
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 RULING #05-14

SUBJECT: Places of Amusement
(Admissions Tax)

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 12-21-2420 (2000; Supp. 2004)
S. C. Code Ann. Section 12-21-2410 (2000)
S. C. Code Ann. Section 12-21-2430 (2000)

AUTHORITY: S. C. Code Ann. Section 12-4-320 (2000)
S. C. Code Ann. Section 1-23-10(4) (Supp. 2004)
SC Revenue Procedure #03-1

SCOPE: The purpose of a Revenue Ruling is to provide guidance to the public and to Department personnel. It is a written statement issued to apply principles of tax law to a specific set of facts or a general category of taxpayers. **A Revenue Ruling does not have the force or effect of law, and is not binding on the public.** It is, however, the Department's position and is binding on agency personnel until superseded or modified by a change in statute, regulation, court decision, or advisory opinion.

Introduction:

The State of South Carolina imposes an admissions tax for the privilege of entering and using a place of amusement. The purpose of this advisory opinion is to provide examples of places of amusements that are subject to this tax. The list of examples is not all-inclusive and is being provided as guidance for taxpayers.

Law and Discussion:

Code Section 12-21-2420 imposes the admissions tax and states in part:

There must be levied, assessed, collected, and paid upon paid admissions to places of amusement within this State a license tax of five percent. The license tax may be listed separately from the cost of admission on an admission ticket. ...

Code Section 12-21-2410 defines the terms “admissions,” “place,” and “person” and states:

For the purpose of this article and unless otherwise required by the context:

- (1) The word “admission” means the right or privilege to enter into or use a place or location;
- (2) The word “place” means any definite enclosure or location; and
- (3) The word “person” means individual, partnership, corporation, association, or organization of any kind whatsoever.

In summary, the admissions tax is imposed upon the paid right or privilege to enter into or use a place of amusement.

It is important to note that the statute taxes charges to "use" a place of amusement, as well as charges to enter a place of amusement. This is seen in *Beach v. Livingston*, 248 SC 135, 149 SE2d 328 (1966), where the South Carolina Supreme Court held that the admissions tax applied to charges paid for the "use" of a bowling alley even though no charge was required for a person to “enter” the bowling alley. Additionally, an Attorney General's Opinion dated August 2, 1956 (See Attorney General's Report, July 1, 1955 to June 30, 1957) concluded the charge made by a person operating a golf driving range was subject to the admissions tax.

The statute, however, does not define the term “amusement.” However, the following from SC Revenue Ruling #89-8 outlines the Department’s longstanding position as to what constitutes an “amusement” and a “place of amusement.”

One of the primary rules of statutory construction is that words used in a statute should be taken in their ordinary and popular meaning, unless there is something in the statute which requires a different interpretation. *Hughes v. Edwards*, 265 S.C. 529, 220 S.E. 2d 231 (1975); *Investors Premium Corp. v. South Carolina Tax Commission*, 260 S.C. 13, 193 S.E. 2d 642 (1973). Also, where the terms of a statute are clear and unambiguous and leave no room for construction, they must be applied according to their literal meaning. *Mitchell v. Mitchell*, 266 S.C. 196, 222 S.E. 2d 217 (1976); *Green v. Zimmerman*, 269 S.C. 535, 238 S.E. 2d 323 (1977).

It is an accepted practice in South Carolina to resort to the dictionary to determine the literal meaning of words used in statutes. For cases where this has been done, see *Hay v. South Carolina Tax Commission*, 273 SC 269, 255 SE 2d 837 (1979); *Fennell v. South Carolina Tax Commission*, 233 S.C. 43, 103 SE2d 424 (1958); *Etiwan Fertilizer Co. v. South Carolina Tax Commission*, 217 SC 484, 60 SE2d 682 (1950).

Black's Law Dictionary, Fifth Edition, defines the term "amusement" to mean: "Pastime, diversion, enjoyment. A pleasurable occupation of the senses or that which furnishes it."

The Second College Edition of the American Heritage Dictionary provides the following definitions:

"Amusement"	1. The state of being amused, entertained, or pleased. 2. Something that amuses.
"Pastime"	An activity that occupies one's spare time pleasantly.
"Diversion"	Something that distracts the mind and relaxes or entertains.
"Enjoyment"	1. The act or state of enjoying. 2. The use or possession of something beneficial or pleasurable. 3. Something that gives pleasure.

In summary, a "place of amusement" is any enclosure or location consisting of an activity that occupies one's spare time, distracts the mind, relaxes, entertains, or gives pleasure.

Further, in *Radcliff v. Query*, 153 S.C. 76, 150 S.E. 352 (1929), an Admission's Tax case, the Supreme Court of South Carolina held:

The statute is broad enough to include all classes of public exhibitions,.... (emphasis added).

Black's Law Dictionary, Fifth Edition, defines "public" in part, as:

Public, adj. Pertaining to a state, nation, or whole community; proceeding from, relating to, or affecting the whole body of people or an entire community. Open to all; notorious. Common to all or many; general; open to common use. Belonging to the people at large; relating to or affecting the whole people or a state, nation, or community; not limited or restricted to

any particular class of the community. *Peacock v. Retail Credit Co.*, D.C.Ga., 302 F.Supp.418, 423 (emphasis added).

In addition, the Appellate Division of the New York Supreme Court held in *Wien v. Murphy*, 284 N.Y.S. 2d 303, 28 A.D. 2d 222 (1967) that:

... if in fact a place or facility provides something edifying or educational in addition to enjoyment, entertainment or amusement, it is no less a place of amusement.

In other words, the term "place of amusement" is not to be strictly construed so as to exclude places which may also have a business or other purpose. If a place distracts the mind, relaxes, entertains, or gives pleasure, then such place is a "place of amusement".

Finally, Code Section 12-21-2420 establishes various exemptions from the admissions tax and states in part:

... , no tax may be charged or collected:

- (1) On account of any stage play or any pageant in which wholly local or nonprofessional talent or players are used;
- (2) On admissions to athletic contests in which a junior American Legion athletic team is a participant unless the proceeds inure to any individual or player in the form of salary or otherwise;
- (3) On admissions to high school or grammar school games or on general gate admissions to the State Fair or any county or community fair;
- (4) On admissions charged by any eleemosynary and nonprofit corporation or organization organized exclusively for religious, charitable, scientific, or educational purposes; or the presentation of performing artists by an accredited college or university; provided, that the license tax herein levied and assessed shall be collected and paid upon all paid admissions to all athletic events of any institution of learning above the high school level; provided, however, that carnivals, circuses, and community fairs operated by eleemosynary or nonprofit corporations or organizations organized exclusively for religious, charitable, scientific, or educational purposes shall not be exempt from the assessment and collection of admissions tax on charges for admission for the use of or entrance to rides, places of amusement, shows, exhibits, and other carnival facilities, but not to include charges for general gate admissions except when the proceeds of any such carnival, circus, or community fair are donated to a hospital; provided, further, that no admission tax shall be charged or collected by reason of any charge made to any member of a nonprofit organization or corporation for the use of the facilities of the organization or corporation of which he is a member.

- (5) On admissions to nonprofit public bathing places;
- (6) On admissions to any hunting or shooting preserve;
- (7) On admissions to privately owned fish ponds or lakes; and
- (8) On admissions to circuses operated by eleemosynary, nonprofit corporations or organizations organized exclusively for religious, charitable, scientific, or educational purposes when the proceeds derived from admissions to the circuses shall be used exclusively for religious, charitable, scientific or educational purposes.
- (9) On admissions to properties or attractions which have been named to the National Register of Historical Places.
- (10) On admissions charged to classical music performances of a nonprofit or eleemosynary corporation organized and operated exclusively to promote classical music.
- (11) On admissions to events other than those events enumerated in item (4) of this section, sponsored and operated exclusively by eleemosynary, nonprofit corporations or organizations organized exclusively for religious, charitable, scientific, civic, fraternal, or educational purposes when the net proceeds derived from admissions to the events shall be immediately donated to an organization operated exclusively for charitable purposes. The term “net proceeds” shall mean the portion of the gross admissions proceeds remaining after necessary expenses of the event have been paid. This item shall not apply to an event in which the above organizations receive a percentage of gross proceeds or a stated fixed sum for the use of its name in promoting the event.
- (12) On admissions charged by nonprofit or eleemosynary community theater companies or community symphony orchestras, county and community arts councils and departments and other such companies engaged in promotion of the arts.
- (13) On admissions to boats which charge a fee for pleasure fishing, excursion, sight-seeing and private charter.
- (14) On admissions to a physical fitness center subject to the provisions of Chapter 79 of Title 44, the Physical Fitness Services Act, that provides only the following activities or facilities:
 - (a) aerobics or calisthenics;
 - (b) weightlifting equipment;
 - (c) exercise equipment;

- (d) running tracks;
- (e) racquetball;
- (f) swimming pools for aerobics and lap swimming; and
- (g) other similar items approved by the department.

The entire admission charge of a physical fitness center which provides any other activity or facilities is subject to the tax imposed by this article. Physical fitness facilities or centers of the State of South Carolina and any of its political subdivisions which are exempt from the Physical Fitness Services Act, pursuant to Section 44-79-110 and, therefore, subject to the admissions tax under this article are nevertheless exempt from the admissions tax if they meet other requirements of this subsection.

(15) for entry into the pit area of NASCAR sanctioned motor speedways or racetracks for drivers, crew members, or car owners where a participation fee is charged these persons by NASCAR, or by the speedway or racetrack, where a charge to these persons is made on a per event basis for entry into the pit area, or where a combination of annual and per event charges to these persons is made for entry into the pit area.

The tax imposed by this section must be paid by the person or persons paying the admission price and must be collected and remitted to the South Carolina Department of Revenue by the person or persons collecting the admission price. The tax imposed by this section does not apply to:

- (a) any amount separately stated on the ticket of admission for the repayment of money borrowed for the purpose of constructing an athletic stadium or field by any accredited college or university; or
- (b) any amount of the charge for admission, whether or not separately stated, that is a fee or tax imposed by a political subdivision of the State.

The revenue derived from the provisions of this section from fishing piers along the coast of South Carolina is allocated for use of the Commercial Fisheries Division of the Department of Natural Resources.

Also, Code Section 12-21-2430 provides an exemption for certain ponds, and states:

No private pond shall be declared an amusement for tax purposes. But this section shall not apply to a pond stocked with fish from a State or Federal hatchery.

Examples of Places of Amusements Subject to the Admissions Tax

The following list of places of amusements is not all inclusive and is merely provided as guidance. Charges to enter or use these places, events, facilities and rides and all other amusement facilities are subject to the tax **unless specifically exempted under Code Section 12-21-2420 or Code Section 12-21-2430:**

air shows

amusement parks

amusement rides, shows and exhibits

animal shows

antique shows

aquariums

aquatic shows

archery range

art and craft exhibitions (See SC Revenue Ruling #89-8.)

automobile shows

balloon shows

baseball batting cages (See SC Revenue Ruling 91-14.)

basketball courts

boat cruises (See, however, Code Section 12-21-2420(13). Charges for cruises with entertainment, such as one in which patrons attempt to solve a murder mystery, do not come within the exemption in Code Section 12-21-2420(13).)

boat shows

botanical gardens

bowling alleys

bungee jumping

carnival, circus and fair entrance fees, rides, shows, exhibits, games and other amusement charges

college, professional and other sporting events (football, basketball, baseball, or hockey games; golf tournaments, tennis tournament, rodeos, car racing, polo, horse racing, wrestling, boxing, etc.)

comedy clubs

cruises that offer entertainment (i.e. bands, audience role participation, or plays)

dance halls

dance shows

dinner theaters and attractions (See SC Private Letter Ruling #92-5.)

dog shows

fishing piers and ponds

flight and similar simulators

go cart or car racing tracks to include "pit passes"

golf courses and country clubs (green fees, range fees, membership dues) (See SC Revenue Ruling #91-18 and SC Private Letter Ruling #91-5.)

golf driving ranges

gun and knife shows

handball courts

health clubs (See, however, SC Revenue Ruling 92-1 for a discussion of exempt health clubs.)

historical attractions (See, however, Code Section 12-21-2420(9). Note: Charges for entertainment events, such as rock concerts, on the grounds of a location on the National Register of Historical Places do not come within the exemption in Code Section 12-21-2420(9).)

holiday celebrations and events (Halloween haunted houses, New Year Eve parties, firework shows, crop circles and mazes, etc.)

historical dramas

home shows

home tours (new homes, historical homes, Christmas tours, etc.)

horse shows

laser tag

mazes, including crop mazes

miniature golf or putt-putt courses

miniature or slot car tracks

“monster” truck shows

motorcycle expositions, races and shows

movie theaters or movie “peep show” machines

museums

music concerts

nightclubs, lounges, or bars with a cover charge

pageants

paint ball or laser gun facilities

para sail rides

Parade of Homes tours

planetariums

plays

promotional events such as boat shows, home shows, antique shows, gun and knife shows, and wildlife shows (See SC Revenue Ruling #89-8.)

race car or similar tracks (reality racing, ATV tracks, etc.)

racquetball courts

rock climbing facilities

rodeos

serpentariums

skating rinks or skate board parks

shooting ranges (target, skeet, trap sporting clays, etc.)

spas

spectator events (football, basketball, baseball, or hockey games; golf tournaments, tennis tournaments, rodeos, car racing, polo, horse racing, wrestling, boxing, etc.)

sport clubs

sporting events for spectators (football, basketball, baseball, or hockey games; golf tournaments, tennis tournaments, rodeos, car racing, polo, horse racing, wrestling, boxing, etc.)

squash courts

stage plays or performances

swimming pools and clubs (pool fees, membership dues)

target, skeet, trap or sporting clay ranges

theaters

tractor pulls

tennis or racquetball courts (court fees, membership dues)

water parks

water-skiing shows

water slides

wildlife preserves

wildlife expositions and shows

zoos

It should be noted that it has been the longstanding position of the Department that (1) fees for golf, tennis, dancing, and self-defense lessons from an instructor; (2) tournament participant entry fees (exclusive of the normal and customary charges to utilize the place of amusement, i.e. green or court fees); (3) fees for boat, carriage, helicopter, plane or bus rides for touring, charter, fishing, or excursion (see SC Technical Advice Memorandum #95-2.); (4) golf cart fees (subject to sales tax as rentals); (5) “trail fees” (fees charged by golf courses for someone using their own golf cart); (6) boat or jet ski rental fees (subject to sales tax); (7) fees for using tanning beds; (9) initiation fees for country clubs, golf clubs, tennis clubs and similar facilities¹ provided the initiation fee is a one-time (nonrecurring) charge paid as a prerequisite to joining the club; and (10) fees for equestrian lessons are not fees to enter or use a place of amusement and are not subject to the admissions tax.

Note: Organizations, event organizers, and others operating places of amusement should review Code Sections 12-21-2420 and 12-21-2430 to determine if their organization, location or event falls within one of the statutory exemptions. The burden of proof that an organization, location or event falls within an exemption rests with the operator of the place of amusement.

An application for admissions tax exemption under Code Section 12-21-2420 may be submitted to the Department on Form L-2068. A copy of this “License Tax” form can be found on the Department’s website (www.sctax.org) under “Quick Links” (“Forms and Instructions”). An organization, location or event does not need to apply for the exemption in order to be exempt, but must be able to document (charter, by-laws, financial records, etc) that an exemption is applicable.

SOUTH CAROLINA DEPARTMENT OF REVENUE

s/Burnet R. Maybank III

Burnet R. Maybank III, Director

September 15, 2005
Columbia, South Carolina

¹ An initiation fee should not allow a person to utilize the facilities of the club without payment of a recurring charge (membership dues). In other words, a one-time charge that is a substitute for recurring membership dues is not an initiation fee.