

SC REVENUE RULING #10-3

SUBJECT: Replacement of Beer or Wine after Delivery by a Licensed Wholesaler
(Alcoholic Beverage Licensing)

EFFECTIVE DATE: All periods open under the statute

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

REFERENCES: S.C. Code Ann. Section 61-4-735 (2009)
S.C. Code Ann. Section 61-4-940 (2009)
SC ABC Ruling 91-15
SC Information Letter #93-11

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

SCOPE: The purpose of a Revenue Ruling is to provide guidance to the public and to Department personnel. It is an advisory opinion issued to apply principles of tax law to a set of facts or a general category of taxpayers. It is the Department's position until superseded or modified by a change in statute, regulation, court decision, or another Departmental advisory opinion.

INTRODUCTION

Title 61 of the South Carolina Code prohibits a licensed wholesaler from giving free beer or wine to a licensed retailer. A question has arisen under what circumstances a wholesaler is allowed to replace stock after delivery to a retailer. The following guidelines are adopted from Ruling 91-15 of the former South Carolina Alcoholic Beverage Control (ABC) Commission and include wine and beer.¹

¹ The former ABC Commission and the former South Carolina Tax Commission were reorganized to form the South Carolina Department of Revenue in 1993. ABC Ruling 91-15, concerning replacement of breakage and out of date beer, has continued in effect since that time. See SC Information Letter #93-11 (the Department of Revenue will follow ABC Commission rulings absent a prospective change).

These guidelines concern regulation of beer and wine only under South Carolina law. Taxpayers interested in breakage issues pertaining to alcoholic liquor under federal law may refer to guidance recently published by the Alcohol and Tobacco Trade Bureau (TTB) of the United States Treasury in the TTB Newsletter (October 16, 2009 ed.), available at www.ttb.gov.

APPLICABLE STATUTES

Transactions between wine wholesalers and holders of retail permits are restricted under Code Section 61-4-735(B) as follows:

Except as provided in subsection (C), a manufacturer of wine, vintner, winery, importer, or wholesaler of wine, or a person acting on his behalf must not furnish, give, rent, lend, or sell, directly or indirectly, to the holder of a retailer permit any equipment, fixtures, **free wine**, or service. The holder of a retail permit or a person acting on his behalf may not accept, directly or indirectly, any equipment, fixtures, free wine, or service referred to in this subsection from a manufacturer of wine, winery, importer, or wholesaler of wine, except as provided in subsection (C).²
[Emphasis added.]

Similarly, as between beer wholesalers and holders of retail permits, Code Section 61-4-940(B) provides:

Except as provided in subsection (C), a manufacturer, brewer, importer, or wholesaler of beer, or a person acting on his behalf, must not furnish, give, rent, lend, or sell, directly or indirectly, to the holder of a retailer permit any equipment, fixtures, **free beer**, or service. The holder of a retail permit, or a person acting on his behalf, may not accept, directly or indirectly, any equipment, fixtures, free beer, or service referred to in this subsection from a manufacturer, brewer, importer, or wholesaler of beer, except as provided in subsection (C).³
[Emphasis added.]

² Code Section 61-4-735(C) does not authorize replacement of stock. It provides:

A wholesaler may furnish at no charge to the holder of a retail permit draft wine equipment replacement parts of nominal value, including washers, gaskets, hoses, hose connectors, clamps, and tap markers, product displays as provided under 27 Code of Federal Regulations, Section 6.83, and point of sale advertising specialties. A wholesaler also may furnish the following services to a retailer: cleaning wine lines, rotating stock, affixing price tags to wine products, building wine displays, setting boxes, conduct not more than two wine tastings in accordance with department rulings or regulations, developing shelf schematics, stocking shelves, providing wine party wagon for temporary use, and assist in wine resets a maximum of three times a year for any store having a retail permit during the hours of 8:00 a.m. to 8:00 p.m. Resets are defined as being a change in the location of the wine department within a store or a rearrangement of the products on shelves within the store's wine department, which involves more than one wholesaler's products. All wholesalers must be notified in writing of any resets being requested by a retail store at least fourteen days prior to the reset.

³ Code Section 61-4-940(C) does not authorize replacement of stock. It provides:

PROHIBITED ACTS

By statute, wholesalers are prohibited from giving free wine or beer to retailers, and retailers are prohibited from accepting free wine or beer from wholesalers. The provisions above also prohibit:

- Replacement of wine or beer that was damaged after delivery to the retailer.
- Replacement of breakage that was done by the retailer, his employee or his customer.
- Replacement of wine or beer that becomes frozen while in the retailer's boxes.
- Replacement of wine or beer damaged by fire at the retailer's premises.
- Replacement of wine or beer under the circumstances discussed below with any product that does not qualify as "like product" under the definition set forth below.

PERMISSIBLE ACTS FOR WINE OR BEER

Consistent with longstanding policy concerning beer transactions set forth in ABC Ruling 91-15, replacement of wine or beer is allowed under the following circumstances:

- If wine or beer was damaged before or during delivery, the wholesaler may replace the wine or beer with like product.
- If wine or beer belongs to a retailer, but is damaged by an employee of a wholesaler, the wholesaler may replace the wine or beer with like product.

PERMISSIBLE ACTS FOR BEER ONLY

The following circumstances are described in ABC Ruling 91-15 and apply to beer only:

- If beer is out of date or about to go out of date, a wholesaler, after collecting such beer, may replace it with like product.

A wholesaler may furnish at no charge to the holder of a retail permit draft beer equipment replacement parts of nominal value, including washers, gaskets, hoses, hose connectors, clamps, and tap markers, party wagons for temporary use, and point of sale advertising specialties. A wholesaler may also furnish the following services to a retailer: cleaning draught lines, setting boxes, rotating stock, affixing price tags to beer products, and building beer displays.

- With respect to seasonal locations, replacement of out of date beer may be deferred as follows. If the beer will go out of date before a seasonal location reopens, a wholesaler may collect it and give a credit for like product, but not cash, to the retailer. The wholesaler will honor the credit by delivering like product when the seasonal location reopens. The credit must not be converted to cash unless the seasonal location’s permit is either surrendered or not renewed due to permanent closing of the location.

MEANING OF “LIKE PRODUCT”

For purposes of this advisory opinion, “like product” means a product that is the same (identical) in terms of manufacturer, product brand name (if applicable) or style of beverage, volume and type of container. A similar but non-identical product may be substituted only if the identical product has been discontinued or is otherwise no longer commercially available to the wholesaler.

SOUTH CAROLINA DEPARTMENT OF REVENUE

s/Ray N. Stevens

Ray N. Stevens, Director

January 14 _____, 2010
Columbia, South Carolina