling Treasured Arts Inc. telephone cards with scratch-off cash prizes, **provided such locations meet all other requirements of the ABC laws**. In addition, pursuant to the injunction neither the Department of Revenue nor the State Law Enforcement Division will institute enforcement proceedings on the sole basis that a beer and wine permittee has also permitted the operation of legally licensed video game machines (as authorized under the Video Game Machines Act) on his or her premises. If the courts uphold the department's position as set forth in SC Information Letter #98-10, then 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.

B. REINSTATEMENT OF PERMITS: Any retailer who surrendered his beer and wine permits solely as a result of his voluntary compliance with SC Information Letter #98-10 may have the permit reinstated by making a written request to: SC Department of Revenue, Office Services Division, ABL Section, P.O. Box 125, Columbia, SC, 29214.

C. WHOLESALEERS MAY REPURCHASE BEER AND WINE FROM RETAILERS: With respect to any retailer who has surrendered or surrenders his beer and wine permit as a result of his voluntary compliance with SC Information Letter #98-10, a wholesaler may accept, without violating the three tier law, the return of beer and wine from such a retailer since, in the department's opinion, such beer and wine can no longer be lawfully sold in locations permitting gambling under the Video Game Machines Act. This is based on ABC Bulletin #84-1 which stated that beer can be returned to the wholesaler for cash without violating the three tier law if the product can no longer be lawfully sold or if the retailer terminates his business.

The decisions to accept return of beer and wine under these circumstances is at the sole discretion of the wholesaler. The wholesaler is not required to accept return of the beer or wine.