

SC REVENUE ADVISORY BULLETIN #00-10

**SUBJECT:** Sale of Alcoholic Liquors, Beer and Wine for On-Premise Consumption on New Year's Eve  
(ABL)

**SUPERSEDES:** All previous advisory opinions and any oral directives in conflict herewith.

**REFERENCES:** S. C. Code Ann. Section 61-4-120 (Supp 2000)  
S. C. Code Ann. Section 61-4-500 (Supp 2000)  
S. C. Code Ann. Section 61-4-240 (Supp 2000)  
S. C. Code Ann. Section 61-6-1600 (Supp 2000)  
S. C. Code Ann. Section 61-6-1610 (Supp 2000)  
S. C. Code Ann. Section 61-6-2000 (Supp 2000)  
S. C. Code Ann. Section 61-6-2010 (Supp 2000)

**AUTHORITY:** S. C. Code Ann. Section 12-4-320 (2000)  
S. C. Code Ann. Section 1-23-10(4) (Supp. 2000)  
SC Revenue Procedure #99-4

**SCOPE:** The purpose of a Revenue Advisory Bulletin is to provide guidance to the public and to Department personnel. It is a written statement issued to apply principles of tax law to a specific set of facts or a general category of taxpayers. A Revenue Advisory Bulletin does not have the force or effect of law, and is not binding on the public. It is, however, the Department's position and is binding on agency personnel until superseded or modified by a change in statute, regulation, court decision, or advisory opinion.

Questions:

1. May a location licensed for on-premise sale and consumption of alcoholic liquors via minibottles sell alcoholic liquor on Sunday, December 31, 2000 - New Year's Eve?
2. May a location permitted for on-premise sale and consumption of beer and wine sell beer and wine on Sunday, December 31, 2000 - New Year's Eve?
3. May a location allow a private function where alcoholic liquors, beer and wine are consumed to be held on its premises on Sunday, December 31, 2000 - New Year's Eve ?

Conclusions:

## **1. ALCOHOLIC LIQUORS SOLD VIA MINIBOTTLES**

### **Food-service Establishments or Places of Lodging**

If a location licensed under the provisions of Code Section 61-6-1610 (minibottle license) has applied for and received from the department a local option permit for December 31, 2000 under the provisions of Code Section 61-6-2010, then the location may sell alcoholic liquors via minibottles on Sunday, December 31, 2000 - New Year's Eve, except between the hours of 2:00 a.m. Sunday and 10:00 a.m. Sunday.

If a location licensed under the provisions of Code Section 61-6-1610 (minibottle license) has **not** applied for and received from the department a local option permit for December 31, 2000 under the provisions of Code Section 61-6-2010, then the location may **not** sell alcoholic liquors via minibottles on Sunday, December 31, 2000 - New Year's Eve. However, such a location may sell alcoholic liquors via minibottles (and beer and wine if it is licensed under Code Section 61-4-500) from 12:01 a.m. till 2:00 a.m. on Monday, January 1, 2001.

**Note: Only locations in counties or municipalities that have approved by referendum local option permits may be issued local option permits under the provisions of Code Section 61-6-2010.**

### **Nonprofit Organizations**

#### **Private Clubs**

If a location is licensed under the provisions of Code Section 61-6-1600 (nonprofit minibottle license), then the location may sell to its members and their bonafide guests alcoholic liquors via minibottles on Sunday, December 31, 2000 - New Year's Eve, except between the hours of 2:00 a.m. Sunday and 10:00 a.m. Sunday.

#### **Single Social Occasion**

If a nonprofit organization obtains a temporary license for a period not to exceed twenty-four hours under the provisions of Code Section 61-6-2000, then the nonprofit organization may purchase and sell at a single social occasion alcoholic liquors in minibottles, on Sunday, December 31, 2000 - New Year's Eve, except between the hours of 2:00 a.m. Sunday and 10:00 a.m. Sunday.

## **2. BEER AND WINE:**

If a location licensed under the provisions of Code Section 61-6-1610 (minibottle license) has applied for and received from the department a local option permit for December 31, 2000, under the provisions of Code Section 61-6-2010, then the location may sell beer and wine (and alcoholic liquor via minibottles) on Sunday, December 31, 2000 - New Year's Eve, except

between the hours of 2:00 a.m Sunday and 10:00 a.m. Sunday, provided it is licensed to sell beer and wine for on-premise consumption under Code Section 61-4-500 (beer and wine permit).

If a location licensed under the provisions of Code Section 61-6-1610 (minibottle license) has **not** applied for and received from the department a local option permit for December 31, 2000 under the provisions of Code Section 61-6-2010, then the location may **not** sell beer and wine (and may not sell alcoholic liquors via minibottles) on Sunday, December 31, 2000 - New Year's Eve. However, such a location may sell alcoholic liquors via minibottles (and beer and wine if it is licensed under Code Section 61-4-500) from 12:01 a.m. till 2:00 a.m. on Monday, January 1, 2001.

If a location is licensed under the provisions of Code Section 61-6-1600 (nonprofit minibottle license), then the location may sell beer and wine (and alcoholic liquor via minibottles) on Sunday, December 31, 2000 - New Year's Eve, except between the hours of 2:00 a.m Sunday and 10:00 a.m. Sunday, provided it is licensed to sell beer and wine for on-premise consumption under Code Section 61-4-500 (beer and wine permit).

If a nonprofit organization obtains a temporary license for a period not to exceed twenty-four hours under the provisions of Code Section 61-6-2000 (nonprofit temporary minibottle license), then the nonprofit organizations may purchase and sell at a single social occasion beer and wine on Sunday, December 31, 2000 - New Year's Eve, except between the hours of 2:00 a.m Sunday and 10:00 a.m. Sunday, provided it is licensed to sell beer and wine for on-premise consumption under Code Section 61-4-240 (temporary beer and wine permit).

If a location is **not** licensed under the provisions of Code Section 61-6-1610 (minibottle license) but is licensed under Code Section 61-4-500 to sell beer and wine for on-premise consumption, then the location may **not** sell beer and wine on Sunday, December 31, 2000 - New Year's Eve, and it may **not** sell beer or wine before sunrise on Monday, January 1, 2001.

**Note: Only locations in counties or municipalities that have approved by referendum local option permits may be issued local option permits under the provisions of Code Section 61-6-2010.**

### **3. PRIVATE FUNCTIONS**

A location may allow a private function where alcoholic liquors, beer and wine are **consumed (but not sold)** to be held on its premises on Sunday, December 31, 2000 - New Year's Eve, provided the provisions of SC Regulation 7-14 are met and only pre-invited guests attend, the function is not advertised to the general public, and the lease required by SC Regulation 7-14 constitutes an arms length transaction. The provisions of Code Section 61-6-1620(B) and SC Regulation 7-14 apply whether or not the location is licensed for the sale and consumption of alcoholic liquors via minibottles, beer or wine.

The provisions of Code Section 61-6-1620(B) and SC Regulation 7-14 only allow the possession and consumption of alcoholic liquors, beer or wine and do **not** allow the sale of alcoholic liquors, beer or wine.

**Note #1: For purposes of the ABC laws and the above conclusions (#1, #2 and #3), alcoholic liquor, beer or wine is sold if there is a per drink charge, if an admissions fee is charged to enter a place or event where these beverages are provided, if a donation is accepted with respect to the event where these beverages are provided, if tickets are sold with respect to the event where these beverages are provided, if such beverages are provided as part of a meal for which consideration, direct or indirect, is accepted or required, if such beverages are provided as part of room accommodations for which consideration, direct or indirect, is accepted or required, or if any consideration is accepted or required with respect to the event where these beverages are provided.**

**Note #2: Code Sections 61-4-160 and 61-6-4550 permit locations licensed for the sale and on-premise consumption of alcoholic liquors via minibottles or beer and wine to hold no more than two functions (approved by the department) per year at which alcoholic liquor, beer or wine are dispensed for free. These sections do not authorize such functions on Sunday, December 31, 2000, unless the location has applied for and received from the department a local option permit for December 31, 2000, under the provisions of Code Section 61-6-2010. (Note: Only locations in counties or municipalities that have approved by referendum local option permits may be issued local option permits under the provisions of Code Section 61-6-2010.)**

Facts:

Locations licensed or permitted for the on-premise sale and consumption of alcoholic beverages (liquor, beer and wine) have inquired about operating on New Year's Eve - December 31st. This year New Year's Eve falls on a Sunday.

Discussion:

Code Section 61-6-1610 establishes the hours for selling alcoholic liquor via minibottles at food-service establishments or places of lodging licensed for the on-premise sale and consumption of alcoholic liquor via minibottles. It states in part:

(A) Except on Sunday, it is lawful to sell and consume alcoholic liquors sold in minibottles in a business establishment between the hours of ten o'clock in the morning and two o'clock the following morning if the establishment meets the following requirements:

(1) the business is bona fide engaged primarily and substantially in the preparation and serving of meals or furnishing of lodging; and

(2) the business has a license from the department authorizing the sale and consumption of alcoholic liquors, which is conspicuously displayed on the main entrance to the premises and clearly visible from the outside. (Emphasis added.)

Code Section 61-6-1600 establishes the hours for selling alcoholic liquor via minibottles by non-profit organizations licensed for the on-premise sale and consumption of alcoholic liquor via minibottles<sup>1</sup>. It states

Nonprofit organizations which are licensed by the department under this article may sell alcoholic liquors in minibottles. Members or guests of members of these organizations may consume alcoholic liquors sold in minibottles upon the premises between the hours of ten o'clock in the morning and two o'clock the following morning.

Code Section 61-6-2010 allows Sunday sales via a local option permit under certain circumstances and states in part:

(A) In addition to the provisions of Section 61-6-2000, the department may issue a temporary permit to allow the possession, sale, and consumption of alcoholic liquors in sealed containers of two ounces or less. This permit is valid for a period not to exceed twenty-four hours and may be issued only to bona fide nonprofit organizations and business establishments otherwise authorized to be licensed for sales. The department shall charge a nonrefundable filing fee of one hundred dollars for processing each application and a daily permit fee of fifty dollars for each day for which a permit is approved. An application must be filed for each permit requested. The department in its sole discretion shall specify the terms and conditions of the permit.

\* \* \* \*

(C) Permits authorized by this section may be issued only in those counties or municipalities where a majority of the qualified electors voting in a referendum vote in favor of the issuance of the permits. The county or municipal election commission, as the case may be, shall conduct a referendum upon petition of at least ten percent but not more than twenty-five hundred qualified electors of the county or municipality, as the case may be, in not less than thirty nor more than forty days after receiving the petition. The election commission shall cause a notice to be published in a newspaper circulated in the county or municipality, as the case may be, at least seven days before the referendum. The state election laws shall apply to the referendum, mutatis mutandis. The election commission shall publish the results of the referendum and certify them to the South Carolina Department of Revenue. The question on the ballot shall read substantially as follows:

"Shall the South Carolina Department of Revenue be authorized to issue temporary permits in this (county)(municipality) for a period not to exceed twenty-four hours to allow the possession, sale, and consumption of alcoholic liquors in sealed containers of two ounces or less to bona fide nonprofit organizations and business establishments otherwise authorized to be licensed for sales?"

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<sup>1</sup> See SC Regulation 7-17 for more information about non-profit organizations eligible to be licensed to sell alcoholic liquors via minibottles.

A referendum for this purpose may not be held more often than once in forty-eight months.

The expenses of any such referendum must be paid by the county or municipality conducting the referendum.

Code Section 61-4-500 concerns the issuance of beer and wine permits and states:

A person engaging in the business of selling beer, ale, porter, wine, or a beverage which has been declared to be nonalcoholic and nonintoxicating under Section 61-4-10 must apply to the department for a permit to sell these beverages. Each applicant must pay a filing fee of two hundred dollars which is not refundable. A retailer must pay to the department four hundred dollars biennially for a retail permit, and a wholesale dealer must pay to the department two thousand dollars biennially for a wholesale permit. A separate permit is required for each separate place of business.

A person who initially applies for a permit after the first day of a permit period must pay permit fees in accordance with the schedule provided in Section 61-6-1810(C).

Code Section 61-4-120 concerns the sale of beer and wine on Sundays and states:

It is unlawful for a person to sell or offer for sale wine or beer in this State between the hours of twelve o'clock Saturday night and sunrise Monday morning. However, an establishment licensed pursuant to Article 5 of Chapter 6 is authorized to sell these products during those hours in which the sale of alcoholic liquors in minibottles is lawful. A person who violates the provisions of this section is considered guilty of a misdemeanor and, upon conviction, must be fined not more than one hundred dollars or imprisoned for not more than thirty days. The right of a person to sell wine and beer in this State under a license issued by the State must be forfeited and the license revoked upon his conviction of violating the provisions of this section. Municipal ordinances in conflict with this section are unenforceable.

Based on the above, it is the opinion of the department that the hours for selling alcoholic liquors, beer and wine are as follows:

**HOURS - FOOD SERVICE ESTABLISHMENTS AND PLACES OF LODGING  
LICENSED FOR ON-PREMISES CONSUMPTION OF LIQUOR (MINIBOTTLES)**

**Locations with a Local Option Permit:** These locations may sell, and patrons may consume, liquor on these premises between the hours of 10:00 a.m. and 2:00 a.m. the following morning. Local Option Permits are issued only in counties or municipalities in which a public referendum has approved such permits. See Code Sections 61-6-1610 and 61-6-2010.

**Locations without a Local Option Permit:** These locations may sell, and patrons may consume, liquor on these premises between the hours of 10:00 a.m. and 2:00 a.m. the following morning, except between midnight Saturday night and midnight Sunday night.

See Code Section 61-6-1610. This allows such locations to sell (and patrons to consume) liquor as follows:

After midnight Sunday until 2:00 a.m. Monday  
10:00 a.m. Monday until 2:00 a.m. Tuesday  
10:00 a.m. Tuesday until 2:00 a.m. Wednesday  
10:00 a.m. Wednesday until 2:00 a.m. Thursday  
10:00 a.m. Thursday until 2:00 a.m. Friday  
10:00 a.m. Friday until 2:00 a.m. Saturday  
10:00 a.m. Saturday until midnight Saturday

**HOURS - NONPROFIT ORGANIZATIONS (PRIVATE CLUBS) LICENSED FOR ON-PREMISES CONSUMPTION OF LIQUOR (MINIBOTTLES)**

These locations may sell, and members and guests of members may consume, liquor on these premises between the hours of 10:00 a.m. and 2:00 a.m. the following morning. See Code Section 61-6-1600. For more information on private clubs, see SC Regulation 7-17.

**HOURS - LOCATIONS LICENSED FOR ON-PREMISES CONSUMPTION OF BEER OR WINE**

**Locations only licensed to sell beer or wine for on-premises consumption:** These locations may sell, and patrons may consume, beer or wine on these premises at anytime except between midnight Saturday night and sunrise Monday morning. This allows such locations to sell (and patrons to consume) beer or wine at anytime after sunrise Monday morning until midnight Saturday night.

**Locations also licensed to sell liquor (minibottles) for on-premises consumption:** These locations may sell, and patrons may consume, beer or wine on these premises during the same hours the location is permitted to sell, and patrons may consume, liquor (minibottles). See the above information entitled “HOURS - FOOD SERVICE ESTABLISHMENTS AND PLACES OF LODGING LICENSED FOR ON-PREMISES CONSUMPTION OF LIQUOR (MINIBOTTLES).” and “HOURS - NONPROFIT ORGANIZATIONS (PRIVATE CLUBS) LICENSED FOR ON-PREMISES CONSUMPTION OF LIQUOR (MINIBOTTLES)” See Code Section 61-4-120.

Now we must consider the issue of private functions held on Sunday, December 31, 2000 - New Year’s Eve.

Code Section 61-6-1620(B) states:

Alcoholic liquors may be possessed or consumed in separate and private areas of an establishment whether or not the establishment includes premises which are licensed pursuant to Sections 61-6-1600 or 61-6-1610, where specific individuals have leased these areas for a function not open to the general public.

SC Regulation 7-14 states:

A. Lease must be written. When a separate and private area of an establishment is leased by a holder of a sale and consumption license to a specific individual or individuals for a function not open to the general public pursuant to Section [61-6-1620(B)], the terms of the lease agreement shall be reduced to writing and a copy of that instrument shall be retained by the licensee upon the licensed premises.

B. Purchase, delivery and possession of alcoholic beverages. When a separate and private area of an establishment is leased by a specific individual or individuals for a function not open to the general public pursuant to Section [61-6-1620(B)], the host or sponsor of said function, or the designated agent or representative of said host or sponsor, must purchase and deliver to the leased area any alcoholic beverages to be possessed and consumed therein and must remain constantly in actual possession of these beverages until such time as the function is concluded, at which time all alcoholic beverages must be removed from the leased area and taken to a location where they may be legally stored. Nothing contained herein shall prohibit the host or sponsor or his designated agent or representative from having other persons, whether employed by the licensee or employed by the host or his agent or representative, from mixing and serving alcoholic beverages belonging to the host of the party.

C. Termination of lease. In the event that the area leased pursuant to Section [61-6-1620(B)], is located upon the premises of an establishment holding either a sale and consumption license or a retail beer and wine permit, the lease agreement shall automatically terminate at 2 o'clock in the morning. To permit or knowingly allow the possession and consumption of any alcoholic beverages upon the premises of the establishment after 2 o'clock in the morning shall constitute a violation against the license or permit. Such violation shall constitute sufficient cause for the [SC Department of Revenue] to revoke or suspend said license or permit.

In addition, it has been the longstanding position of the department and the former ABC Commission that a private function is one which (1) complies with the provisions of SC Regulation 7-14, (2) only pre-invited guests attend, (3) the function is not advertised to the general public, and (4) the lease required by SC Regulation 7-14 constitutes an arms length transaction.

Based on the above, it is the department's opinion that a location may allow a private function where alcoholic liquors, beer and wine are consumed to be held on its premises on Sunday, December 31, 2000 - New Year's Eve, provided the provisions of SC Regulation 7-14 are met and only pre-invited guests attend, the function is not advertised to the general public, and the lease required by SC Regulation 7-14 constitutes an arms length transaction.

The provisions of Code Section 61-6-1620(B) and SC Regulation 7-14 only allow the possession and consumption of alcoholic liquors, beer or wine and do **not** allow the sale of alcoholic liquors, beer or wine.



Finally, Code Section 61-6-2000 states:

In addition to the minibottle licenses authorized under subarticle 1 of this article, the department may also issue a temporary license for a period not to exceed twenty-four hours to nonprofit organizations which authorizes these organizations to purchase and sell at a single social occasion alcoholic liquors in minibottles. Notwithstanding any other provision of this article, the issuance of this permit authorizes the organization to purchase alcoholic liquors in minibottles from licensed retail dealers in the same manner that persons with biennial minibottle licenses are authorized to make these purchases. The fee for the permit is thirty-five dollars payable at the time of application. The permit application must include a statement by the applicant as to the amount of alcoholic liquors to be purchased and the nature and date of the social occasion at which they are to be sold. The issuance or nonissuance of permits authorized under this section is within the sole discretion of the department.

Code Section 61-4-240 states:

Temporary permits for the possession, consumption, and sale of beer or wine may be issued pursuant to Sections 61-4-550, 61-6-500, 61-6-510, 61-6-2000, or 61-6-2010, as appropriate, and in accordance with these statutes. (Emphasis added.)

SOUTH CAROLINA DEPARTMENT OF REVENUE

s/Elizabeth A. Carpentier  
Elizabeth A. Carpentier, Director

December 14, 2000  
Columbia, South Carolina