

Document No.
DEPARTMENT OF REVENUE
CHAPTER 7

Statutory Authority: S.C. Code Ann. Sections 12-4-320 and 61-2-60

7-202, 7-404.1, 7-700

Preamble:

The South Carolina Department of Revenue is considering promulgating SC Regulation 7-202 to revise the definition of “premises” for purposes of licenses for beer, wine, and liquor issued pursuant to Title 61, Chapters 4 and 6. The Department of Revenue is also considering repealing SC Regulations 7-404.1 and 7-700, which contain the current definitions of “premises.” On repeal, SC Regulation 7-404.1 will be designated as “Reserved.” The Notice of Drafting was published in the February 27, 2009 edition of the State Register.

Proposed SC Regulation 7-202, which includes four subsections, will provide a unified definition of premises, with general guidelines appropriate for all license holders. The regulation will also provide specific guidelines appropriate for specific types of premises, i.e., the premises of retail liquor dealers and the premises of nonprofit organizations licensed to sell alcoholic liquor by the drink. These general and specific guidelines are consistent with other regulations or longstanding Department of Revenue policy, or both. In addition, a subsection addressing certain facilities that may constitute the premises for a license to sell liquor by the drink, including golf courses, fishing piers, and resort complexes, will incorporate and make public longstanding Department of Revenue policy as modified in accordance with recent amendments to S.C. Code Ann. Sections 61-6-20(2) and 61-6-1610.

With the promulgation of SC Regulation 7-202, SC Regulations 7-404.1 and 7-700, which contain the current definitions of premises, will become obsolete. Therefore, the South Carolina Department of Revenue is considering repealing SC Regulations 7-404.1 and 7-700. On repeal, SC Regulation 7-404.1 will be designated as “Reserved.”

Notice of Public Hearing and Opportunity for Public Comment:

All comments concerning this proposal should be mailed to the following address by 5:00 p.m. on June 22, 2009: S.C. Department of Revenue, Legislative Services - Mr. Meredith Cleland, P.O. Box 125, Columbia, South Carolina 29214.

The Department of Revenue has scheduled a public hearing before the Administrative Law Court in the Edgar Brown Building (Suite 224) on the Capitol Complex (1205 Pendleton Street) in Columbia, South Carolina for Tuesday, September 15, 2009 at 10:00 a.m. if the requests for a hearing meet the requirements of S.C. Code Ann. Section 1-23-110(A)(3). The public hearing, if held, will address a proposal by the Department to promulgate SC Regulation 7-202 concerning the definition of “premises” for purposes of licenses for beer, wine and liquor issued pursuant to Title 61, Chapters 4 and 6, and to repeal SC Regulations 7-404.1 and 7-700. The Department will be asking the Administrative Law Court, in accordance with S.C. Code Ann. Section 1-23-111, to issue a report that the proposal to promulgate SC Regulation 7-202 and to repeal SC Regulations 7-404.1 and 7-700 is needed and reasonable.

Preliminary Fiscal Impact Statement:

There will be no impact on state or local political subdivisions expenditures in complying with this proposed legislation. There will be no impact on general fund collections.

Statement of Need and Reasonableness:

DESCRIPTION OF REGULATION: For 7-202: Premises

Purpose: To promulgate SC Regulation 7-202 to provide a unified definition of premises, with general guidelines appropriate for all license holders. Two of the regulation subsections will provide specific guidelines appropriate for specific types of premises, i.e., the premises of retail liquor dealers and the premises of nonprofit organizations licensed to sell alcoholic liquor by the drink. These guidelines are consistent with other regulations or longstanding Department of Revenue policy, or both. In addition, a subsection addressing certain facilities that may constitute the premises for a license to sell liquor by the drink, including golf courses, fishing piers and resort complexes, will incorporate and make public longstanding Department of Revenue policy as modified in accordance with recent amendments to S.C. Code Ann. Sections 61-6-20(2) and 61-6-1610. With the promulgation of SC Regulation 7-202, SC Regulations 7-404.1 and 7-700, which contain the current definitions of premises, will become obsolete. Therefore, the South Carolina Department of Revenue is considering repealing SC Regulations 7-404.1 and 7-700. On repeal, SC Regulation 7-404.1 will be designated as "Reserved."

Legal Authority: S.C. Code Ann. Sections 12-4-320 and 61-2-60.

Plan for Implementation: After approval by the General Assembly and publication in the State Register, SC Regulation 7-202 would be effective upon publication in the State Register. The repeal of SC Regulations 7-404.1 and 7-700 would be effective at the same time.

DETERMINATION OF NEED AND REASONABLENESS OF THE PROPOSED REGULATION BASED ON ALL FACTORS HEREIN AND EXPECTED BENEFITS:

The promulgation of SC Regulation 7-202 is needed to provide a unified definition of premises, with general and specific guidelines that are consistent with other regulations or longstanding Department of Revenue policy, or both, as modified by recent amendments to S.C. Code Ann. Sections 61-6-20(2) and 61-6-1610. The promulgation of SC Regulation 7-202 is reasonable in that it represents longstanding Department policy that is consistent with applicable statutes and regulations. The repeal of SC Regulations 7-404.1 and 7-700, which contain the current definitions of premises, is both needed and reasonable inasmuch as these regulations will become obsolete with the promulgation of SC Regulation 7-202.

DETERMINATION OF COSTS AND BENEFITS

There will be no impact on state or local political subdivisions expenditures from the promulgation of SC Regulation 7-202 and repeal of SC Regulations 7-404.1 and 7-700. There will be no impact on general fund collections. Promulgation of SC Regulation 7-202 and repeal of SC Regulations 7-404.1 and 7-700 will benefit the State and taxpayers by providing a unified definition of premises with general and specific guidelines, thus ensuring that longstanding Department of Revenue policies are made public and brought up to date in accordance with recent statutory amendments.

UNCERTAINTIES OF ESTIMATES:

None

EFFECT ON ENVIRONMENT AND PUBLIC HEALTH:

None

DETERIMENTAL EFFECT ON THE ENVIRONMENT AND PUBLIC HEALTH IF REGULATION IS NOT IMPLEMENTED:

None

Statement of Rationale:

SC Regulation 7-202 will provide a unified definition of premises, with general guidelines appropriate for all license holders. Two of the regulation subsections will provide specific guidelines appropriate for specific types of premises, i.e., the premises of retail liquor dealers and the premises of nonprofit organizations licensed to sell alcoholic liquor by the drink. The general and specific guidelines are consistent with other regulations or longstanding Department of Revenue policy, or both. In addition, a subsection addressing certain facilities that may constitute the premises for a license to sell liquor by the drink, including golf courses, fishing piers, and resort complexes, will incorporate and make public longstanding Department of Revenue policy as modified in accordance with recent amendments to S.C. Code Ann. Sections 61-6-20(2) and 61-6-1610. With the promulgation of SC Regulation 7-202, SC Regulations 7-404.1 and 7-700, which contain the current definitions of premises, will become obsolete. Therefore, the South Carolina Department of Revenue is considering repealing SC Regulations 7-404.1 and 7-700. On repeal, SC Regulation 7-404.1 will be designated as "Reserved."

The promulgation of SC Regulation 7-202 and repeal of SC Regulations 7-404.1 and 7-700 are needed to provide a unified definition of premises with general and specific guidelines, thus ensuring that longstanding Department of Revenue policies are made public and brought up to date in accordance with recent statutory amendments.

Text:

7-202. Premises.

The following provisions apply with respect to licenses issued pursuant to Title 61. The purpose of these provisions is the determination of the extent of the physical place where a business or entity that has been approved to hold a license undertakes the privileges and responsibilities associated with that license. Eligibility to hold such licenses is outside the scope of these provisions, except with respect to licenses for satellite facilities as provided in Section 7-202.3.D.

7-202.1. General Requirements – All Licenses.

A. Unless otherwise limited by statute or regulation, as used in Title 61, "premises" means all of the buildings and grounds that are both (1) subject to the direct control of the license holder and (2) used by the license holder to conduct its business.

B. For purposes of establishing the premises:

(1) The license holder's direct control of buildings and grounds may be shown by any of the following: (a) a deed or lease conveying to the license holder an appropriate interest that includes the premises; (b) a writing from a local governmental jurisdiction giving the license holder the right to use and the duty to maintain an area owned or controlled by the local governmental jurisdiction; (c) an enforceable written contract granting the license holder a right to use the premises.

(2) A presumption arises that the buildings and grounds described with particularity in the license application, as required by Regulation 7-200.1(B), are used by the license holder to conduct its business.

(3) The premises in its entirety, or any area within the premises, may be subject to conditions or restrictions or both imposed pursuant to Code Section 61-2-80.

(4) The premises for which a license is held may include more than one tract of land or building, unless otherwise limited by statute or regulation. For more than one tract of land to be included in the licensed premises, the tracts must be contiguous. For more than one building to be included in the licensed premises, all buildings must be situated on the same tract of land or contiguous tracts of land.

(5) The premises for which a license is held must be a separate designated location of a business in accordance with Code Section 61-2-140(C). Two or more licenses of the same type must not be issued for the same premises, except as provided in Section 7-202.3.D.

(6) As provided in Code Section 61-2-140(C), a separate license is required for each separate location of a business. The Department will determine whether separate licenses are required using factors including but not limited to (a) whether the business operates at more than one street address; (b) the number of retail sales tax licenses required; (c) whether the public would perceive the business to be operating at one location or at more than one location; and (d) whether there is one location or more than one location of the same business under one roof, based on factors including, but not limited to, entrances, utilities, employees, HVAC systems, public perception, lease contracts, and partitioning as the result of walls, common areas and areas set aside for the conduct of other enterprises, whether unlicensed or separately licensed.

7-202.2. Specific Requirements – Retail Dealers.

A. The Department will determine whether a retail dealer maintains a separate store or separate place of business, as required by Code Section 61-6-1510, using criteria including but not limited to the following:

(1) A separate store or separate place of business must be surrounded by impermeable walls, except that there may be two doors used for public ingress or egress and one door used solely for the receipt of commercial deliveries and as an emergency exit.

(2) The two doors used for public ingress or egress must be located on the front of the building, or on the same side of the building, or at the corner of two adjacent sides of the building. The one door used solely for receipt of commercial deliveries and as an emergency exit must be located on the side or at the back of the building.

(3) The store or place of business must not be connected with another business premises by common doorways, interior hallways, openings, or partial walls. Provided, however, the main

entrance to a retail liquor store may be located inside a small interior entrance hall or passage that also contains the main entrance to a location licensed to sell beer and wine for off premises consumption.

B. The provisions of this regulation apply to retail dealers in addition to the provisions of Regulation 7-202 and 7-202.1.

7-202.3. Specific Facilities – Alcoholic Liquor by the Drink.

A. In addition to the provisions of Regulations 7-202 and 7-202.1 (unless otherwise limited or restricted) the premises for licenses for alcoholic liquor by the drink for the following specific facilities include the criteria below.

B. Golf courses: All of the buildings and grounds of a golf course that are under the direct control of a license holder located at a golf course are presumed to be used by the license holder to conduct its business, including but not limited to the land on which the course is laid out for the playing of the game, the golf cart rentals area, the food and beverage service areas, and the pro shop or other retail space.

C. Fishing piers: A fishing pier, including the entire length and width of the pier, under the exclusive and direct control of a license holder is presumed to be used by the license holder to conduct its business.

D. (1) Resort Complexes: For purposes of determining the premises of a resort complex, a presumption arises that all buildings and grounds within the resort complex tract are used in the resort complex license holder's business.

(2) A "resort complex" must be an enterprise that meets all of the following criteria:

(a) Either as a single business or a group of businesses under identical ownership, the enterprise must operate facilities that include, at a minimum, the following: (i) "furnishing lodging" as defined in Code Section 61-6-20(4) and (ii) being "bona fide engaged primarily and substantially in the preparation and serving of meals" as defined in Code Sections 61-6-20(2) and 61-6-1610 and (iii) providing a substantial recreational facility.

(b) One of the facilities described in item (a) above must operate under a license to serve alcoholic liquor by the drink issued under Code Section 61-6-1610. The license holder for such facility shall be designated as the "resort complex license holder." The first held license will be known as the "primary resort complex license."

(c) The recreational facility described in item (a) above must operate solely within the resort complex tract. "Resort complex tract" means either a single tract of land or contiguous tracts of land (without regard to whether the contiguous space is interrupted by any intervening dedicated road or public right-of-way) which must be under the direct control of the enterprise.

(3) The resort complex license holder may obtain licenses for satellite facilities in the resort complex tract if the following conditions are met:

(a) The resort complex license holder and the satellite facility must be under identical ownership and control.

(b) The application for a satellite facility license must contain the name of the resort complex license holder, the date the primary resort complex license was issued, and any other information required by the Department.

(c) All satellite facilities must meet the distance requirements set forth in Code Section 61-6-120.

(d) The resort complex license holder and all satellite facilities, when viewed together, must maintain the character of a business that is engaged primarily and substantially in the preparation and serving of meals or furnishing lodging in accordance with Code Sections 61-6-20(2) and 61-6-1610 or with Code Section 61-6-20(4).

(e) In acquiring a license for any satellite facility, the resort complex license holder must agree to the following conditions: (i) any suspension or revocation of any resort complex license will result in suspension or revocation of all resort complex licenses; and (ii) termination of the primary resort complex license will result in termination of all satellite facility licenses. "Resort complex license" means any license issued for a facility located on the resort complex tract, whether the primary resort complex license or a satellite facility license.

7-202.4. Restrictions on the Premises of Nonprofit Organizations Licensed to Sell Alcoholic Liquor by the Drink.

A. The premises of a nonprofit organization must be separate from the premises of any business operation, including business establishments licensed to sell alcoholic liquor by the drink.

B. The premises of a nonprofit organization will be deemed separate if the organization has its own address and separate entrance, and is not connected with another business premises by common doorways or passageways, whether interior or exterior.

7-401.1. Licensed Premises.

~~A. Definitions. As used in Article 5 of Chapter 6 of Title 61 of the 1976 Code: (1) The word "premises" means the physical place at which a licensee is or may be licensed to engage in the sale, serving and storage of alcoholic beverages in sealed containers of two (2) ounces or less; (2) The words "licensed premises" mean any premises for which a license under Article 5 of Chapter 6 of Title 61 of the 1976 Code, is in force and effect.~~

~~B. Premises must be separate and distinct. No nonprofit organization shall qualify for a sale and consumption license unless the premises to be licensed are located in a place separate and distinct from the premises of any business operation including establishments licensed to sell alcoholic beverages in sealed containers of two (2) ounces or less. Premises which are "separate and distinct" from such business operations must bear a different address, have a separate entrance and not be connected by common doors or passageways with the business premises.~~

~~C. Parking lots. Notwithstanding the provisions of any other section of these regulations, the licensed premises of a business establishment which is bona fide engaged primarily and substantially in the preparation and service of meals and which holds a valid license for the sale and consumption of alcoholic beverages in sealed containers of two (2) ounces or less shall not extend to any portion of the business establishment or the property upon which it is located which is designed as or used for a parking area even though food may be served in such area.~~

Reserved.

7-700. ~~Definition of Licensed Premise.~~

~~Licensed premises shall include those areas normally used by the permittee or licensee to conduct his business and shall include but are not limited to the following: selling areas, storage areas, food preparation areas and parking areas. A separate permit and/or license shall be required for each separate and distinct area in which beer, wine and/or alcoholic liquors are sold.~~

Repealed.