

SC REVENUE RULING #99-7

SUBJECT: Maximum Payout - Inducements
(Video Game Machines)

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

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

REFERENCES: S. C. Code Ann. Section 12-21-2791 (Supp. 1998)
S. C. Code Ann. Section 12-21-2804 (Supp. 1998)
S. C. Code Ann. Section 12-54-40(H) (Supp. 1998)
S. C. Code Ann. Section 12-54-90 (Supp. 1998)
SC Regulation 117-190.1 (Supp. 1998)

AUTHORITY: S. C. Code Ann. Section 12-4-320 (Supp. 1997)
SC Revenue Procedure #97-8

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 It is valid and remains in effect until superseded or modified by a change in the statute or regulations or a subsequent court decision, Revenue Ruling or Revenue Procedure.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:

1. Does the offering of a video game machine jackpot that exceeds the maximum payout provisions of Code Section 12-21-2791 constitute a special inducement under the provisions of Code Section 12-21-2804(B) and SC Regulation 117-190.1?
2. Does the offering, or actual payment, of a video game machine jackpot that exceeds the maximum payout provisions of Code Section 12-21-2791 carry a criminal penalty or criminal sanction under the Video Game Machines Act?

Conclusion:

1. The offering of a video game machine jackpot that exceeds the maximum payout provisions of Code Section 12-21-2791 does not constitute a special inducement under the provisions of Code Section 12-21-2804(B) and SC Regulation 117-190.1.

As such, the payment of a video game jackpot that exceeds the maximum payout provisions of Code Section 12-21-2791 will subject the operator of the establishment to a civil penalty of not less than \$50 nor more than \$500 for each violation. In addition, any or all of the licenses issued by the department and held by the operator of the establishment (e.g., liquor licenses, beer and wine licenses, Class C coin-operated device owner/operator's license, machine licenses, establishment licenses, and retail sales tax licenses) are subject to revocation, regardless of whether the licenses are for the establishment where the violation occurred.

2. The offering, or actual payment, of a video game machine jackpot that exceeds the maximum payout provisions of Code Section 12-21-2791 does not carry a specific criminal penalty or criminal sanction under the Video Game Machines Act.

Facts:

Recently, the department was asked to explain the applicable penalties for exceeding the maximum payout provisions of Code Section 12-21-2791.

The department established guidelines for imposing the civil penalties under Code Section 12-54-40(H) (previously 12-54-40(b)(3)) and Code Section 12-54-90 for violations of Code Section 12-21-2791 in the summer of 1993 shortly after the enactment of the Video Game Machines Act. The imposition of these same penalties continued with the issuance of two subsequent advisory opinions - SC Revenue Procedure #97-2 and SC Revenue Procedure #99-1.

While the department has previously issued advisory opinions establishing guidelines for assessing civil penalties for violating the Video Game Machines Act, it was determined that this advisory opinion should be issued to explain why certain civil and criminal penalties under the Video Game Machines Act are or are not assessed with respect to a violation for exceeding the maximum payout provisions of Code Section 12-21-2791.

Discussion:

The issue has been raised as to whether an offer of a jackpot that exceeds the \$125 maximum payout provision of Code Section 12-21-2791 constitutes a special inducement under the provisions of Code Section 12-21-2804(B) and SC Regulation 117-190.1.

Code Section 12-21-2791 establishes the maximum payout per player, per location, per a 24 hour period, and reads:

Any location which operates or allows the operation of coin-operated machines pursuant to Section 12-1-720(A)(3) which provides payouts shall limit the cash payout for credits earned for free games to two thousand five hundred credits a player a location during any twenty-four hour period. The cash value of credits for each free game shall be limited to five cents.

See also SC Information Letters #94-28 and #97-4.

A review of Code Section 12-21-2791 indicates that it does not provide a specific civil or criminal penalty for exceeding the maximum payout.

Code Section 12-21-2804(B) prohibits special inducements and reads:

No person who maintains a place or premises for the operation of machines licensed under Section 12-21-2720(A)(3) may advertise in any manner for the playing of the machines nor may a person offer or allow to be offered any special inducements to a person for the playing of machines permitted Section 12-21-2720(A)(3). (Emphasis added.)

SC Regulation 117-190.1 reads:

The Video Game Machines Act, found in Article 20, Chapter 21 of Title 12, prohibits the offering of any special inducements to a person for the playing of video game machines.

Therefore, any attempt to influence a person to play video game machines is an inducement and is strictly prohibited by the statute.

A location will be subject to the various civil or criminal penalties imposed by the statute for offering any of the following inducements:

1. Free or discounted food or beverages,
2. Free or discounted games,
3. Prizes, either at the doors or through drawings or other means,
4. Coupons offering any of the above,
5. Cash, or
6. Any other valuable consideration.

If a location engages in activities other than the operation of video game machines, then that location will also be subject to the various civil or criminal penalties imposed by the statute for offering any inducement unless the location can establish that the inducements it offers are not directed at video game machine players and if the location can establish that such offerings are part of the normal business practice of similar activities in South Carolina.

For example, a lounge that offers entertainment and dancing and sells alcoholic beverages may provide a complimentary buffet for its patrons. If this lounge also has video game machines, then the complimentary buffet is not an inducement to play video game machines as long as the location can establish that it is not directed at video game machine players and the location can establish that it is a part of the normal business practice of similar activities in South Carolina.

The above list of inducement is not all inclusive. Any other attempts to influence a person to play a video game machine will also be subject to the various civil or criminal penalties imposed by the statute. (June 23, 1995)

Code Section 12-21-2804(F) provides the penalty for violating the inducement prohibition and reads:

(F) A person violating subsections (A), (B), (D), or (E) of this section is subject to a fine of up to five thousand dollars to be imposed by the [department]. The [department], upon a determination that the violation is wilful, may refer the violation to the Attorney General or to the appropriate circuit solicitor for criminal prosecution, and, upon conviction, the person must be fined not more than ten thousand dollars or imprisoned not more than two years, or both. The [department] shall revoke the licenses of any person issued pursuant to the provisions of Article 19 of this chapter for a violation of subsection (C) of this section. Revocation is pursuant to the procedures set forth in Section 12-54-90.

Unlike the maximum payout provisions, the code section prohibiting special inducements authorizes a specific civil and a specific criminal penalty for violating the special inducements provisions.

Code Section 12-54-40(H) (previously codified as 12-54-40(b)(3)) states:

(H) A person who must obtain a license or purchase stamps for identification purposes, and who fails to obtain or display the license properly, or to affix the stamps properly, or to comply with statutory provisions, is subject to a penalty of not less than fifty dollars nor more than five hundred dollars for each failure. For failure to obtain or display a license as prescribed in Sections 12-21-2720 and 12-21-2730, the penalty is fifty dollars for each failure to comply.

Code Section 12-54-90 states:

(A) When a person fails, neglects, violates, or refuses to comply with a provision of law or regulation administered by the department, the department, in its discretion, may revoke one or more licenses held by the taxpayer within ten days of notification in writing of the taxpayer's failure to comply. The notification may be served by certified mail or personally.

(B) A person whose license has been revoked must not be issued a new license until all outstanding liabilities are satisfied.

(C) The [department] may review and determine whether a new license may be issued according to guidelines established by it.

Based on its review of the above, the department applies the following civil penalties (see SC Revenue Procedure #99-1 – “Penalty Guidelines for Violations of the Video Game Machines Act and Coin-Operated Device Laws”) to violations of the maximum payout provisions and the special inducement provisions:

Maximum Payout:

Violation Section	12-21-2791
Penalty Section	12-54-40(H); 12-54-90
Penalty Amount	\$50 to \$500; Revocation of licenses issued by the department and held by the location operator.
Recommended Action	First Offense - \$500 Second Offense - \$500 and revocation of the location operator's retail sales tax license. Addt'l Offenses - \$500 and revocation of all licenses issued by the department and held by the operator of the single place or premises, regardless of whether or not the licenses are for the premises in violation (for example, liquor licenses, beer and wine licenses, and Class C coin-operated device owner/operator's license).

Inducements:

Violation Section	12-21-2804 (B); Regulation 117-190.1
Penalty Section	12-21-2804(F); 12-54-90
Penalty Amount	Up to \$5,000; Revocation of licenses issued by the department and held by the location operator.
Recommended Action	First Offense - \$2,000 Second Offense - \$3,000 Third Offense - \$5,000 and the revocation of the location operator's retail sales tax license. Addt'l Offenses - \$5,000 and revocation of all licenses issued by the department and held by the operator of the single place or premises, regardless of whether or not the licenses are for the premises in violation (for example, liquor licenses, beer and wine licenses, and Class C coin-operated device owner/operator's license).

Note: If the department determines that the violation is willful, then it may refer the violation to the Office of the Attorney General for prosecution. See Code Section 12-21-2804(F).

Based on the above, the department has never considered the offering of a jackpot that exceeds the maximum payout provision to be a special inducement for the following reasons:

1. **Specific v. General:** In Wilder v. South Carolina State Highway Dept., 228 S.C. 448, 454, 90 S.E. 2d 635, 638 (1955), the Court stated that “where there is a statute dealing with a subject in general terms and another statute dealing with a part of the same subject in a more minute and definite way, the special statute will be considered as an exception to, or qualification of, the general statute and given effect.” The General Assembly enacted a specific statute concerning the maximum payout. The more general statute concerns inducements. Under this rule of construction, the maximum payout provisions is an exception to the general rule on inducements. In essence, it is not an inducement for purposes of the Video Game Machines Act. Therefore, it would be an inducement to give players five dollars to spend on video poker machines; however, the possibility of receiving a payout is not an inducement within the meaning of the statute and regulation.

However, the General Assembly did understand that a civil penalty could be imposed. In 1985 the General Assembly enacted Chapter 54 of Title 12. For many years, each tax administered by the department had its own set of penalties and enforcement procedures. This chapter was enacted to make such penalties and procedures uniform among the taxes. Code Section 12-54-190 specifically states that “[u]nless otherwise specified, the provisions of this chapter take precedence over all other related statutory provisions.” Therefore, since the Code Section 12-21-2791 does not state a penalty, the provisions of Chapter 54 are controlling and the civil penalty set forth in Code Section 12-54-40(H) is applicable. In addition, the imposition of the civil penalty under Code Section 12-54-40(H) for violations of Code Section 12-21-2791 has been upheld by the Administrative Law Judge Division on several occasions.

2. **Intent of the General Assembly:** The General Assembly, in enacting the Video Game Machines Act, set forth specific criminal penalties for specific violations. In fact, with respect to Code Section 12-21-2804, the General Assembly delineated which violations under that code section were subject to criminal penalties. The General Assembly also enacted criminal penalties for tampering with machines, skimming of proceeds, possession of contraband machines, and operating within a certain number of feet of a school or church, but they did not impose a specific civil or criminal penalty under Code Section 12-21-2791 for exceeding the maximum cash payout. As such, it is the department’s position that the General Assembly did not intend to impose the criminal penalty for a special inducement for exceeding the maximum cash payout.
3. **Ambiguity in a Criminal Statute:** Ambiguity in a criminal statute favors the person upon whom the state seeks to impose the criminal penalty. If the department were to attempt to apply criminal sanctions to this activity, any possible ambiguity in the statute would be held against the department. See State v. Four Video Slot Machines, 317 S.C. 397, 453 S.E. 2d 896 (1995).
4. **Longstanding Administrative Policy:** The department has never considered an excessive payout to be a special inducement. “Administrative interpretations of statutes by the agency charged with their administration and not expressly changed by the legislative body are entitled to great weight. Marchant v. Hamilton, 279 S.C. 497, 309 S.E. 2d 781(1983). When ... the construction or administrative interpretation of a statute has been applied for a number of years and has not been changed by the legislature, there is created a strong presumption that such interpretation or construction is correct.” Ryder Truck Lines, Inc. v. South Carolina Tax Commission, 248 S.C. 148, 149 S.E. 2d 435 (1966); Etiwan Fertilizer Company v. South Carolina Tax Commission, 217 S.C. 354, 60 S.E. 2d 682 (1950).

The department has, since 1993, consistently imposed the civil penalty under Code Section 12-54-40(H) (previously 12-54-40(b)(3)) for violations of Code Section 12-21-2791¹. In addition, the imposition of this civil penalty under Code Section 12-54-40(H) for violations of Code Section 12-21-2791 has been upheld by the Administrative Law Judge Division on several occasions. See South Carolina Department of Revenue v. A.M.F. Bowling Centers, Inc., 96-ALJ-17-0061-CC and South Carolina Department of Revenue v. McDonald Amusements, Inc., 98-ALJ-17-0123-CC. Finally, Code Section 12-21-2791 was amended in 1997 (Act 53, Section 2), but the General Assembly did not add a specific civil or criminal penalty.

Based on the above, the offering of a video game machine jackpot that exceeds the maximum payout provisions of Code Section 12-21-2791 does not constitute a special inducement under the provisions of Code Section 12-21-2804(B) and SC Regulation 117-190.1

SOUTH CAROLINA DEPARTMENT OF REVENUE

s/ Elizabeth A. Carpentier

Elizabeth A. Carpentier, Director

Columbia, South Carolina
March 11 , 1999

¹As stated in the Facts, the department established guidelines for imposing the civil penalties under Code Section 12-54-40(H) (previously 12-54-40(b)(3)) and Code Section 12-54-90 for violations of Code Section 12-21-2791 in the summer of 1993 shortly after the enactment of the Video Game Machines Act. The imposition of these same penalties continued with the issuance of two subsequent advisory opinions - SC Revenue Procedure #97-2 and SC Revenue Procedure #99-1.