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

SC REVENUE RULING #95-3 (ABC and Tax)

SUBJECT: Brew-on-premises operations
(Beer Tax; ABC)

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 61-9-1220 (1976)
S.C. Code Ann. Section 61-9-1250 (1976)
S.C. Code Ann. Section 61-9-20 (1976)
S.C. Code Ann. Section 12-21-1020 (1976)
S.C. Code Ann. Section 12-21-1030 (1976)
S.C. Code Ann. Section 12-21-1060 (Supp. 1993)
S.C. Code Ann. Section 12-21-1070 (1976)
S.C. Code Ann. Section 12-4-330 (Supp. 1993)

AUTHORITY: S.C. Code Ann. Section 12-4-320 (Supp. 1993)
S.C. 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 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 It is valid and remains in effect until superseded or modified by a change in the statute or regulations or a subsequent court decision, Revenue Ruling or Revenue Procedure.

Questions:

1. Are brew-on-premises operations, as described in the facts, legal under South Carolina alcoholic beverage control laws?
2. Is a beer permit necessary for a brew-on premises operation?
3. Is the beer produced at a brew-on-premises operation, as described in the facts, subject to the taxes imposed under Code Sections 12-21-1020 through 12-21-1030 (1976).

Conclusions:

1. Brew-on-premises operations, as described in the facts, are legal in South Carolina.

2. Brew-on-premises operations, as described in the facts, must obtain a brewery permit under Code Section 61-9-1220 (1990).
3. Beer produced at a brew-on-premises operation, as described in the facts, is subject to the beer taxes pursuant to Code Section 12-21-1070 at the rates imposed under Code Sections 12-21-1020 through 12-21-1030 (1976).

The person who rents the equipment and purchases the ingredients to brew beer at a brew-on-premises is liable for the beer tax.

However, the Department of Revenue will allow the operator of a brew-on-premise to collect the tax from customers and remit the tax on Form L-600. The operator of the brew-on-premise would only be responsible for tax collected and would not be entitled to the discount under Code Section 12-21-1050. Any tax not collected from a particular customer would have to be assessed against that customer, not the operator of the brew-on-premise.

Facts:

Brew-on-premises operations are businesses that sell beer ingredients, and rent to the public the equipment and space necessary to brew beer. These businesses also provide technical expertise and advice during the brewing and bottling process. The only beer produced on the premises of these operations belongs to individual consumers. The operators of these businesses do not brew beer for sale to the public or to other businesses, and do not sell any beer.

Based on a letter dated March 3, 1993, by Robert G. Hardt, Chief Technical Services, Bureau of Alcohol, Tobacco and Firearms, federal guidelines allow such operations provided the following requirements are met:

1. Written notice is given to the Bureau of Alcohol, Tobacco, and Firearms Regional Director (compliance) at 2600 Courtney Parkway, N.E., Atlanta, Georgia, 30343. Such notice must give the name and address of the brew-on-premises facility and the hours when it is open for business. The proprietor of the facility will update the notice in the event of a change in name, address, or hours of operation.
2. The proprietor of the home brew warehouse will keep records relating to individuals using the facility. Information in records will include the name, address, age, number of adults residing in the individual's household, and the quantity of beer produced by each individual during a calendar year. These records may consist of commercial records or invoices, and will be available for inspection by an ATF officer during the business hours of the facility.
3. The proprietor and employees of the facility may not provide physical assistance to, or on behalf of, customers in the production, storage, or bottling of beer. Incidental activities such as cleaning, maintenance, and repair of brewing and bottling equipment; maintenance of climate and temperature control; disposal of spent grains and wastes; and quality control (including laboratory examination) of beer are not considered as providing physical assistance in the production of beer.

4. Individuals using the brew-on-premises facility to produce beer are subject to the *Code of Federal Regulations* § 25.205 - 25.206. Individuals must be twenty-one years of age, may produce beer within the prescribed quantity limitations, and may not sell beer so produced. Beer produced at a brew-on-premises facility may be removed only for personal or family use or for use in organized affairs.
5. The proprietor and employees of the brew-on-premises facility may not provide non-tax paid beer to customers or potential customers.
6. Operation of the brew-on-premises facility in a manner contrary to the conditions outlined above may cause the facility to be considered a brewery subject to notice, bond, and special tax requirements, and may cause beer produced at such facility to be subject to payment of excise tax.

Discussion:

ABC Provisions:

There is no law prohibiting brew-on-premises operations in South Carolina. Code Section 61-9-1220 (1990) states:

A person desiring to construct, maintain, or operate a brewery or winery under this article first shall apply to the department for a permit. The application must be in writing in a form the department may prescribe. The applicant is subject to the payment of a biennial permit tax upon each brewery and on each commercial winery to be established and operated of two hundred dollars which must be paid to and collected by the Tax Department before a permit is issued. However, the owner and operator of a winery who consumes in the operation only the fruits produced on his own farm or premises is subject to the payment of a permit fee of only ten dollars biennially. The permit expires December biennially. The fees charged for permits for the operation of breweries and wineries must be prorated by reducing the permit cost by one-eighth January 1st, April 1st, July 1st, and October 1st each year. A brewer or commercial wine manufacturer commencing business during one of these intervals shall pay for the eighth of the permit period in which business is commenced and for the eighth of the permit period during the remainder of the period, but no refund may be made to a dealer who ceases business after securing a permit.

Code Section 61-9-1250 (1990) states that: " Any person operating a brewery or winery without having secured a permit from the Department or after his permit has been canceled by the Department shall be guilty of a misdemeanor"

The term "brewery" is not defined in our code. *The Second College Edition of the American Heritage Dictionary* defines the term as "an establishment for the manufacture of malt liquors." 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). Accordingly, even though the brew-on-premises operation will not be

selling beer, it will be operating a brewery and a permit must be obtained from the Department before initiating construction of the brewery. In addition, the operators of the facility must maintain a current permit the entire time the business is in operation.

Therefore, brew-on-premises operations are legal in South Carolina and must obtain a brewery permit under Code Section 61-9-1250.

Tax Provisions:

Code Section 12-21-1020 (1976) reads: "There shall be levied and collected on all beer offered for sale in containers of one gallon or more in this State a license tax of six-tenths cent per ounce"

Code Section 12-21-1030 (1976) states: "If beer be offered for sale in bottles or cans, there shall be levied and collected a tax of six-tenths cents per ounce or fractional quantity thereof. . . ."

These taxing statutes require that for a tax to be payable, beer must be offered for sale. In the instant case, there is no offer to sell beer. Only the ingredients to make beer are sold, and the customer makes his or her own beer. Accordingly, no taxes are due on the beer produced in brew-on premises operations under Code Sections 12-21-1020 and 12-21-1030.

However, the provisions of Code Section 12-21-1070 must also be considered. That section reads:

Every person, firm, corporation, club, or association, or any organization or individual within this State, importing, receiving, or acquiring from without the State or from any other sources whatever, beer or wine as defined in [Section] 12-21-1010 on which the tax imposed by this chapter has not been paid, for use or consumption within this State, shall be subject to the payment of a license tax at the same rates provided in [Sections] 12-21-1020 and 12-21-1030. (Emphasis added.)

It is an 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 S.E.2d 837 (1979); Fennell v. South Carolina Tax Commission, 233 S.C. 43, 103 S.E.2d 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 word "acquire" to mean "[t]o gain possession of" and "[t]o get by one's own efforts".

As such, persons who rent the equipment and purchase the ingredients to brew beer at a brew-on premises "acquire" beer under Code Section 12-21-1070, and therefore, are liable for the beer tax. (The rates are established under Code Sections 12-21-1020 and 12-21-1030.)

Based on the above, the operator of a brew-on premise is not responsible for the tax; however, such operators need to be aware of the following:

1. The Department of Revenue will allow the operator of a brew-on premise to collect the tax from customer and remit the tax on Form L-600. The operator of the brew-on premise would only be responsible for tax collected and would not be entitled to the discount under Code Section 12-21-1050. Any tax not collected from a particular customer would have to be assessed against that customer, not the operator of the brew-on premise.
2. The Department of Revenue has the authority under Code Section 12-4-330(A) to summon witnesses to produce records with respect to the State beer tax, and therefore, may require the operator of the brew-on premises to produce records concerning customers. Such records may be used by the Department, at its discretion, to assess the beer taxes, penalties, and interest against a customer if the customer has not remitted the tax to the Department or if the brew-on premises has not collected the tax and remitted to the Department on the behalf of the customer.

SOUTH CAROLINA DEPARTMENT OF REVENUE

s/Burnet R. Maybank III

Burnet R. Maybank, III, Director

Columbia, South Carolina
April 17 1995

For questions concerning brew-on premises and the ABC provisions of the law, contact Nicholas Sipe at (803) 734-0478. For questions concerning brew-on premises and the tax provisions of the law, contact John P. McCormack at (803) 737-4438.