

SC REVENUE PROCEDURE #12-1

- SUBJECT:** Dishonored Checks to Beer and Wine 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 61-4-30 (2009)
S.C. Code Ann. Section 61-4-40 (2009)
S.C. Code Ann. Section 61-4-250 (2009)
1 S.C. Code Regs. 7-702.3 (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 It is effective until superseded or modified by a change in statute, regulation, court decision, or another Departmental advisory opinion.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 beer and wine license holder (retailer) and a wholesale beer and wine license holder (wholesaler). One such restriction concerns indebtedness: beer and wine must be sold by wholesalers to retailers for cash only not later than the time of delivery, and payment on credit by a check or other payment that is dishonored is prohibited. S.C. Code Ann. §§61-4-30 and 61-4-40. This revenue ruling will address the administration and enforcement of such dishonored payments.

Law and Regulation:

Code Section 61-4-30 requires that payment in “cash” be made by a retailer to a wholesaler not later than the time of delivery of beer or wine, as follows:

Beer or wine sold by wholesalers to the holders of retail licenses in this State must be sold for cash only at the time of delivery or prior to delivery. For purposes of this section, "cash" means money or a bona fide check, money order, or electronic transfer of funds if the transfer of funds is initiated by an irrevocable payment order on or before delivery of the beer or wine. The electronic transfer must be initiated by the wholesaler no later than one business day after delivery. A holder of a retail permit who issues a check or an irrevocable payment order in payment for beer or wine with insufficient funds at the bank to cover the check violates the provisions of this section. This provision for cash payment applies to cash deposits on empties when beer is delivered in returnable containers. This deposit on bottles or draft beer containers must not be less than the charge from the brewery to the wholesaler.

Code Section 61-4-40 bars any type of credit in the purchase of beer and wine at wholesale and provides for specific penalties in the case of credit transactions, as follows:

A holder of a beer permit or a beer and wine permit may not purchase beer or wine, or both, on credit by a dishonored check, an unpaid note or invoice, or other insufficient manner from a permitted beer and wine wholesaler. However, no action may be taken against the holder for a first violation of this section. If a holder commits a second or subsequent violation, his retailer's permit may be suspended, canceled, or revoked by the department, or a monetary penalty of not more than twenty-five dollars may be assessed against him.¹

SC Regulation 7-702.3 further states:

Any holder of a beer permit or a beer and wine permit who purchases beer and/or wine on credit, whether by a dishonored check, unpaid note, or invoice, or in any other manner, from a licensed beer and wine wholesale dealer, is in violation of this Regulation and the retail dealer's permit will be subject to be suspended, cancelled or revoked or, in lieu thereof, a monetary penalty be assessed against said permit.

To summarize, when a retailer pays on credit by check or other payment that is dishonored, the retail permit is subject to suspension, cancellation or revocation, or a monetary penalty of not more than \$25. However, no action may be taken for the first violation.

¹ Code Section 61-4-40 expressly limits any action for a first violation and provides specific penalties for subsequent violations, including a specific amount of monetary penalty. Therefore, the general penalty provisions set forth in Code Section 61-4-250 do not apply to violations arising under Code Section 61-4-40.

Procedure:

A. The Administrative Process. If a retailer purchases beer or wine from a wholesaler on credit by a check or other payment that is dishonored, the 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 wholesaler should give the retailer written notice that its check has been dishonored and that

- A retailer is not allowed to take delivery on credit, and the giving of a check that is dishonored is a violation of the law.
- The retailer, as a result of a second or subsequent violation, is subject to a monetary penalty or suspension or revocation of the retail permit.
- The Department of Revenue, by copy of this letter, is being notified of this violation.

2. The wholesaler should provide the Department with a copy of the 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.

B. Determination of Administrative Violation. On receipt of notice from a wholesaler that a 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 retailer’s record in the 3-year period preceding the date of the most recent dishonored check, under the following guidelines:

For a first offense, the Department will send a letter to the retailer advising of the violation.

For a second offense, a \$25 penalty.

For a third offense, the Department will suspend the license for a period of 5 days.²

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

² This suspension period must be 5 consecutive days during which sales of beer and wine would be lawful, but for the suspension.

Note: This advisory opinion sets out penalty guidelines that are specific to administrative violations against retail permits 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

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Columbia, South Carolina