

SC REVENUE RULING #05-19

SUBJECT: Sale of Alcoholic Liquors, Beer and Wine for On-Premise Consumption on New Year's Day 2006 (ABL)

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

REFERENCES: S. C. Code Ann. Section 61-4-120 (Amended - Act 139 of 2005)
S. C. Code Ann. Section 61-4-500 (Supp. 2004)
S. C. Code Ann. Section 61-4-240 (Supp. 2004)
S. C. Code Ann. Section 61-6-1600 (Amended - Act 139 of 2005)
S. C. Code Ann. Section 61-6-1610 (Amended - Act 139 of 2005)
S. C. Code Ann. Section 61-6-2000 (Amended - Act 139 of 2005)
S. C. Code Ann. Section 61-6-2010 (Amended - Act 139 of 2005)

AUTHORITY: S. C. Code Ann. Section 12-4-320 (2000)
S. C. Code Ann. Section 1-23-10(4) (Supp. 2004)
SC Revenue Procedure #05-2

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 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 It is the Department's position until superseded or modified by a change in statute, regulation, court decision, or another Departmental advisory opinion.

Questions:

1. May a location licensed for on-premise sale and consumption of alcoholic liquors by the drink sell alcoholic liquor on Sunday, January 1, 2006 - New Year's Day?
2. May a location permitted for on-premise sale and consumption of beer and wine sell beer and wine on Sunday, January 1, 2006 - New Year's Day?
3. May a location allow a private function where alcoholic liquors, beer and wine are consumed to be held on its premises on Sunday, January 1, 2006 - New Year's Day?

Conclusions:

1. ALCOHOLIC LIQUORS SOLD BY THE DRINK

Food Service Establishments or Places of Lodging

If a location licensed under the provisions of Code Section 61-6-1610 (liquor by the drink license) has applied for and received from the Department a local option permit for January 1, 2006 under the provisions of Code Section 61-6-2010, then the location may sell, and persons at the location may consume, alcoholic liquors via liquor by the drink on Sunday, January 1, 2006 - New Year's Day, except between the hours of 2:00 a.m Sunday and 10:00 a.m. Sunday.

If a location licensed under the provisions of Code Section 61-6-1610 (liquor by the drink license) has **not** applied for and received from the Department a local option permit for January 1, 2006 under the provisions of Code Section 61-6-2010, then the location may **not** sell, and persons at the location may **not** consume, alcoholic liquors via liquor by the drink on Sunday, January 1, 2006 - New Year's Day.

Note: Only locations in counties or municipalities that have approved by referendum local option permits may be issued local option permits under the provisions of Code Section 61-6-2010.

Nonprofit Organizations

Private Clubs

If a location is licensed under the provisions of Code Section 61-6-1600 (nonprofit liquor by the drink license), then the location may sell to its members and their bona fide guests, and the members and their bona fide guests may consume, alcoholic liquors via liquor by the drink on Sunday, January 1, 2006 - New Year's Day, except between the hours of 2:00 a.m Sunday and 10:00 a.m. Sunday.

Single Social Occasion

If a nonprofit organization obtains a temporary license for a period not to exceed twenty-four hours under the provisions of Code Section 61-6-2000, then the nonprofit organization may sell at a single social occasion, and persons at this single social occasion may consume, alcoholic liquor by the drink on Sunday, January 1, 2006 - New Year's Day, except between the hours of 2:00 a.m Sunday and 10:00 a.m. Sunday.

2. BEER AND WINE:

If a location licensed under the provisions of Code Section 61-6-1610 (liquor by the drink license) has applied for and received from the Department a local option permit for January 1, 2006, under the provisions of Code Section 61-6-2010, then the location may sell beer and wine (and alcoholic liquor by the drink), and persons at the location may consume beer and wine (and

alcoholic liquor by the drink), on Sunday, January 1, 2006 - New Year's Day, except between the hours of 2:00 a.m Sunday and 10:00 a.m. Sunday, provided it is licensed to sell beer and wine for on-premise consumption under Code Section 61-4-500 (beer and wine permit).

If a location licensed under the provisions of Code Section 61-6-1610 (liquor by the drink license) has **not** applied for and received from the Department a local option permit for January 1, 2006 under the provisions of Code Section 61-6-2010, then the location may **not** sell, and persons at the location may **not** consume, beer and wine (and may **not** sell and persons may **not** consume alcoholic liquor by the drink) on Sunday, January 1, 2006 - New Year's Day.

If a location is licensed under the provisions of Code Section 61-6-1600 (nonprofit liquor by the drink license), then the location may sell beer and wine (and alcoholic liquor by the drink) to its members and their bona fide guests, and the members and their bona fide guests may consume beer and wine (and alcoholic liquor by the drink) on Sunday, January 1, 2006 - New Year's Day, except between the hours of 2:00 a.m Sunday and 10:00 a.m. Sunday, provided it is licensed to sell beer and wine for on-premise consumption under Code Section 61-4-500 (beer and wine permit).

If a nonprofit organization obtains a temporary license for a period not to exceed twenty-four hours under the provisions of Code Section 61-6-2000 (nonprofit temporary liquor by the drink license), then the nonprofit organizations may sell at a single social occasion, and persons at this single social occasion may consume, beer and wine (and alcoholic liquor by the drink) on Sunday, January 1, 2006 - New Year's Day, except between the hours of 2:00 a.m Sunday and 10:00 a.m. Sunday, provided it is licensed to sell beer and wine for on-premise consumption under Code Section 61-4-240 (temporary beer and wine permit).

If a location is **not** licensed under the provisions of Code Section 61-6-1610 (liquor by the drink license) but is licensed under Code Section 61-4-500 to sell beer and wine for on-premise consumption, then the location may **not** sell, and persons at this location may **not** consume, beer and wine on Sunday, January 1, 2006 - New Year's Day, and it may **not** sell or permit the consumption of beer or wine before sunrise on Monday, January 2, 2006.

Note: Only locations in counties or municipalities that have approved by referendum local option permits may be issued local option permits under the provisions of Code Section 61-6-2010.

3. PRIVATE FUNCTIONS

A location may allow a private function where alcoholic liquors, beer and wine are **consumed (but not sold)** to be held on its premises on Sunday, January 1, 2006 - New Year's Day, provided the provisions of SC Regulation 7-403 are met and only pre-invited guests attend, the function is not advertised to the general public, and the lease required by SC Regulation 7-403 constitutes an arms length transaction. The provisions of Code Section 61-6-1620(B) and SC Regulation 7-403 apply whether or not the location is licensed for the sale and consumption of alcoholic liquor by the drink, beer or wine.

The provisions of Code Section 61-6-1620(B) and SC Regulation 7-403 only allow the possession and consumption of alcoholic liquors, beer or wine and do **not** allow the sale of alcoholic liquors, beer or wine.

Note #1: For purposes of the ABC laws and the above conclusions (#1, #2 and #3), alcoholic liquor, beer or wine is sold if there is a per drink charge, if an admissions fee is charged to enter a place or event where these beverages are provided, if a donation is accepted with respect to the event where these beverages are provided, if tickets are sold with respect to the event where these beverages are provided, if such beverages are provided as part of a meal for which consideration, direct or indirect, is accepted or required, if such beverages are provided as part of room accommodations for which consideration, direct or indirect, is accepted or required, or if any consideration is accepted or required with respect to the event where these beverages are provided.

Note #2: Code Sections 61-4-160 and 61-6-4550 permit locations licensed for the sale and on-premise consumption of alcoholic liquors liquor by the drink or beer and wine to hold no more than two functions (approved by the Department) per year at which alcoholic liquor, beer or wine are dispensed for free. These sections do not authorize such functions on Sunday, January 1, 2006, unless the location has applied for and received from the Department a local option permit for January 1, 2006, under the provisions of Code Section 61-6-2010. (Note: Only locations in counties or municipalities that have approved by referendum local option permits may be issued local option permits under the provisions of Code Section 61-6-2010.)

Note #3: Since the provisions of Act 139 of 2005 do not become effective until January 1, 2006, food service establishments, places of lodging and nonprofit private clubs licensed for the sale and consumption of alcoholic liquors may only sell alcoholic liquor via minibottles on December 31, 2005 – New Year’s Eve.

Note #4: Locations that may not sell, and therefore may not allow persons at the location to consume, alcoholic liquor, beer or wine on Sunday, January 1, 2006 – New Year’s Day, may not have or allow open containers alcoholic liquor, beer or wine on the location on Sunday, January 1, 2006 – New Year’s Day. Locations that may sell, and therefore may allow persons at the location to consume, alcoholic liquor, beer or wine on Sunday, January 1, 2006 – New Year’s Day, may not have or allow open containers of alcoholic liquor, beer or wine on the location on Sunday, January 1, 2006 – New Year’s Day, between the hours of 2:00 a.m Sunday and 10:00 a.m. Sunday.

Facts:

Locations licensed or permitted for the on-premise sale and consumption of alcoholic beverages (liquor, beer and wine) have inquired about operating on New Year’s Day – January 1, 2006, which falls on a Sunday.

Furthermore, it is important to note that in 2005 the General Assembly amended the statutory provisions for the sale of alcoholic liquor at a location with an on-premises consumption license (Act 139 of 2005). With respect to the issues to be addressed in this advisory opinion, the following changes were made:

1. On-premises consumption licensees will no longer be required to purchase alcoholic liquor in minibottles for sale to their customers. (Effective January 1, 2006.)
2. A person licensed for the sale of alcoholic liquors for on-premises consumption (now known as “alcoholic liquor for sale by the drink”) must purchase the alcoholic liquor from a licensed retail dealer with a wholesaler's basic permit issued pursuant to the Federal Alcohol Administration Act in any size bottle, except 1.75 liter size bottles. (Effective January 1, 2006.)
3. A licensed retail dealer with a wholesaler's basic permit issued pursuant to the Federal Alcohol Administration Act may deliver, in sealed containers, alcoholic liquor in any size bottle, except 1.75 liter size bottles, to a person licensed to sell alcoholic liquors for on-premises consumption. (Note: This provision is effective January 1, 2006, except that beginning on June 7, 2005 a licensed retail dealer with a wholesaler's basic permit issued pursuant to the Federal Alcohol Administration Act may deliver, in sealed containers, alcoholic liquor in minibottles to a person licensed for sale for on-premises consumption.)

However, in order to allow for a smooth transition, the Department will allow a retail liquor store licensee with a wholesaler’s basic permit to begin delivering alcoholic liquor in any size bottle (“big bottles”), except 1.75 liter size bottles, to licensed on-premises consumption locations on Thursday, December 1, 2005. Please note that under no circumstances may on-premises consumption locations sell from big bottles prior to January 1, 2006. If during an inspection the State Law Enforcement Division (“SLED”) discovers liquor in big bottles with seals broken prior to January 1, 2006, the liquor will be confiscated and an administrative citation will be written.

Discussion:

Code Section 61-6-1610 establishes the hours for selling alcoholic liquor by the drink at food-service establishments or places of lodging licensed for the on-premise sale and consumption of alcoholic liquor by the drink. It states in part:

(A) Except on Sunday, it is lawful to sell and consume alcoholic liquors sold by the drink in a business establishment between the hours of ten o'clock in the morning and two o'clock the following morning if the establishment meets the following requirements:

- (1) the business is bona fide engaged primarily and substantially in the preparation and serving of meals or furnishing of lodging; and
- (2) the business has a license from the Department authorizing the sale and consumption of alcoholic liquors by the drink, which is displayed conspicuously on the main entrance to the premises and clearly visible from the outside. (Emphasis added.)

Code Section 61-6-1600 establishes the hours for selling alcoholic liquor by the drink by non-profit organizations licensed for the on-premise sale and consumption of alcoholic liquor by the drink¹. It states

(A) A nonprofit organization which is licensed by the department pursuant to the provisions of this article may sell alcoholic liquors by the drink. A member or guest of a member of a nonprofit organization may consume alcoholic liquors sold by the drink upon the premises between the hours of ten o'clock in the morning and two o'clock the following morning.

(B) An employee or agent of an establishment licensed as a nonprofit organization is prohibited from selling, making available for sale, or permitting the consumption of alcoholic liquors on the licensed premises between the hours of two o'clock in the morning and ten o'clock in the morning. A violation of this provision is a violation against the organization's license.

Code Section 61-6-2010 allows Sunday sales via a local option permit under certain circumstances and states in part:

(A) In addition to the provisions of Section 61-6-2000, the department may issue a temporary permit to allow the possession, sale, and consumption of alcoholic liquors by the drink. This permit is valid for a period not to exceed twenty-four hours and may be issued only to bona fide nonprofit organizations and business establishments otherwise authorized to be licensed for sales. The department shall charge a nonrefundable filing fee of one hundred dollars for processing each application and a daily permit fee of fifty dollars for each day for which a permit is approved. An application must be filed for each permit requested. The department must also offer the option of an annual fifty-two week temporary permit for a nonrefundable fee of three thousand dollars per year. However, the optional fifty-two week permit must not extend beyond the expiration date of the biennial license issued pursuant to this chapter. If the expiration date is less than fifty-two weeks from the date of the application for the optional fifty-two week permit, the department must prorate the three thousand dollar fee on a monthly basis. The department in its sole discretion shall specify the terms and conditions of the permit.

* * * *

(C)(1) A permit authorized by this section may be issued only in those counties or municipalities where a majority of the qualified electors voting in a referendum vote in favor of the issuance of the permit. The county or municipal election commission, as the case may be, shall conduct a referendum upon petition of at least ten percent but not more than seven thousand five hundred qualified electors of the county or municipality, as the case may be. The petition form must be submitted to the election commission not less than one hundred twenty days before the date of the referendum. The names on the petition must be on the petition form provided to county election officials by the State Election Commission. The names on the petition must be certified by the election commission within sixty days after receiving the petition form. The referendum must be conducted at the next general election. The election commission shall cause a notice to

¹ See SC Regulation 7-401.4 for more information about non-profit organizations eligible to be licensed to sell alcoholic liquor by the drink.

be published in a newspaper circulated in the county or municipality, as the case may be, at least seven days before the referendum. The state election laws shall apply to the referendum, mutatis mutandis. The election commission shall publish the results of the referendum and certify them to the South Carolina Department of Revenue. The question on the ballot shall be one of the following:

(a) Shall the South Carolina Department of Revenue be authorized to issue temporary permits in this (county) (municipality) for a period not to exceed twenty-four hours to allow the possession, sale, and consumption of alcoholic liquors by the drink to bona fide nonprofit organizations and business establishments otherwise authorized to be licensed for consumption-on-premises sales?' or

(b) Shall the South Carolina Department of Revenue be authorized to issue temporary permits in this (county) (municipality) for a period not to exceed twenty-four hours to allow the possession, sale, and consumption of alcoholic liquors by the drink to bona fide nonprofit organizations and business establishments authorized to be licensed for consumption-on-premises sales and to allow the sale of beer and wine at permitted off-premises locations without regard to the days or hours of sales?' or

(c) in case of a county or municipality where temporary permits are authorized to be issued pursuant to this section as of June 21, 1993, the question may be 'Shall the Department of Revenue be authorized to issue temporary permits in this (county) (municipality) for a period not to exceed twenty-four hours to allow the sale of beer and wine at permitted off-premises locations without regard to the days or hours of sales?'

(2) A referendum for this purpose may not be held more often than once in forty-eight months.

(3) The expenses for a referendum for this purpose must be paid by the county or municipality conducting the referendum.

(D)(1) The municipal governing body may order a referendum on the question of the issuance of temporary permits to allow the possession, sale, and consumption of alcoholic liquors by the drink in the following circumstances:

(a) parts of the municipality are located in more than one county;

(b) as a result of a favorable vote in a county referendum held pursuant to this section, permits may be issued in only the parts of the municipality located in that county; and

(c) the proposed referendum would authorize issuance of permits in the remaining parts of the municipality.

(2) The method of ordering a referendum provided in this subsection is in addition to the petition method provided in subsection (C). An unfavorable vote in a municipal referendum does not affect the authority to issue these permits in the part of the municipality located in a county where these permits may be issued.

(3) Upon receipt of a copy of the ordinance filed with the municipal election commission at least sixty days before the date of the general election, the commission must conduct the referendum at the time of the general election and publish and certify its results in the same manner as provided in subsection (C). Subsection (C)(2) does not apply to this referendum.

Code Section 61-4-500 concerns the issuance of beer and wine permits and states:

A person engaging in the business of selling beer, ale, porter, wine, or a beverage which has been declared to be nonalcoholic and nonintoxicating under Section 61-4-10 must apply to the department for a permit to sell these beverages. Each applicant must pay a filing fee of two hundred dollars which is not refundable. A retailer must pay to the department four hundred dollars biennially for a retail permit, and a wholesale dealer must pay to the department two thousand dollars biennially for a wholesale permit. A separate permit is required for each separate place of business.

A person who initially applies for a permit after the first day of a permit period must pay permit fees in accordance with the schedule provided in Section 61-6-1810(C).

Code Section 61-4-120 concerns the sale of beer and wine on Sundays and states:

It is unlawful for a person to sell or offer for sale wine or beer in this State between the hours of twelve o'clock Saturday night and sunrise Monday morning. However, an establishment licensed pursuant to Article 5 of Chapter 6 is authorized to sell these products during those hours in which the sale of alcoholic liquors by the drink is lawful. A person who violates the provisions of this section is considered guilty of a misdemeanor and, upon conviction, must be fined not more than one hundred dollars or imprisoned for not more than thirty days. The right of a person to sell wine and beer in this State under a license issued by the State must be forfeited and the license revoked upon his conviction of violating the provisions of this section.

Based on the above, it is the opinion of the Department that the hours for selling alcoholic liquors, beer and wine are as follows:

**HOURS - FOOD SERVICE ESTABLISHMENTS AND PLACES OF LODGING
LICENSED FOR ON-PREMISES CONSUMPTION OF LIQUOR BY THE DRINK**

Locations with a Local Option Permit: These locations may sell, and patrons may consume, liquor on these premises between the hours of 10:00 a.m. and 2:00 a.m. the following morning. Local Option Permits are issued only in counties or municipalities in which a public referendum has approved such permits. See Code Sections 61-6-1610 and 61-6-2010.

Locations without a Local Option Permit: These locations may sell, and patrons may consume, liquor on these premises between the hours of 10:00 a.m. and 2:00 a.m. the following morning, except between midnight Saturday night and midnight Sunday night. See Code Section 61-6-1610. This allows such locations to sell (and patrons to consume) liquor as follows:

After midnight Sunday until 2:00 a.m. Monday
10:00 a.m. Monday until 2:00 a.m. Tuesday
10:00 a.m. Tuesday until 2:00 a.m. Wednesday
10:00 a.m. Wednesday until 2:00 a.m. Thursday
10:00 a.m. Thursday until 2:00 a.m. Friday
10:00 a.m. Friday until 2:00 a.m. Saturday
10:00 a.m. Saturday until midnight Saturday

HOURS - NONPROFIT ORGANIZATIONS (PRIVATE CLUBS) LICENSED FOR ON-PREMISES CONSUMPTION OF LIQUOR BY THE DRINK

These locations may sell, and members and guests of members may consume, liquor on these premises between the hours of 10:00 a.m. and 2:00 a.m. the following morning. See Code Section 61-6-1600. For more information on private clubs, see SC Regulation 7-401.4.

HOURS - LOCATIONS LICENSED FOR ON-PREMISES CONSUMPTION OF BEER OR WINE

Locations only licensed to sell beer or wine for on-premises consumption: These locations may sell, and patrons may consume, beer or wine on these premises at anytime except between midnight Saturday night and sunrise Monday morning. This allows such locations to sell (and patrons to consume) beer or wine at anytime after sunrise Monday morning until midnight Saturday night.

Locations also licensed to sell liquor by the drink for on-premises consumption: These locations may sell, and patrons may consume, beer or wine on these premises during the same hours the location is permitted to sell, and patrons may consume, liquor by the drink. See the above information entitled “HOURS - FOOD SERVICE ESTABLISHMENTS AND PLACES OF LODGING LICENSED FOR ON-PREMISES CONSUMPTION OF LIQUOR BY THE DRINK” and “HOURS - NONPROFIT ORGANIZATIONS (PRIVATE CLUBS) LICENSED FOR ON-PREMISES CONSUMPTION OF LIQUOR BY THE DRINK” See Code Section 61-4-120.

Now we must consider the issue of private functions held on Sunday, January 1, 2006 - New Year’s Day.

Code Section 61-6-1620(B) states:

Alcoholic liquors may be possessed or consumed in separate and private areas of an establishment whether or not the establishment includes premises which are licensed pursuant to Sections 61-6-1600 or 61-6-1610, where specific individuals have leased these areas for a function not open to the general public.

SC Regulation 7-403 states:

A. Lease must be written. When a separate and private area of an establishment is leased by a holder of a sale and consumption license to a specific individual or individuals for a function not

open to the general public pursuant to Section 61-6-1620(B), the terms of the lease agreement shall be reduced to writing and a copy of that instrument shall be retained by the licensee upon the licensed premises.

B. Purchase, Delivery and Possession of Alcoholic Beverages. When a separate and private area of an establishment is leased by a specific individual or individuals for a function not open to the general public pursuant to Section 61-6-1620(B), the host or sponsor of said function, or the designated agent or representative of said host or sponsor must purchase and deliver to the leased area any alcoholic beverages to be possessed and consumed therein and must remain constantly in actual possession of these beverages until such time as the function is concluded, at which time all alcoholic beverages must be removed from the leased area and taken to a location where they may be legally stored. Nothing contained herein shall prohibit the host or sponsor or his designated agent or representative from having other persons, whether employed by the licensee or employed by the host or his agent or representative, from mixing and serving alcoholic beverages belonging to the host of the party.

C. Termination of Lease. In the event that the area leased pursuant to Section 61-6-1620(B), is located upon the premises of an establishment holding either a sale and consumption license or a retail beer and wine permit, the lease agreement shall automatically terminate at two o'clock in the morning. To permit or knowingly allow the possession and consumption of any alcoholic beverages upon the premises of the establishment after two o'clock in the morning shall constitute a violation against the license or permit. Such violation shall constitute sufficient cause for the South Carolina Department of Revenue to revoke or suspend said license or permit.

In addition, it has been the longstanding position of the Department and the former ABC Commission that a private function is one which (1) complies with the provisions of SC Regulation 7-403, (2) only pre-invited guests attend, (3) the function is not advertised to the general public, and (4) the lease required by SC Regulation 7-403 constitutes an arms length transaction.

Based on the above, it is the Department's opinion that a location may allow a private function where alcoholic liquors, beer and wine are consumed to be held on its premises on Sunday, January 1, 2006 - New Year's Day, provided the provisions of SC Regulation 7-403 are met and only pre-invited guests attend, the function is not advertised to the general public, and the lease required by SC Regulation 7-403 constitutes an arms length transaction.

The provisions of Code Section 61-6-1620(B) and SC Regulation 7-403 only allow the possession and consumption of alcoholic liquors, beer or wine and do **not** allow the sale of alcoholic liquors, beer or wine.

Finally, Code Section 61-6-2000 states:

In addition to the licenses authorized pursuant to the provisions of subarticle 1 of this article, the department also may issue a temporary license for a period not to exceed twenty-four hours to a nonprofit organization which authorizes an organization to purchase and sell at a single social occasion alcoholic liquors by the drink. Notwithstanding another provision of this article, the

issuance of this permit authorizes the organization to purchase alcoholic liquors from licensed retail dealers in the same manner that a person with a biennial license is issued pursuant to the provisions of subarticle 1 of this article are authorized to make these purchases. The fee for the permit is thirty-five dollars payable at the time of application. The permit application must include a statement by the applicant as to the amount of alcoholic liquors to be purchased and the nature and date of the social occasion at which they are to be sold. The issuance or nonissuance of permits authorized pursuant to the provisions of this section is within the discretion of the department.

Code Section 61-4-240 states:

Temporary permits for the possession, consumption, and sale of beer or wine may be issued pursuant to Sections 61-4-550, 61-6-500, 61-6-510, 61-6-2000, or 61-6-2010, as appropriate, and in accordance with these statutes. (Emphasis added.)

SOUTH CAROLINA DEPARTMENT OF REVENUE

s/Burnet R. Maybank

Burnet R. Maybank III, Director

December 13, 2005
Columbia, South Carolina