
State of South Carolina
Department of Revenue
301 Gervais Street, P. O. Box 125, Columbia, South Carolina 29214

SC REVENUE RULING #95-10 (TAX)

SUBJECT: Multi Player Video Gaming Devices
(Video Game Machines)

EFFECTIVE DATE: June 28, 1995

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

Questions:

1. For purposes of determining the maximum number of machines that may be operated in a single place or premises under Code Section 12-21-2804(A) of the Video Game Machines Act, is each player station of a multi player video gaming device¹ a machine under Code Section 12-21-2772(5)?
2. How many Class III licenses as authorized by Code Section 12-21-2720(A)(3) must be displayed on a multi player video gaming device?

Conclusions:

1. For purposes of determining the maximum number of machines that may be operated in a single place or premises under Code Section 12-21-2804(A), each player station of a multi player video gaming device is a machine under Code Section 12-21-2772(5).
2. The number of Class III licenses required under Code Section 12-21-2720(A)(3) for a multi player video gaming device must equal the maximum number of players that can play the device at any one time.

¹For purposes of this document, a "multi player video gaming device" is a video game device with a free play feature which allows more than one person to play the device at one time.

Facts:

Recently, multi-player video gaming devices have been introduced into the South Carolina market. Such devices allow up to five or six persons to play games, such as blackjack and craps, at one time. In the future, such devices may allow 10, 15, 20 or more persons to play the device at one time. Questions have arisen as to whether these devices are permissible under the Video Game Machines Act of 1993 and as to how many Class III licenses must be purchased for each of these devices.

Discussion:

Video Game Machines Act

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; the maximum amount of any cash payouts; and various other aspects of the video gaming industry.

Code Section 12-21-2772(5) defines the term "machine" to mean:

... an electronic video games machine that, upon insertion of cash, is available to play or simulate the play of games as authorized by the commission utilizing a video display and microprocessors in which the player may receive free games or credits that can be redeemed for cash.

The definition of "machine" uses words in the singular number, such as "a video display" and "the player".

Where a statute is clear and unambiguous, there is no room for construction and the terms of the statute must be given their literal meaning. Duke Power Co. v. South Carolina Tax Commission, 292 S.C. 64, 354 S.E.2d 902, 903 (1987).

Based on the clear meaning of the definition, a video gaming machine is a device that allows only one person to play at a time. As such, any device that allows more than one person to play it at a time must be more than one machine for purposes of the Video Game Machines Act.

The General Assembly's intent with respect to this matter can be determined by reviewing an Attorney General's opinion issued March 24, 1994 to the Honorable Greg Gregory of the South Carolina Senate.

The opinion concerns the statutory restriction on the number of machines allowed in a "single place or premises", and states in part:

The Video Game Machines Act [Act] was enacted by the General Assembly in 1993 to regulate video gambling activities in South Carolina. The cardinal rule of statutory interpretation is to ascertain and give effect to the legislative intent. Horn v. Davis Electric Contractors, Inc., 307 S.C. 559, 416 S.E. 2d 634 (1992); State v. Martin, 293 S.C. 46, 358 S.E. 2d 697 (1987); State v. Salmon, 279 S.C. 344, 306 S.E. 2d 620 (1983). Most often, legislative intent is determined by applying the words used by the General Assembly in their usual and ordinary significance. Martin v. Nationwide Insurance Company, 256 S.C. 577, 183 S.E. 2d 451 (1971). However, a statute should be construed in a reasonable manner consistent with the statutory goals, purpose, design, and policy of the Legislature. State v. Baker, __ S.C. __, 427 S.E. 2d 670 (1993); State v. Squires, __ S.C. __, 426 S.E. 2d 738 (1992). Our Court has instructed that a gambling scheme that seeks to evade the law's intent is an unlawful one. Cf. Darlington Theaters, Inc. V. Coker, 190 S.C. 282, 2 S.E. 2d 782 (1937).

One of the broad areas that the Act regulates is that of the location or placement of video gambling machines. In this regard, two related legislative themes are apparent. First, the General Assembly was concerned that large-scale casino-type operations are inimical to public welfare and, thus, concentrations of video gambling machines should be prohibited. In order to accomplish this goal, the General Assembly prescribed three types of regulations. The General Assembly directed that only a limited number of gambling machines could be situated at a single place or premises. Supra, Section 12-21-2804(A). The General Assembly also prohibited advertising of these gambling machines. Supra, Section 12-21-2804(B). In addition, the General Assembly required that a business's gambling operations not provide its principal revenue source. Supra, Section 12-21-2804(A).²

Second, the General Assembly was concerned that gambling activities should not occur with prescribed distances of schools, churches and playgrounds. Supra, Section 12-21-2793. The language of the various provisions of the Act should be construed in a manner consistent with these basic themes.

Based on the above, it would be in conflict with public policy to consider a multi-player video gaming device to be a single machine. This would be inconsistent with the General Assembly's theme that large-scale casino-type operations are inimical to public welfare.

²The State Attorney General noted the following in a footnote concerning this requirement: "I advise that the United States District Court has enjoined the enforcement of this particular provision; nonetheless, the regulation demonstrates the General Assembly's regulatory theme."

Such a device, if treated as a single machine, would:

1. allow up to 30 players to gamble at one time if a location had 5 craps devices³;
2. allow up to 25 players to gamble at one time if a location had 5 blackjack devices⁴; or,
3. allow up to 100 players to gamble at one time if a location had 5 devices that each allow 20 players to play at one time.

The courts will not favor an interpretation that would render the statute meaningless or futile. Fulghum v. Bleakley, 177 S.C. 286, 181 S.E. 30 (1935). See Statutes Key No. 212.4, 212.5.

An interpretation that considers a multi player video gaming device as one machine would defeat the purpose of limiting a single place or premises to five video game machines - making its enactment meaningless and futile.

Therefore, each player station of a multi player video gaming device is a machine for purposes of determining the maximum number of machines that may be operated in a single place or premises under Code Section 12-21-2804(A). In addition, multi player video gaming devices may not allow more than five persons to play at any time; otherwise, the single place or premises where video gaming occurs would violate the statutory provisions that limit the number of machines in a single place or premises to five.

COIN-OPERATED DEVICE LICENSING

Before we determine how many licenses are required of the devices in question, the provisions of Code Section 12-21-2724 should be reviewed.

Code Section 12-21-2720(A)(3) sets forth the licensing requirements with respect to video poker and other similar coin operated machines, and reads in part:

³The most popular version of a video craps device on the market in this State allows up to six persons to play at one time. Effective July 2, 1995, this device would cause a single place or premises to exceed the statutory provisions that limit a single place or premises to five machines. As such, this device must either be removed from the single place or premises or one of the player stations in the device must be permanently shut down (coin box removed, computer board removed, etc.).

⁴The most popular version of a video blackjack device on the market in this State allows up to five persons to play at one time.

(A) Every person who maintains for use or permits the use of, on a place or premises occupied by him, one or more of the following machines or devices shall apply for and procure from the South Carolina Department of Revenue and Taxation a license effective for two years for the privilege of making use of the machine in South Carolina and shall pay for the license a tax of fifty dollars for each machine in item (1), two hundred dollars for each machine in item (2), and three thousand dollars for each machine in item (3):

* * * *

(3) a machine of the nonpayout type, in-line pin game, or video game with free play feature operated by a slot in which is deposited a coin of thing of value ...

In considering this issue we cannot be governed by the apparent meaning of words in one clause, sentence, or part of the statute, but rather by the statute as a whole. City of Spartanburg v. Leonard, 180 S.C. 491, 186 S.E. 395(1936).

In reviewing the statute as a whole, a multi player video gaming device must be licensed based on the number of persons capable of playing the device at one time.

SOUTH CAROLINA DEPARTMENT OF REVENUE

s/Burnet R. Maybank III
Burnet R. Maybank, III, Director

Columbia, South Carolina
June 28 _____, 1995

For questions concerning this matter, please contact your local Taxpayer Service Center as follows:

Aiken	(803) 641-7685	Greenville	(803) 241-1200
Beaufort	(803) 524-2852	Myrtle Beach	(803) 293-6550
Charleston	(803) 571-3000	Rock Hill	(803) 324-7641
Columbia	(803) 737-4602	Spartanburg	(803) 594-4900
Florence	(803) 661-4850		