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SC REVENUE RULING #94-5 (ABC)

SUBJECT: Electronic Payment for Beer and Wine Purchases from Wholesalers.
(ABC Laws)

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

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

REFERENCES: S.C. Code Ann. Section 61-9-30 (1976)

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

SCOPE: A Revenue Ruling is the Department of Revenue's official advisory opinion of how laws administered by the Department are to be applied to a specific issue or a specific set of facts, and is provided as guidance for all persons or a particular group. It is valid and remains in effect until superseded or modified by a change in the statute or regulations or a subsequent court decision, Revenue Ruling or Revenue Procedure.

Question:

Do the provisions of Code Section 61-9-30 permit the utilization by retailers of an electronic payment program, as described in the facts, to pay for their purchases of beer from wholesalers?

Conclusion:

Electronic payment programs, as described in the facts, are not permissible under the provisions of Code Section 61-9-30 since payment is not made prior to or at the time of delivery of the beer to the retailer.

Facts:

Questions have arisen recently concerning the validity under South Carolina law of a proposed electronic payment program known as the "Electronic Beer Payment Program" ("EBP Program"). Currently, at the time of delivery, the retailer pays the distributor by check, money order, or cash for the beer or wine received.

The proposed EBP Program would eliminate the exchange of a physical payment instrument (check, money order) or cash at the time of delivery. Instead of a check, money order or cash, the distributor's driver would collect a signed copy of the invoice. At the end of the day, the information regarding the day's deliveries would be entered into the distributor's computer. The computer would read the day's transactions and produce an extract file of payments that are due to be made via the EBP Program. In accordance with the instructions on the electronic file, the Federal Reserve would debit each retailer's account and credit the distributor's account.

Discussion:

Code Section 61-9-30 states, in part:

All beer or wine sold by wholesalers to the holders of retail licenses in this State shall be sold for cash only at the time of delivery or prior thereto. Cash shall mean money or a bona fide check or money order.

Where the words of a statute are clear there is no room for construction and such terms must be given their literal meaning. Duke Power Co. v. South Carolina Tax Commission, 292 S.C. 64, 354 S.E.2d 902 (1987).

In addition, in Beaty v. Richardson, 56 S.C. 173, 180, 34 S.E. 73, 76 (1899), the Court stated the rule as follows:

The legislature must have intended to mean what it has plainly expressed, and consequently there is no room for construction. Where the words of a statute are plainly expressive of an intent, not rendered dubious by the context, the interpretation must conform to and carry out that intent. It matters not, in such a case, what the consequences may be.

Therefore, the electronic beer payment program is not permissible under Code Section 61-9-30 since payment is not made prior to or at the time of delivery of the beer to the retailer as required by the statute. Payment, as stated in the facts, is not made until the end of the day when the information regarding the day's deliveries is entered into the distributor's computer and the money is transferred electronically.

SOUTH CAROLINA DEPARTMENT OF REVENUE

Columbia, South Carolina
March 23, 1994

For questions concerning the issues addressed in this ruling, contact Nicholas Sipe at (803) 734-0478.