

SC REVENUE RULING #95-13 (TAX)

SUBJECT: Regulation - Single Place or Premises
(Video Game Machines)

EFFECTIVE DATE: The date the Video Game Machine regulation on what constitutes a "single place or premises" is effective.

SUPERSEDES: SC Revenue Ruling #95-7 and all previous documents and any oral directives in conflict herewith.

REFERENCES: S. C. Code Ann. Section 12-21-2798 (Supp. 1994)

AUTHORITY: S. C. Code Ann. Section 12-4-320 (Supp. 1994)
SC Revenue Procedure #94-1

SCOPE: A Revenue Ruling is the Department of Revenue's official advisory opinion of how laws administered by the Department are to be applied to a specific issue or a specific set of facts, and is provided as guidance for all persons or a particular group. It is valid and remains in effect until superseded or modified by a change in the statute or regulations or a subsequent court decision, Revenue Ruling or Revenue Procedure.

LAW AND REGULATION:

Code Section 12-21-2804(A) restricts the number of video game machines that may be located in a "single place or premises" to five. The statute, however, does not define the terms single place or premises. Under its authority in Code Section 12-21-2798 and in accordance with the provisions of the Administrative Procedures Act, the Department promulgated regulations concerning various aspects of the Video Game Machine Act. As a result, the following regulation concerning what constitutes a "single place or premises" was approved by the General Assembly. This regulation became effective June 23, 1995, and states:

The Video Game Machines Act, found in Article 20, Chapter 21 of Title 12, limits the number of machines that may be located in a "single place" or "premises".

A single place or premises must be a fixed location. It does not include moving property such as a boat or a train, unless such property is permanently affixed to a specific location.

A "single place" or "premises" means a structure surrounded by exterior walls or firewalls consistent with the requirements of the applicable building code (or where no building code is applicable, a one hour rated firewall), provided such exterior walls and firewalls may not have any windows, doors or other openings leading to another area where video game machines are located

If a structure surrounded by exterior walls has two or more areas where video game machines are located, each surrounded by exterior walls or firewalls as defined and required above, the Department must review all the facts and circumstances to determine if each area in reality constitutes a single place or premise for video game machines. In determining whether each entity is in fact a single place or premises, the Department of Revenue will consider the following factors: (1) Does each entity or business have a separate electric utility meter? (2) Does each entity or business have at least one separate employee on the premises during business hours? (3) Does each entity or business have a separate local business license where required? (4) Does each entity or business have a separate state sales tax licenses? A positive answer to these four questions is required for each area to be considered a "single place or premise" for purposes of The Video Game Machines Act.

The purpose of this ruling is to address various issues and questions that have arisen as a result of the General Assembly's approval of the regulation. Most of the issues and questions concern the application of this regulation to structures surrounded by exterior walls that have two or more areas where video game machines are located.

QUESTIONS AND ANSWERS:

Requirement of Separate Electric Utility Meters

The regulation on "single place or premises" requires a location with video game machines to have its own electric utility meter if it is located in a structure that has other areas with video game machines.

1. Q. Does this require each single place or premises¹ to have an electric utility meter that is supplied by a traditional electric utility company? Or may a landlord install his own meters in each tenant's single place or premises?
 - A. Each single place or premises is not required to have an electric utility meter that is supplied by and read by an electric utility company. The landlord may install his own meters in each tenant's single place or premises; however, the landlord and tenant must comply with all applicable Public Service Commission laws and regulations.

2. Q. Does the requirement for separate electric utility meters require each single place or premises to be completely self-contained? In other words, may a mall type setting have a central heating and air conditioning unit whereby heating and air conditioning costs are included in the lease? Or must each single place or premises have its own heating and air conditioning system?
 - A. A mall type setting may have a central heating and air conditioning unit whereby heating and air conditioning costs are included in the lease. Each single place or

¹See page 2 of this document for the regulation that defines the term "single place or premises" for purposes of the Video Game Machines Act.

premises is not required to have its own heating and air conditioning system. However, each single place or premises must have a separate electric utility meter.

3. Q. Does the requirement for separate electric utility meters also require each single place or premises to be billed separately for the electricity? In other words, if one person operates more than one single place or premises in the structure, may that person be billed on one invoice for all single places or premises operated by the person within the structure?
 - A. The requirement for separate electric utility meters does not require each single place or premises to be billed separately for the electricity. If one person operates more than one of the single places or premises in the structure, that person may be billed on one invoice for all single places or premises the person operates within the structure. However, each single place or premises must have a separate electric utility meter.

Windows, Doors, and Other Openings in Exterior Walls and Firewalls

The regulation on "single place or premises" states that "exterior walls and firewalls may not have any windows, doors or other openings leading to another area where video game machines are located."

4. Q. If a firewall has a window leading to another area where video game machines are located, but that window is permanently sealed shut, is the single place or premises in violation of the regulation?
 - A. The regulation does not distinguish between windows that may be opened and windows that are sealed shut. A firewall with a window leading to another area where video game machines are located, even if that window is permanently sealed shut, is a violation of the regulation.
5. Q. In a mall type setting, must the firewalls which provide access to the commons area of the structure have doors that meet the building code requirements of doors within a firewall? Or may such firewalls have an opening without a door leading to the commons area?
 - A. In a mall type setting, the firewalls which provide access to the commons area of the structure must have doors that meet the building code requirements of doors within a firewall.
6. Q. In a mall type setting, since the firewalls which provide access to the commons area of the structure must have doors that meet the building code requirements of doors within a firewall, must these doors remain closed at all times except when the door is opened by someone entering or leaving the location?
 - A. The regulation does **not** require the doors within the firewalls to be closed at all times. Such doors may remain open during the business hours of the single place or premises, unless the building code requirements for doors within a firewall require such doors to remain closed except when the door is opened by someone entering or leaving the location.

7. Q. In a mall type setting, since the firewalls which provide access to the commons area of the structure must have doors that meet the building code requirements of doors within a firewall, may these doors be constructed of glass or must the doors be opaque?
- A. The regulation does not require the doors to be made of a certain material and does not require the doors to be opaque. However, the doors, whether made of glass or other materials, must meet the building code requirements for doors within a firewall.

Employees

The regulation on "single place or premises" requires that "each entity or business [within a structure that has several areas where video game machines are located] have at least one separate employee on the premises during business hours".

8. Q. In a mall type setting, will a separate payout station be required for each single place or premises? Or may several single places or premises payout winnings from the same payout station (cash register)?
- A. In a mall type setting, a separate payout station will **not** be required for each single place or premises. The regulation does not establish a requirement with respect to payout stations within a structure that has several single places or premises.

However, since the regulation requires separate state sales tax licenses for each single place or premises, each location's income and payouts must be accounted for separately.

9. Q. Is an employee required to be located in the same single place or premises as the video game machines at all times? In other words, in a mall type setting, may the employee for each single place or premises be located in a commons area where players come to collect their winnings or purchase food and drinks?
- A. The regulation requires that "each entity or business [within a structure that has several areas where video game machines are located] have at least one separate employee on the premises during business hours." "On the premises" refers to the single place or premises itself. Therefore, the regulation requires each distinct single place or premises to have an employee present on the premises anytime the business is open. In other words, in a mall with 10 single places or premises, there must be an employee in each of the 10 single places or premises during all business hours.
10. Q. If a single place or premises, such as a building that houses a convenience store, has no more than five video game machines within it and has these machines located in a game room within the building, does the regulation require that an employee be located in the same room as the video game machines at all times?
- A. No, the building housing the convenience store is the single place or premises. Therefore, the regulation only requires the employee to be located within the building and not specifically within the game room that contains the five video game machines.

SOUTH CAROLINA DEPARTMENT OF REVENUE

s/Burnet R. Maybank III
Burnet R. Maybank, III, Director

Columbia, South Carolina
August 1, 1995

For questions concerning this matter, please contact your local Taxpayer Service Center as follows:

Aiken	(803) 641-7685	Greenville	(803) 241-1200
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