



SC REVENUE PROCEDURE #94-2 (TAX)

SUBJECT: Single Place or Premise
(Video Game Machines)

EFFECTIVE DATE: July 1, 1993

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

REFERENCES: S. C. Code Ann. Section 12-21-2770 et. seq. (Supp. 1993)

AUTHORITY: S. C. Code Ann. Section 12-4-320 (Supp. 1993)
SC Revenue Procedure #94-1

SCOPE: A Revenue Procedure is a statement which provides information of a procedural nature. It is valid and remains in effect until superseded or modified by a change in the statute or regulations or a subsequent court decision Procedure or Revenue Ruling.

PURPOSE: The purpose of this document is to formalize procedures presently followed by the Department of Revenue to ensure no more than the proper number of video game machines are located in a "single place or premises".

LAW:

In 1993 the General Assembly enacted the Video Game Machines Act which regulates video games with free play features. This act regulates the hours of operation; the age of players to whom payouts may be made; residency of machine licensees; location of the establishment; the number of machines allowed at a single place or premises; and various other aspects of the video gaming industry.

This revenue procedure concerns the statutory restrictions on the number of machines allowed at a "single place or premise". Code Section 12-21-2804(A) sets forth these restrictions, and reads in part:

No person shall apply for, receive, maintain, or permit to be used, and the commission shall not allow to be maintained, permits or licenses for the operation of more than eight machines authorized under Section 12-21-2720(A)(3) at a single place or premise for the period beginning July 1, 1993, and ending July 1, 1994. After July 1, 1994, the commission may not issue nor authorize to be maintained any licenses or permits for more than five machines authorized under Section 12-21-2720(A)(3) at a single place or premises. Any licenses or permits issued for the operation of machines authorized under Section 12-21-2720(A)(3) during the period of July 1, 1993, and July 1, 1994, for a two year period shall continue in effect after July 1, 1994, provided that during the period of July 1, 1994, and July 1, 1995, no person shall maintain at a single place or premises more than eight machines authorized under Section 12-21-2720(A)(3).

Therefore, only eight machines may be located in a single place or premises. Beginning July 1, 1994, only five machines, with certain exceptions, may be located in a single place or premises. As such, it must be determined what is a single place or premises to ensure that establishments operating video game machines are complying with the above statutory provisions.

Shortly after the Video Game Machines Act was enacted the South Carolina Department of Revenue issued a publication called "A GUIDE TO CONDUCTING VIDEO GAMING ESTABLISHMENTS IN SOUTH CAROLINA". This publication listed numerous factors to be considered in determining whether a business establishment operating video game machines is separate and distinct from any other business establishment operating video game machines.

The publication was filed with the United States District Court for the Greenville Division as part of a lawsuit brought by persons seeking declaratory and injunctive relief from operation of the Video Game Machines Act. The Court, in *Reyelt et. al. v. South Carolina Tax Commission et. al.*, USDC, C/A No. 6:93-1491-3 and 6:93-1493-3 (November 15, 1993), reviewed the Act and the Department's publication and held:

The first is Section 12-21-2804(A) which limits the number of machines which may be operated at any one "single place" or "premises" and the related term in Section 12-21-2778 which requires a machine to be licensed before being placed in a "premises" or "establishment." The Plaintiffs complain that the Act does not define these terms and that, therefore, they must guess as to the meaning of the statute and at what is required of them. The real inquiry here is not whether there is room for philosophical disagreement over the minute and precise meaning of every word in the statute, but rather whether one can reasonably understand that his contemplated course of conduct would be prohibited.

This Court finds as a matter of law that the terms: "single place," "establishment," "location," and "premises" are sufficiently definite and susceptible of a common and ordinary meaning to provide a person of ordinary intelligence a reasonable notice of the prescribed conduct.

PROCEDURE:

Based on the above, the Department will continue to review the same factors as set forth in the publication, "A GUIDE TO CONDUCTING VIDEO GAMING ESTABLISHMENTS IN SOUTH CAROLINA", in determining whether a business establishment operating video game machines is separate and distinct from any other business establishment operating video game machines.

As previously stated, this determination must be made to ensure no more than the proper number of machines are located in a single place or premises.

The determination as to what constitutes a "single place" or "premises" must be made on a case by case basis. Factors that the Department will consider include, but are not limited to, the following:

1. Is the ownership of the business establishment independent of the ownership of any other business establishment operating video game machines? Is the ownership the same? If the ownership is not the same, is there any relationship between the owners (i.e. common stockholder)?
2. Does each business establishment have its own licenses, such as those required by the State, city, county, etc.? Do they operate under the same licenses?
3. Does each business establishment keep its own books and records? Are the books and records kept together? Does each business establishment maintain its own financial accounts, such as bank checking and investment accounts? Do they maintain joint financial accounts?
4. If the business establishment leases its location, is that lease agreement separate from any lease agreement entered into by any other business establishment operating video game machines? Are these business establishments operating under the same lease agreement?
5. If the business establishment does not own the video game machines in its location, is the machine profit sharing or lease agreement with a licensed coin operator separate from any machine profit sharing or lease agreement entered into by any other business establishment operating video game machines? Are these business establishments operating under the same machine profit sharing or lease agreement?

6. Does each business establishment have its own, separate and distinct, address listed through the United States Postal Service or a 911 emergency system? Is the address for both business establishments the same?
7. Does each business establishment have its own signs and business marquis? Do they operate under the same signs and marquis?
8. Do the business establishments operate under different names? Do they operate under the same name?
9. Does each business establishment have its own employees? Do the same employees work for both establishments?
10. Does each business establishment have its own account with each of the utility companies (i.e. telephone, water, power)? Do they operate under the same account?
11. How are the business establishments physically separated (i.e walls, no walls, lattice work, separate or common amenities, etc.)?
12. Does each business establishment file its own returns for any taxes that may be due (i.e. property tax - PT-100, admissions tax - L-511, sales and use tax - ST-3, etc)? Do they remit such taxes on the same return?

It should be noted that the foregoing list is a recommendation of factors to consider and no one factor, standing alone, is determinative of whether or not a certain area meets the requirement of a "single place or premises".

In summary, if after review of the above factors it is determined that an area contains two or more separate and distinct business establishments, then each business establishment is a "single place or premises" entitled to operate eight (five beginning July 1, 1994) video game machines. If after review of the above factors it is determined that an area contains only one business establishment, then that one business establishment is a "single place or premises" entitled to operate eight (five beginning July 1, 1994) video game machines.

SOUTH CAROLINA DEPARTMENT OF
REVENUE

Columbia, South Carolina
March 23, 1994

For question concerning what constitutes a "single place or premises" under the Video Game Machines Act, contact John Taylor at (803) 737-4666 or John P. McCormack at (803) 737-4438.