



SC REVENUE RULING #94-4 (ABC)

SUBJECT: Malt Coolers - Code Section 61-9-1010
Unlawful Acts of Registered Producers and Wholesalers.
(ABC Laws)

EFFECTIVE DATE: Applies to all periods open under the statute.

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

REFERENCE: S.C. Code Ann. Section 61-9-1010 (1990)
S.C. Code Ann. Section 12-21-1010 (1976)
S.C. Code Ann. Section 61-3-20(1) (1990)
S.C. Code Ann. Section 61-9-10 (1990)

AUTHORITY: S.C. Code Ann. Section 12-4-320 (Supp. 1993)
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 It is valid and remains in effect until superseded or modified by a change in the statute or regulations or a subsequent court decision, Revenue Ruling or Revenue Procedure.

Question:

Do the provisions of Code Section 61-9-1010 concerning unlawful acts of registered producers and wholesalers apply to malt coolers.

Conclusion:

The provisions of Code Section 61-9-1010 apply to registered producers and wholesalers distributing malt coolers containing not more than 5% of alcohol by weight.

If a malt cooler contains more than 5% of alcohol by weight, then the malt cooler is an alcoholic liquor as defined by Code Sections 61-9-10 and 61-3-20(1). As an alcoholic liquor, the malt cooler would not be subject to the provisions of Code Section 61-9-1010, but would be subject to all regulatory and taxation provisions applying to alcoholic liquors.

Facts:

A malt cooler is a beverage containing alcohol. The product is brewed with malted (germinated) barley and hops, and then sugar, citric acid, and other chemicals are added. Carbon dioxide is added at the time of bottling.

Discussion:

Chapter 9 of Title 61 concerns beers, ales, porters and wines. Code Section 61-9-1010 of that chapter concerns unlawful acts of registered producers and wholesalers, and reads:

- (1) It shall be unlawful for any producer holding a certificate of registration from the [South Carolina Department of Revenue] (hereinafter called a registered producer) or any officer, agent or representative of any registered producer:
 - (a) To coerce, or attempt to coerce, or persuade, any person holding a permit to sell beer, ale, porter, and other similar malt or fermented beverages at wholesale (hereinafter referred to as a beer wholesaler) to enter into any agreement to take any action which would violate any provision of this article or any ruling or regulation promulgated pursuant to law in accordance therewith; or
 - (b) To unfairly, without due regard to the equities of such beer wholesaler, or without just cause or provocation, to cancel or terminate any agreement or contract, written or oral, or franchise, or any contractual franchise relationship of such wholesaler existing on May 1, 1974 or thereafter entered into, to sell beer manufactured by the registered producer; provided, also, that this provision shall be a part of any contractual franchise relationship, whether written or oral, between any beer wholesaler and any registered producer doing business with such beer wholesaler, just as though such provision had been specifically agreed upon between such beer wholesaler and such registered producer; provided, further, however, notice of intention to cancel such agreement or contract, written or oral, or franchise or contractual franchise relationship shall be given in writing at least sixty days prior to the date of such proposed cancellation or termination. Such notice shall contain (i) assurance that the agreement or contract, written or oral, or franchise or contractual franchise relationship is being terminated in good faith and for material violation of one or more provisions which are relevant to the effective operation of the agreement, or contract, written or oral, or franchise or contractual franchise relationship, if any, and (ii) a list of the specific reasons for the termination or cancellation.
- (2) It shall be unlawful for any beer wholesaler:
 - (a) To enter into an agreement or take any action which would violate or tend to violate any provision of this article or any ruling promulgated pursuant to law in accordance therewith; or

- (b) To unfairly, without due regard for the equities of a registered producer, or without just cause of provocation, to cancel or terminate any agreement or contract, written or oral, or franchise or any contractual franchise relationship of such registered producer existing on May 1, 1974 or thereafter entered into, to sell beer manufactured by the registered producer; provided, that this provision shall become a part of any contractual franchise relationship, whether written or oral, between any beer wholesaler and any registered producer doing business with such beer wholesaler, just as though such provision had been specifically agreed upon between such beer wholesaler and such registered producer; provided, further, however, notice of intention to cancel such agreement or contract, written or oral, or franchise or contractual franchise relationship shall be given in writing at least sixty days prior to the date of such proposed cancellation or termination. Such notice shall contain (i) assurance that the agreement or contract, written or oral, or franchise or contractual franchise relationship is being terminated in good faith and for material violation of one or more provisions which are relevant to the effective operation of the agreement, or contract, written or oral, or franchise or contractual franchise relationship, if any, and (ii) a list of the specific reasons for the termination or cancellation.
- (c) To refuse to sell to any licensed retail dealer whose place of business is within the geographical limits specified in any distributorship agreement between the beer wholesaler and the registered producer for the brands involved.
- (d) To store or warehouse any beer or other malt beverages to be sold in the State of South Carolina in any warehouse located outside of the State of South Carolina.

For a malt cooler to be included within the protection of this section, we would have to find that a malt cooler is a beer.

Title 61 of the S.C. Code of Laws does not define the term "beer". However, beer is defined in Code Section 12-21-1010(c) as "all beers, ales, porter and other similar malt or fermented beverages containing not more than five per cent of alcohol by weight."

In addition, Code Section 61-9-10, which is found in the same chapter as Code Section 61-9-1010, concerns beers, ales, porters and wine and reads:

All beers, ales, porter and other similar malt or fermented beverages containing not in excess of five per cent alcohol by weight and all wines containing not in excess of twenty-one per cent alcohol by volume are hereby declared to be nonalcoholic and nonintoxicating beverages.

The following quote from 73 Am.Jur. 2d Statutes, Section 188 provides guidance:

Under the rule of statutory construction of statutes in *pari materia*, statutes are not to be considered as isolated fragments of law, but as a whole, or as parts of a great, connected, homogenous system. Such statutes are considered as if they constituted but one act, so that sections of one act may be considered as though they were parts of the other act, as far as this

can reasonably be done. Indeed, as a general rule, where legislation dealing with a particular subject consists of a system of related general provisions indicative of a settled policy, new enactments of a fragmentary nature on that subject are to be taken as intended to fit into the existing system and to be carried into effect conformably to it, unless a different purpose is shown plainly.

Therefore, a malt cooler "containing not more than five per cent of alcohol by weight" is a beer. As such, the provisions of Code Section 61-9-1010 apply to registered producers and wholesalers distributing malt coolers containing not more than 5% of alcohol by weight.

If a malt cooler contains more than 5% of alcohol by weight, then the malt cooler is an alcoholic liquor as defined by Code Sections 61-3-20(1) and 61-9-10 (cited above).

Code Section 61-3-20(1) reads:

The words "alcoholic liquors" mean any spirituous malt, vinous, fermented, brewed (whether lager or rice beer) or other liquors or any compound or mixture thereof by whatever name called or known which contains alcohol and is used as a beverage, but shall not extend to:

- (a) Wine when manufactured or made for home consumption and which is not sold by the maker thereof or by any other person or
- (b) Any beverage declared by statute to be nonalcoholic or nonintoxicating;

As an alcoholic liquor, the malt cooler containing more than five per cent alcohol by weight would not be subject to the provisions of Code Section 61-9-1010, but would be subject to all regulatory and taxation provisions applying to alcoholic liquors.

SOUTH CAROLINA DEPARTMENT OF REVENUE

Columbia, South Carolina
March 23 1994

For questions concerning the issues addressed in this ruling, contact Nicholas Sipe at (803) 734-0478.