
State of South Carolina
Department of Revenue
301 Gervais Street, P. O. Box 125, Columbia, South Carolina 29214
Website Address: <http://www.sctax.org>

SC REVENUE PROCEDURE #12-2

SUBJECT: Dishonored Checks to Liquor Wholesalers
(Alcoholic Beverage Licensing)

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

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

REFERENCES: S. C. Code Ann. Section 61-6-940 (2009)
S. C. Code Ann. Section 61-6-1300 (2009)
S. C. Code Ann. Section 61-6-4270 (2009)
1 S.C. Code Regs. 7-300.3 (2011)

AUTHORITY: S. C. Code Ann. Section 12-4-320 (2000 and Supp. 2011)
S. C. Code Ann. Section 1-23-10(4) (2005)
SC Revenue Procedure #09-3

SCOPE: The purpose of a Revenue Procedure is to provide procedural guidance to the public and to Department personnel. It is an advisory opinion issued to assist in the administration of laws and regulations by providing guidance that may be followed in order to comply with the law. It is effective until superseded or modified by a change in statute, regulation, court decision, or another Departmental advisory opinion.

Introduction:

The Department is charged with administering and enforcing certain restrictions on the relationship between a retail liquor license holder (liquor retailer) and a wholesale liquor license holder (liquor wholesaler). One such restriction concerns indebtedness: liquor wholesalers are prohibited from selling alcoholic liquors to retailers on credit, and payment that is dishonored is considered indebtedness. S.C. Code Ann. §61-6-1300(5); 1 S.C. Code Regs. 7-300.3. This revenue ruling will address the administration and enforcement of such dishonored payments.

Law and Regulation:

Code Section 61-6-1300 imposes restrictions on liquor wholesalers and states in part:

No wholesaler may:

(5) sell alcoholic liquors on credit; however, this item does not prohibit payment by electronic transfer of funds if (a) the transfer of funds is initiated by an irrevocable payment order on or before delivery of the alcoholic liquors and (b) the electronic transfer is initiated by the wholesaler no later than one business day after delivery[.]

Code Section 61-6-940, which is found in Article 3 of Chapter 6, states:

The department must immediately revoke a retail license to sell alcoholic liquors if the licensee or an officer of the licensee is, during the effective period of the license, indebted to a wholesaler licensed by the department, except an indebtedness for current purchases of alcoholic liquors which are not past due.

SC Regulation 7-300.3 further states:

As Section 61-6-940 requires the retail liquor license to be revoked when such licensee is indebted to a licensed wholesale liquor dealer, the giving of a check which is dishonored by the bank is in violation of this Section of the Code.

Upon receipt by a wholesaler of such a dishonored check, the wholesaler must notify all the other licensed wholesalers that the particular licensee is in violation of the law, and all licensed wholesalers must put the individual licensee on a cash only basis.

The provisions of Regulation 7-300.3 contemplate that a continued course of business between the liquor retailer and liquor wholesalers may be possible despite the reference to revocation of the retailer's license.

This is consistent with the provision for monetary penalties for certain violations set out in Code Section 61-6-4270. Specifically, Code Section 61-6-4270 gives the Department discretion to impose a monetary penalty of not less than \$100 nor more than \$1,500 in lieu of revocation or suspension of the retail liquor license.¹

¹ Code Section 61-6-4270 further gives the Department discretion to "suspend payment of a fine or monetary penalty imposed under this section."

To summarize, when a retail liquor license holder becomes indebted to a wholesale liquor license holder by a check or other payment that is dishonored, the retail license is subject to revocation. However, the Department may impose a monetary penalty in lieu of revocation.

Procedure:

A. The Administrative Process. If a liquor retailer remits payment for liquor purchases to a liquor wholesaler with a check or other payment that is dishonored causing the indebtedness to become past due, the liquor wholesaler may notify the Department to begin the administrative process. The following are guidelines for providing notice to all affected parties. The term “check” includes any form of payment that may be dishonored causing the indebtedness to become past due.

1. The liquor wholesaler should give the liquor retailer written notice that its check has been dishonored and that

- A liquor retailer is not allowed to take delivery on credit, and payment to a liquor wholesaler by a check that is dishonored is a violation of the law.
- The liquor retailer, as a result of this violation, is subject to monetary penalties or suspension or revocation of the retailer’s license.
- The Department of Revenue, by copy of this letter, is being notified of this violation.
- All future purchases of liquor from any liquor wholesaler must be on a cash-only basis until the “bad check” debt is satisfied.

2. The liquor wholesaler should provide the Department with a copy of the written notice to the retailer described above, along with a copy of the dishonored check and any other documentation the Department may require. Failure to do so may compromise the Department’s ability to assess the penalties authorized under the law.

3. The liquor wholesaler must immediately notify all other liquor wholesalers that the liquor retailer’s check has been dishonored and that future purchases by the liquor retailer must be on a cash only basis until further notice.²

4. If the liquor retailer satisfies the debt resulting from the “bad check,” the liquor wholesaler should immediately notify all other liquor wholesalers that the cash-only requirement no longer applies for the liquor retailer in question, stating the beginning and ending dates of the cash-only basis period. Similar notice or a copy should be given to the Department and the retailer.

² 1 S.C. Code Regs. 7-300.3 (quoted above). **Note:** This document addresses the administrative violation that occurs when a liquor retailer’s check is dishonored. A separate administrative violation may be assessed against a liquor wholesaler’s license for its failure to comply with statutory and regulatory requirements.

B. Determination of Administrative Violation. On receipt of notice from a liquor wholesaler that a liquor retailer's check has been dishonored, the Department will determine if a violation has occurred. An administrative penalty will be assessed based on the number of previous dishonored check violations on the license holder's record in the 3-year period preceding the date of the most recent dishonored check, under the following guidelines:

For a first offense, a \$100 penalty.

For a second offense, a \$500 penalty.

For a third offense, the Department will suspend the license for a period of 5 days.³

For a fourth offense, the Department will revoke the license.

Note: This advisory opinion sets out penalty guidelines that are specific to administrative violations against retail liquor licenses arising from a check or other payment that is dishonored. The guidelines set out in SC Revenue Procedure 04-4 are not applicable.

This advisory opinion does not establish a binding norm as to penalties. These are guidelines only. Mitigating circumstances may be taken into account. Nothing in this advisory opinion restricts the Department's authority or discretion to impose any sanction, whether more severe or less severe, within the statutory parameters set by the General Assembly.

For further information on this matter, please visit the Alcoholic Beverage Licensing (ABL) home page on the Department's website at www.sctax.org.

SOUTH CAROLINA DEPARTMENT OF REVENUE

s/James F. Etter

James F. Etter, Director

September 13 _____, 2012
Columbia, South Carolina

³ This suspension period must be 5 consecutive days during which sales of beer and wine would be lawful, but for the suspension.