

SC REVENUE RULING #96-2 (TAX)

SUBJECT: Coin Operated Devices

EFFECTIVE DATE: Applies to all periods open under statute.

SUPERSEDES: SC Revenue Ruling #90-9 and all previous documents and any oral directives in conflict herewith.

REFERENCE: S.C. Code Ann. Section 12-21-2720 (Supp. 1994)
S.C. Code Ann. Section 12-21-2730 (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 It is valid and remains in effect until superseded or modified by a change in the statute or regulations or a subsequent Revenue Ruling or Revenue Procedure.

Question:

What guidelines can the Department provide that will assist in determining the proper licenses required on various types of amusement and arcade machines, devices and tables, pursuant to Code Sections 12-21-2720 and 12-21-2730?

Facts:

Advice has been requested with regard to the imposition of the license taxes under Chapter 21 of Title 12 on various types of amusement and arcade machines, devices and tables. Questions have been raised concerning machines using electronic scoreboards, such as skeeball tables, shuffleboard tables and pool tables. Also of concern are these same games played on a video screen, in that, the computer simulates a game of pool or shuffleboard. Furthermore, some machines or devices appear to fall within several different categories of games described in the statute.

In addition, many machines award a player a free game if the player achieves a certain score or desired goal.

Discussion:

Code Section 12-21-2720 imposes license taxes on three categories of amusement machines, and reads, in part:

Every person who maintains for use or permits the use of, on any place or premise occupied by him, one or more of the following machines or devices shall apply for and procure from the South Carolina Department of Revenue and Taxation a license effective for two years for the privilege of making use of the machine in South Carolina and shall pay for the license a tax of fifty dollars for each machine in item (1), two hundred dollars for each machine in item (2), and three thousand dollars for each machine in item (3):

(1) a machine for the playing of music or kiddy rides operated by a slot or mechanical amusement devices and juke boxes in which is deposited a coin or thing of value. A machine on which an admissions tax is imposed is exempt from the C.O.D. license provisions of this section.

(2) a machine for the playing of amusements or video games, without free play feature, or machines of the crane type operated by a slot in which is deposited a coin or thing of value, and a machine for the playing of games or amusements, which has a free play feature, operated by a slot in which is deposited a coin or thing of value, and the machine is of the nonpayout pin table type with levers or "flippers" operated by the player by which the course of the balls can be altered or changed. A machine required to be licensed under this item is exempt from the license fee if an admissions tax is imposed.

(3) a machine of the nonpayout type, in-line pin game, or video game with free play feature operated by a slot in which is deposited a coin or thing of value except machines of the nonpayout pin table type with levers or "flippers" operated by the player by which the course of the balls can be altered or changed.

Code Section 12-21-2730 imposes a license tax on specific amusement devices, and reads, in part:

Every person owning or operating any billiard or pocket billiard table, football table, bowling lane table, or skeeball table for profit shall apply for and procure from the Commission a license for the privilege of operating the table and pay for the license a tax of twenty-five dollars for each table owned or operated.

A review of the above statutes reveals three areas which need clarification. First, what is the difference between "machines for the playing of amusements" without a free play feature and "mechanical amusement devices"? Second, what constitutes a "video game"? Third, what is a free play feature?

The Code does not define the aforementioned terms and phrases: however, it is 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).

The Second College Edition of the American Heritage Dictionary defines the following terms, in part:

machine

2. A system or device together with its power source and auxiliary equipment, ... 3. A system or device, such as an electronic computer, that performs or assists in the performance of a human task.

mechanical

1. Of or pertaining to machines or tools.
2. Operated or produced by a machine

amusement

1. The state of being amused, entertained or pleased.
2. Something that amuses.

device

Something devised or constructed for a particular purposes, esp. a machine used to perform one or more relatively simple tasks.

video games

An electronic or computerized game played by manipulating images on a television or other display screen.

Based on the above definitions, "machines for the playing of amusements" and "mechanical amusement devices" are the same type of machines, except that "machines for the playing of amusements" [Section 12-21-2720(2)] are limited to those games without a free play feature. The section concerning "mechanical amusement devices" [Section 12-21-2720(1)] is silent concerning the free play feature; therefore, the Type I license is applicable to those devices ("mechanical amusement devices") with a free play feature. Also, video games are those games "played by manipulating images on a television or other display screen".

Code Section 12-21-2730 imposes a license tax on specific machines or devices; however, these same machines or devices could also fall within the provisions of Code Section 12-21-2720. However, "...with respect to a conflict arising between a statute dealing generally with a subject, and another dealing specifically with a certain phase of it, the specific legislation controls in a proper case". 73 Am. Jurs.2d, Statutes, Section 258. Therefore, Code Section 12-21-2730 is controlling with respect to billiard and pocket billiard tables, football tables, bowling lane tables and skeeball tables owned or operated for profit.

Furthermore, Regulation 117-31 provides insight as to the definition of the phrase "free play feature" and reads, in part:

The words "which has a free-play feature" shall mean and include any machine which is designed and made with such feature by the manufacturer of such machine, provided, however, that where the mechanism constituting a free-play feature has been completely and wholly removed from the machine, and a certificate to that effect is filed at the time of application for license, the machine shall be licensed as provided by [Section 12-21-2720] of the 1976 Code.

Finally, it has been the longstanding policy of the Department that a free play feature was one that allows a player to play a complete game free of charge¹. For example², a player may receive a free game if:

1. a certain number of points are scored;
2. the last number of the player's score matches a number randomly selected by the machine (Score: 328,446, Randomly Selected Number: 6); or

¹A free play feature allows a player to play an entire game free of charge. The free game is the same game the player would play if he or she had paid to play the game.

²These examples do not represent all the methods in which a player may win or achieve a free play.

3. the player is allowed to bet credits won (free games) with each bet representing another play³.

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 309 S.E. 2d 781 (1983). When as in this case, 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; Etiwan Fertilizer Company v. South Carolina Tax Commission, 217 S.C. 354, 60 SE 2d, 682.

Conclusion:

The guidelines, provided by the department, that will assist in determining the proper license taxes on various types of amusement and arcade machines, devices and tables, pursuant to Code Sections 12-21-2720 and 12-21-2730, are as follows:

<u>Type Machine</u>	<u>Free Play Feature</u>	<u>Operated By Slot</u>	<u>Section</u>	<u>Type Lic.</u>
Machines for playing music	N/A	Yes	12-21-2720(1)	I
Kiddy rides	N/A	Yes	12-21-2720(1)	I
Juke box N/A	Yes	12-21-2720(1)		I
Mechanical amusement devices	Yes	Yes	12-21-2720(1)	I
Playing of amusements	No	Yes	12-21-2720(2)	II
Crane type machines	N/A	Yes	12-21-2720(2)	II
Video games	No	Yes	12-21-2720(2)	II
Pin table, w/ levers	N/A ⁴	Yes	12-21-2720(2)	II
Video games	Yes	Yes	12-21-2720(3)	III
In-line pin game	N/A	Yes	12-21-2720(3)	III
Billiard table	N/A	N/A	12-21-2730	I
Pocket billiard tables	N/A	N/A	12-21-2730	I
Football table	N/A	N/A	12-21-2730	I
Bowling lane table	N/A	N/A	12-21-2730	I
Skeeball table	N/A	N/A	12-21-2730	I

³This type of free play feature is usually found in Video Game Machines regulated under Article 20 of Chapter 21 in Title 12 of the South Carolina Code of Laws.

⁴While the statute specifically states that a pin table with levers and a free play feature is a Type II machine, this chart shows that a pin table with levers without a free play feature is also a Type II machines since it qualifies as "machine for the playing of amusements". A "machine for the playing of amusements" is a Type II machine.

Notes:

1. Machines or devices subject to the licensing provisions of Code Section 12-21-2730, while not required to be operated by a slot or a coin, must be "for profit". If a player is not charged to use these machines or devices, it is not for profit and is not subject to the license tax.
2. Not all electronic machines, devices or tables qualify as video games. Video games are those games played by manipulating images on a television, computer or other similar display screen.
3. In order to qualify as a machine or device "without a free play feature", the machine or device's mechanism constituting the free play feature must be completely and wholly removed from the machine or device. FOR MORE INFORMATION ON FREE PLAY FEATURES, SEE PAGE 4 OF THE DISCUSSION PORTION OF THIS DOCUMENT.
4. Video games of billiards, pocket billiards, football, bowling and skeeball are subject to the taxes imposed by Code Section 12-21-2720, and not Code Section 12-21-2730. Therefore, such video games without a free play feature are Type II machines and those with a free play feature are Type III machines.
5. The licensing of an illegal machine does not make the machine legal in South Carolina. If a machine is held to be illegal, the owner of the machine may not receive a refund for the license that was purchased from the Department of Revenue and affixed to the illegal machine. See Code Sections 12-21-2724 and 12-21-2736.

SOUTH CAROLINA DEPARTMENT OF REVENUE

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

Columbia, South Carolina
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