

SC REVENUE RULING #95-7 (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: 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 It is valid and remains in effect until superseded or modified by a change in the statute or regulations or a subsequent court decision, Revenue Ruling or Revenue Procedure.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 is not yet effective and will not become effective until the legislation concerning this regulation is signed by the Governor **and** is published in the State Register. The earliest possible date that this regulation can be published in the State Register is June 23, 1995.

All persons operating locations with video game machines should carefully review both the proposed regulation on what constitutes a "single place or premises" and the following questions and answers of this advisory opinion.

If this regulation is approved by the Governor, each location must be in compliance with the regulation as soon as it is published in the State Register. The regulation 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 questions that have arisen as a result of the General Assembly's approval of the regulation. Most of the 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 game room¹ to have an electric utility meter that is supplied by and read by an electric utility company? Or may a landlord install his own meters in each tenant's game room and bill them himself?
 - A. Each game room 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 game room and bill the tenants himself.
2. Q. Does the requirement for separate electric utility meters require each game room 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 contract and electricity for other purposes is billed the tenant based on the meter reading? Or must each game room 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 contract and electricity for other purposes is billed each of the tenants based on the meter reading. Each game room is **not** required to have its own heating and air conditioning system.
3. Q. Does the requirement for separate electric utility meters also require each game room to be billed separately by the power company or landlord for the electricity? In other words, if one person operates more than one game room in the structure, may that person be billed on one invoice for all game rooms operated by the person within the structure?
 - A. The requirement for separate electric utility meters does **not** require each game room to be billed separately by the power company or landlord for the electricity. If one person operates more than one of the game rooms in the structure, that person may be billed on one invoice for all game rooms the person operates within the structure.

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 game room in violation of the regulation?

¹The term "game room" as used in this document refers to each individual single place or premises with video game machines. Therefore a game room, which may consist of several individual rooms (machine area, office, restrooms, etc), must be "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." In addition, a game room must also meet all the other requirements 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 game room, 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 game room? Or may several game rooms 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 game room. The regulation does not establish a requirement with respect to payout stations within a structure that has several game rooms.

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

SC Revenue Ruling #95-7

SOUTH CAROLINA DEPARTMENT OF REVENUE

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

Columbia, South Carolina
June 7, 1995

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

Aiken	(803) 641-7685	Greenville	(803) 241-1200
Beaufort	(803) 524-2852	Myrtle Beach	(803) 293-6550
Charleston	(803) 571-3000	Rock Hill	(803) 324-7641
Columbia	(803) 737-4602	Spartanburg	(803) 594-4900
Florence	(803) 661-4850		