

SC REVENUE PROCEDURE #99-1

SUBJECT: Penalty Guidelines for Violations of the Video Game Machines Act and Coin-Operated Devices Laws

EFFECTIVE DATE: Applies to all periods open under the statute.

SUPERSEDES: SC Revenue Procedure #97-2 and all previous documents and any oral directives in conflict herewith.

REFERENCES: S. C. Code Ann. Section 12-21-2703 et.seq. (Supp. 1998)
S. C. Code Ann. Section 12-21-2770 et.seq. (Supp. 1998)
S. C. Code Ann. Section 12-54-40 (Supp. 1998)
S. C. Code Ann. Section 12-54-90 (Supp. 1998)

AUTHORITY: S. C. Code Ann. Section 12-4-320 (Supp. 1998)
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 It is valid and remains in effect until superseded or modified by a change in the statute or regulations or a subsequent court decision, Revenue Procedure or Revenue Ruling.

INTRODUCTION:

This procedure is an advisory opinion providing guidance to be used by department employees in assessing penalties for violations of the statutes and regulations governing video game machines. The purpose of this procedure is to ensure uniform penalty application. Flexibility is allowed to deal with situations that do not fall exactly within the guidelines.

PROCEDURES:

The department recognizes that ensuring compliance with the law, not punishment, is the reason for administrative penalties. Accordingly, except for the most serious offenses, the department adopts a progressive response to assessing penalties. The penalties outlined below include a monetary amount or a license revocation or both.

These are guidelines only and this advisory opinion does not establish a binding norm. There often will be circumstances present that call for either more severe or less severe sanctions for an offense. These guidelines do not restrict the department's authority to impose any sanctions within the statutory authority granted the department by the General Assembly.

Note: For purposes of this document, the "machine owner" is the person who has been issued the license required under Code Section 12-21-2720 or 12-21-2730 for the operation of the machine in question. The "location operator" is the person who is operating the business where coin-operated devices are located for play.

CIVIL VIOLATIONS AND PENALTY GUIDELINES:

DESCRIPTION OF THE VIOLATION: **Penalty Signs** - Each machine must have a sign prominently displayed citing the penalties provided by Code Sections 12-21-2790, 12-21-2792 and 12-21-2974 on the wall above the machine or affixed prominently to the machine.

Violation Section	12-21-2802
Penalty Sections	12-54-40(b)(3); 12-54-90
Penalty Amount	\$50 to \$500; License revocation
Recommended Action	First Offense - \$ 100 Second Offense - \$ 250 Third Offense - \$500
Party Liable for Penalty	Location Operator
Other Notification	None

DESCRIPTION OF THE VIOLATION: **More Than 5 Machines** - No more than five machines per single place or premises.

Violation Section	12-21-2804 (A); Regulation 117-190
Penalty Sections	12-21-2804 (A); 12-21-2804(F)

Penalty Amount	Up to \$5,000; Revocation of all machine licenses; Six Month Suspension of Machine Operation at the Location
Recommended Action	<p>A single violation of \$5,000 will be written per single place or premises. A \$5,000 penalty will be sought from each machine license holder (machine owner) for each single place or premises failing to meet the requirements as a single place or premises and a \$5,000 penalty will be sought from each location operator for each single place or premises failing to meet the requirements as a single place or premises.</p> <p>In addition, all licenses for machines in a single place or premises will be revoked, not just those in excess of the statutory limitation. In accordance with Code Section 12-21-2804(A), once the licenses are revoked, machines may not be operated in the establishment for a period of six months from the date of revocation.</p>
Party Liable for Penalty	Machine Owner and Location Operator
Other Notification	Since revocation of the machine licenses will prohibit machines at the single place or premises for six months, the location operator should be notified in writing of the violation.

Note: If the department determines that the violation is willful, then it may refer the violation to the Office of the Attorney General for prosecution. See Code Section 12-21-2804(F).

DESCRIPTION OF THE VIOLATION: Advertising - No person who maintains a place or premises for the operation of video game machines may advertise in any manner for the playing of video game machines.

Violation Section	12-21-2804 (B); Regulation 117-190.2
Penalty Section	12-21-2804(F); 12-54-90

Penalty Amount	Up to \$5,000; Revocation of licenses issued by the department and held by the location operator.
Recommended Action	First Offense - \$2,000 Second Offense - \$3,000 Third Offense - \$5,000 and the revocation of the location operator's retail sales tax license. Addtl Offenses - \$5,000 and revocation of all licenses issued by the department and held by the operator of the single place or premises, regardless of whether or not the licenses are for the premises in violation (for example, liquor licenses, beer and wine licenses, and Class C coin-operated device owner/operator's license).
Party Liable for Penalty	Location Operator
Other Notification	None

Note: If the department determines that the violation is willful, then it may refer the violation to the Office of the Attorney General for prosecution. See Code Section 12-21-2804(F).

DESCRIPTION OF THE VIOLATION: Inducements - No person may offer or allow to be offered any special inducements to a person for the playing of video game machines.

Violation Section	12-21-2804 (B); Regulation 117-190.1
Penalty Section	12-21-2804(F); 12-54-90
Penalty Amount	Up to \$5,000; Revocation of licenses issued by the department and held by the location operator.
Recommended Action	First Offense - \$2,000 Second Offense - \$3,000

Third Offense - \$5,000 and the revocation of the location operator's retail sales tax license.

Add'l Offenses - \$5,000 and revocation of all licenses issued by the department and held by the operator of the single place or premises, regardless of whether or not the licenses are for the premises in violation (for example, liquor licenses, beer and wine licenses, and Class C coin-operated device owner/operator's license).

Party Liable for Penalty	Location Operator and any other person offering inducements or allowing inducements to be offered ¹
Other Notification	None

Note: If the department determines that the violation is willful, then it may refer the violation to the Office of the Attorney General for prosecution. See Code Section 12-21-2804(F).

DESCRIPTION OF THE VIOLATION: Sunday Operations - It is unlawful to operate video game machines between the hours of midnight Saturday and 6 a.m. Monday.

Violation Section	12-21-2804 (E)
Penalty Section	12-21-2804(F); 12-54-90
Penalty Amount	Up to \$5,000; Revocation of all machine licenses and any other licenses issued by the department and held by the location operator.
Recommended Action	First Offense - \$2,000

¹ The statute imposes the penalty for inducements on any person offering or allowing to be offered special inducements for the playing of video game machines. As such, penalties could be imposed on the location operator, the machine owner, an association or other third party, depending on the circumstances.

Second Offense - \$3,000

Third Offense - \$5,000 and the revocation of the location operator's retail sales tax license.

Add'l Offenses - \$5,000 and revocation of all licenses issued by the department and held by the operator of the single place or premises, regardless of whether or not the licenses are for the premises in violation (for example, liquor licenses, beer and wine licenses, and Class C coin-operated device owner/operator's license).

Party Liable for Penalty Location Operator

Other Notification None

Note: If the department determines that the violation is willful, then it may refer the violation to the Office of the Attorney General for prosecution. See Code Section 12-21-2804(F).

DESCRIPTION OF THE VIOLATION: Payout to a Person Under Age 21 - No person under the age of 21 may receive a payout as a result of the operation of a video game machine.

Violation Section 12-21-2804 (C)

Penalty Section 12-21-2804(F); 12-54-90

Penalty Amount Revocation of all machine licenses and any other licenses issued by the department and held by the location operator.

Recommended Action First Offense - Revocation of machine licenses and the retail sales tax license of the single place or premises.

Add'l Offenses - Revocation of machine licenses and the retail sales tax license of the single place or premises and all other licenses issued by the department and held by the location operator for the operation of that single place or premises (for example: liquor

license, beer and wine license, admissions tax license, Class C coin-operated device owner/operator license).

Party Liable for Penalty Location Operator

Other Notification None

DESCRIPTION OF THE VIOLATION: Residency Requirement - Owner, operator or marketer may not be issued a Type III machine license unless that person has been a resident of South Carolina for two years. The department requires a statement of residency at the time of application for a Type III machine license.

Violation Section 12-21-2804 (D)

Penalty Section 12-21-2804(F); 12-54-90

Penalty Amount Up to \$5,000 per machine license improperly obtained; Revocation of licenses issued by the department and held by the machine owner.

Recommended Action First Offense - \$5,000 per machine license improperly obtained and revocation of all machine licenses, retail sales tax licenses, liquor licenses, beer and wine licenses, and Class C coin-operated device owner/operator's license.

Second Offense - Refer to the Criminal Investigation Section of the Office of the General Counsel.

Party Liable for Penalty Machine Owner

Other Notification None

Note: If the department determines that the violation is willful, then it may refer the violation to the Office of the Attorney General for prosecution. See Code Section 12-21-2804(F).

DESCRIPTION OF THE VIOLATION: Retail License Requirement - A coin-operated device licensed under the provisions of Code Section 12-21-2720(A)(3) may **not** be operated at a location unless that location is licensed under the provisions of Chapter 36 of Title 12 (Retail License).

Violation Section	12-21-2703
Penalty Section	12-54-40(b)(3); 12-54-90
Penalty Amount	\$50 to \$500
Recommended Action	\$500 - Each day in violation is a separate offense.
Party Liable for Penalty	Location Operator
Other Notification	None

Note: If the single place or premises is a business that sells tangible personal property at retail, in addition to operating video game machines, then the above recommended action should not be followed and the matter should be referred to the Criminal Investigation Section of the Office of the General Counsel. See Code Section 12-36-560.

DESCRIPTION OF THE VIOLATION: No Owner Identification on the Coin-Operated Device - A person who owns or operates a device licensed under Code Sections 12-21-2720 or 12-21-2730 must have information attached to the device identifying the owner or operator of the device. The identification must be placed on an area on the device visible for inspection purposes

Violation Section	12-21-2748
Penalty Section	12-21-2738; 12-54-90
Penalty Amount	\$50 for Type I or II devices or up to \$2,500 for Type III devices; Revocation of all machine licenses and any other licenses issued by the department and held by the location operator.
Recommended Action	First Offense - Type I or II Device \$50 - Type III Device \$500 Second Offense - Type I or II Device \$50 - Type III Device \$1,250

Add'l Offenses - \$50 or \$2,500 (depending on whether the device is a Type I, II, or III device) and revocation of the machine licenses for the machines in violation.

Party Liable for Penalty Machine Owner

Other Notification None

DESCRIPTION OF THE VIOLATION: Unlicensed or Improperly Licensed Coin-Operated Devices - All devices defined under Code Sections 12-21-2720 or 12-21-2730 must be properly licensed.

Violation Section 12-21-2720; 12-21-2730

Penalty Section 12-21-2738; 12-54-90

Penalty Amount \$50 or \$2,500; Revocation of all machine licenses and any other licenses issued by the department and held by the location operator.

Recommended Action All Offenses - Type I or II Device \$50
- Type III Device \$2,500

Party Liable for Penalty Machine Owner

Other Notification Licenses purchased from the department may not be sold or transferred by the purchaser to any other person or entity. (Under Code Section 12-21-2720, a person may only procure the license from the department.) Therefore, when a machine that is improperly licensed due to the improper sale or transfer of a license, the department, in addition to any and all penalties authorized under these guidelines or by law, will seek revocation of the license that was improperly sold or transferred.

Note: The machine owner must also pay the license fee required. This license fee will not be prorated.

DESCRIPTION OF THE VIOLATION: Exceeding Pay-Out Limitation of 2,500 Credits - Cash pay-outs for credits earned for free games are limited to 2,500 credits per player per location during any 24 hour period.

Violation Section	12-21-2791
Penalty Section	12-54-40(b)(3); 12-54-90
Penalty Amount	\$50 to \$500; Revocation of licenses issued by the department and held by the location operator.
Recommended Action	First Offense - \$500 Second Offense - \$500 and revocation of the location operator's retail sales tax license.
Add'l Offenses	- \$500 and revocation of all licenses issued by the department and held by the operator of the single place or premises, regardless of whether or not the licenses are for the premises in violation (for example, liquor licenses, beer and wine licenses, and Class C coin-operated device owner/operator's license).
Party Liable for Penalty	Location Operator
Other Notification	None

Note: This violation for exceeding 2,500 credits can be written in conjunction with a violation for exceeding the pay-out limit of 5 cents per credit. See next discussion on violation for paying out more than 5 cents per credit.

DESCRIPTION OF THE VIOLATION: Exceeding Pay-Out Limitation of 5 Cents Per Credit - Cash pay-outs for credits earned for free games are limited to 5 cents per credit.

Violation Section	12-21-2791
Penalty Section	12-54-40(b)(3); 12-54-90
Penalty Amount	\$50 to \$500; Revocation of licenses issued by the department and held by the location operator.

Recommended Action	<p>First Offense - \$500</p> <p>Second Offense - \$500 and revocation of the location operator's retail sales tax license.</p> <p>Add'l Offenses - \$500 and revocation of all licenses issued by the department and held by the operator of the single place or premises, regardless of whether or not the licenses are for the premises in violation (for example, liquor licenses, beer and wine licenses, and Class C coin-operated device owner/operator's license).</p>
Party Liable for Penalty	Location Operator
Other Notification	None

Note: This violation for exceeding 5 cents per credit on a cash pay-out can be written in conjunction with a violation for exceeding the pay-out limit of 2,500 credits per player per location for any 24 hour period. See the previous discussion on violation for paying out more than 2,500 credits per player per location for any 24 hour period.

DESCRIPTION OF THE VIOLATION: Failure to File Quarterly Report or Filing an Incomplete Quarterly Report - Certain information concerning each video game machine must be filed with the department on a quarterly basis.

Violation Section	12-21-2776
Penalty Section	12-54-40(b)(3); 12-54-90
Penalty Amount	\$50 to \$500; Revocation of all machine licenses and any other licenses issued by the department and held by the location operator.
Recommended Action	<p>First Offense - \$500</p> <p>Add'l Offense - \$500 and revocation of all licenses issued by the department and held by the machine owner (for example, the department will seek revocation of all machine licenses and the owner's Class C coin-operated device owner/operator license. Also, if the machine owner is operating a location or several locations, the department will</p>

seek revocation of the any retail sales tax licenses, liquor licenses and beer and wine licenses).

Party Liable for Penalty	Machine Owner
Other Notification	None

Note: The department also will refuse to issue any new machine licenses to any machine owner who has failed to file a complete quarterly report as required by statute.

DESCRIPTION OF THE VIOLATION: Operating Machines in a Location in Violation of the Six Month Restriction - Machines may not be operated in a location for a period of six months from the date of revocation in a location that had its machine licenses revoked for a violation of Code Section 12-21-2804(A).

Violation Section	12-21-2804 (A)
Penalty Section	12-21-2804(A) and (F); 12-54-90
Penalty Amount	Up to \$5,000 for each machine in violation as well as each single place or premises in violation; Revocation of licenses issued by the department and held by the location operator.
Recommended Action	\$5,000 and revocation of all machine licenses, retail sales tax licenses, liquor licenses, beer and wine licenses, and Class C coin-operated device owner/operator's license.

In addition to or in lieu of the above penalties, the department may seek to have the violator ruled in contempt of court if the original revocation of the machine licenses was ordered by the Administrative Law Judge Division (“ALJD”) or any other court of law. If the ALJD or other court of law determines the machine owner and/or location operator are in contempt of court, then the ALJD or other court may require the machine owner and/or location operator to (1) comply with the original order, (2) pay a fine, (3) be incarcerated, or (4) be subject to other penalties or requirements as ordered by the ALJD or court.

The determination as to whether to assess penalties and seek revocation of licenses, seek a contempt of court determination by the ALJD or other court, or both, rests with the Office of the General Counsel.

Party Liable for Penalty	Machine Owner and Location Operator
Other Notification	None

Note: If the department determines that the violation is willful, then it may refer the violation to the Office of the Attorney General for prosecution. See Code Section 12-21-2804(F).

CRIMINAL VIOLATIONS

The following violations are subject to various criminal penalties.

<u>DESCRIPTION OF THE VIOLATION</u>	<u>CODE SECTION</u>
Machine Tampering - Tampering with a machine with intent to interfere with its proper operation.	12-21-2790
Skimming Proceeds - Skimming of machine proceeds to exclude anything of value from the deposit, counting, collection or computation of revenues from machines.	12-21-2792
Location Restrictions - Any location with Type III machines which provides for pay-outs may <u>not</u> be located within 500 feet in a county or 300 feet in a municipality of a public or private elementary, middle, or secondary school; a public or private kindergarten; a public vocational or trade school or technical education center; a public or private college or university; or a house of worship.	12-21-2793; Reg. 117-190.3
Machine Manipulation - Manipulating <u>with intent</u> the outcome, payoff, or operation of a machine by physical or any other means.	12-21-2794

Contraband Machines - Possessing,
or allowing the operation of, contraband
or gray area machines.

12-21-2797

OTHER VIOLATIONS

This revenue procedure establishes guidelines for assessing penalties and revoking licenses for violations of many of the provisions of Article 19 and Article 20 of Chapter 21 of Title 12. There are, of course, other possible violations and other penalties. All other violations of these laws and other penalties (civil penalties, revocation of licenses, criminal penalties) shall be considered on a case by case basis and the assessment of penalties and revocation of licenses will be determined based on that review.

OTHER PENALTIES AND ENFORCEMENT PROVISIONS

As stated in the "Introduction," nothing in this revenue procedure shall restrict the department's authority to impose any sanctions authorized under the Code of Laws of South Carolina.

SOUTH CAROLINA DEPARTMENT OF REVENUE

s/Burnet R. Maybank III

Burnet R. Maybank, III, Director

January 11 _____, 1999
Columbia, South Carolina