



SC REVENUE RULING #90-9

SUBJECT: Coin Operated Devices

TAX MANAGER: John P. McCormack

EFFECTIVE DATE: Applies to all periods open under statute.

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

REFERENCE: S.C. Code Ann. Section 12-21-2720 (Supp. 1989)
S.C. Code Ann. Section 12-21-2730 (Supp. 1989)

AUTHORITY: S.C. Code Ann. Section 12-3-170 (1976)
SC Revenue Procedure #87-3

SCOPE: A Revenue Ruling is the Commission's official interpretation of how tax law is to be applied to a specific set of facts. A Revenue Ruling is public information and remains a permanent document until superseded by a Regulation or is rescinded by a subsequent Revenue Ruling.

Question:

What guidelines can the Commission provide that will assist in determining the proper license taxes 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, any of the machines or devices described below shall apply for and procure from the South Carolina Tax Commission a license for the privilege of making use of every such machine in South Carolina and shall pay for the license a tax of twenty-five dollars for each machine described in item (1) of this section, one hundred dollars for each machine described in item (2) of this section, and one thousand five hundred dollars for each machine described in item (3) of this section.

(1) Any machine for the playing of music or kiddy rides operated by a slot or mechanical amusement devices and juke boxes wherein is deposited any coin or thing of value.

(2) Any machine for the playing of amusements or video games, without free play feature, or machines of the crane type operated by a slot wherein is deposited any coin or thing of value, and any machine for the playing of games or amusements, which has a free play feature, operated by a slot wherein is deposited any 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.

(3) Any machine of the nonpayout type, in-line pin game, or video game with free play feature operated by a slot wherein is deposited any 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 two 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" ?

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"	1. A system or device together with its power source and auxiliary equipment, 2. 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) - \$100 license] are limited to those games without a free play feature. The section concerning "mechanical amusement devices" [Section 12-21-2720(1)], which requires a \$25 license, is silent concerning the free play feature; therefore, the \$25 license is applicable to those 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 \$25 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.

Conclusion:

The guidelines, provided by the Commission, 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/Coin</u>	<u>Section</u>	<u>Tax</u>
Machines for playing music	N/A	Yes	12-21-2720(1)	\$ 25
Kiddy rides	N/A	Yes	12-21-2720(1)	\$ 25
Juke box	N/A	Yes	12-21-2720(1)	\$ 25
Mechanical amusement devices	Yes	Yes	12-21-2720(1)	\$ 25
Playing of amusements	No	Yes	12-21-2720(2)	\$100
Crane type machines	No	Yes	12-21-2720(2)	\$100
Video games	No	Yes	12-21-2720(2)	\$100
Pin table, w/ levers*	Yes	Yes	12-21-2720(2)	\$100
Video games	Yes	Yes	12-21-2720(3)	\$1500
In-line pin game, w/o levers*	Yes	Yes	12-21-2720(3)	\$1500
Billiard table	N/A	N/A	12-21-2730	\$ 25
Pocket billiard tables	N/A	N/A	12-21-2730	\$ 25
Football table	N/A	N/A	12-21-2730	\$ 25
Bowling lane table	N/A	N/A	12-21-2730	\$ 25
Skeeball table	N/A	N/A	12-21-2730	\$ 25

* These machines are essentially pinball machines, one with levers or "flippers" and one without levers or "flippers". Both machines are "nonpayout".

Note: 1. Machines or devices subject to the license tax under 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.
4. Video games of billiards, pocket billiards, football, bowling and skeeball are subject to the taxes imposed by subsections (2) and (3) of Code Section 12-21-2720, and not Code Section 12-21-2730.

SOUTH CAROLINA TAX COMMISSION

s/S. Hunter Howard, Jr.

S. Hunter Howard, Jr., Chairman

s/A. Crawford Clarkson, Jr.

A. Crawford Clarkson, Jr., Commissioner

s/T. R. McConnell

T. R. McConnell, Commissioner

Columbia, South Carolina
September 6, 1990