

1982 WL 189113 (S.C.A.G.)

Office of the Attorney General

State of South Carolina

November 1, 1982

\*1 The Honorable Nicholas P. Sipe  
Executive Director  
South Carolina Alcoholic Beverage  
Control Commission  
1205 Pendleton Street  
Columbia, South Carolina 29201

Dear Nick:

You have asked this office for advice concerning distribution of various fines, license and permit fees and filing fees received by the Alcoholic Beverage Control Commission. The statutes governing these funds are quite diverse and various schemes of distribution are mandated. Accordingly, the particular types of revenue will be separately addressed.

1982 Act No. 466, Part I, § 1 [State General Appropriations Act] provides:

For the fiscal year 1982-83 except as hereinafter specifically provided, all general state revenues derived from taxation, licenses, fees, or from any other source whatsoever, and all institutional and departmental revenues or collections, including income from taxes, licenses, fees, the sale of commodities and services, and income derived from any other departmental or institutional source of activity, ... shall be credited, unless otherwise directed by law, to the General Fund of the State.

Several sources of the funds received by the Commission are earmarked for special purposes. However, "... appropriations in this Act for expenses of the Alcoholic Beverage Control Commission shall be deducted from the total revenues from alcoholic liquors before distribution of such revenues to the counties and municipalities of the State...." 1982 Act No. 466, Part 1, § 82. <sup>1</sup>

## I.

### LIQUOR LICENSES

The Commission is authorized to issue manufactures', wholesalers' and retail dealers' licenses for liquor pursuant to § 61-3-410 of the Alcoholic Beverage Control Act. However, there are no prescribed license fees therein. Section 61-3-520 prohibits the Commission from issuing any of the licenses specified in § 61-3-410 until the license taxes as required by Chapter 33 of Title 12 of the South Carolina Code of Laws, 1976, have been paid.

Chapter 33 of Title 12 is parcel of the title of laws pertaining to taxation and the Tax Commission. Section 12-33-210, as amended by 1982 Act No. 466 Part II § 12, provides a schedule of license taxes for alcoholic liquor licenses issued by the Commission pursuant to § 61-3-410. Section 12-33-30 of the taxation statutes provides:

The taxes levied by this chapter shall be paid to and collected by the [Tax] Commission and, when collected, shall be distributed as follows: Sixty percent thereof shall be paid into the State Treasury for credit to the General fund of the State for public school use; twenty percent thereof shall be distributed among the several counties of the State, on a population basis, according to the latest official Federal census; and twenty percent thereof shall be distributed among the incorporated municipalities of the State, on a population basis, according to the latest Federal census, ....

The license taxes specified in § 12-33-210 for manufactures', wholesalers' and retail dealers' licenses appear to be subject to the collection and distribution procedures set forth in § 12-33-30, in that these provisions are codified within the same chapter.

\*2 The \$100 dollar application fee prescribed by § 12-33-210 as amended by 1982 Act No. 466 Part II § 12 is not designated as a tax and thus, is most probably to be remitted to the credit of the General Fund of the State pursuant to 1982 Act No. 466 Part I § 1. However, this conclusion is not completely free from doubt.

Section 61-3-610 of the Alcoholic Beverage Control Act authorizes the Alcoholic Beverage Control Commission to collect a license fee from establishments obtaining a "cooking license". Disposition of these fees is not controlled by any special statute and apparently is governed by § 1 of Part 1 of the 1982 Appropriation Act. These fees are to be remitted to and credited to the General Fund of the State.

Note, however, the proviso at § 82 of Part 1 of Act 466 which necessitates that the Alcoholic Beverage Control Commission's appropriations for expenses are to be deducted prior to distribution of any revenues to the counties and municipalities.

## II.

### ALCOHOLIC BEVERAGE PRODUCER REGISTRATION FEES

Pursuant to Chapter 7 of Title 61 of the Alcoholic Beverage Control Act, certain registration fees are collected by the Alcoholic Beverage Control Commission. Section 61-7-80 requires each producer to submit an application fee to the Commission for a certificate of registration. Section 61-7-90 provides for the registration of brands and prescribes an application fee to be submitted to the Commission. Section 61-7-110 requires an application fee from a person seeking registration as a producer's representative.

Section 61-7-210 directs:

All monies received by the Alcoholic Beverage Control Commission under the provisions of this Chapter [Chapter 7 of Title 61] shall be deposited with the State Treasurer to the credit of the general fund of the State.

Thus, you are advised that application fees received by the Commission pursuant to Chapter 7 of Title 61 are deposited with the State Treasurer to the credit of the General Fund of the State.

## III.

### SALE AND CONSUMPTION LICENSE FEES

Pursuant to § 61-5-80, as amended by 1982 Act No. 466 Par II § 12 sale and consumption license and application fees are payable to the South Carolina Alcoholic Beverage Control Commission. There is no statutory provision designating a particular disposition of these fees, and thus they must be controlled by § 1 of Part I of Act 466 and "... shall be credited...., to the General Fund of the State." The distribution scheme pursuant to § 12-33-30 is inapplicable in that such scheme is limited in scope to "taxes levied by this Chapter [Chapter 33 of Title 12]."

The Commission is also authorized by § 61-5-85 to issue temporary sale and consumption licenses and collect fees therefor. These fees should be disbursed in similar manner to other sale and consumption application and license fees.

## IV.

### BEER AND WINE PERMIT FEES

Section 61-9-310 as amended by 1982 Act No. 466 Part II § 12 requires applicants for beer and wine permits to pay prescribed permit and application fees to the Alcoholic Beverage Control Commission. There exists nothing within the Alcoholic Beverage Control Act that demonstrates an intent that beer and wine permit and application fees collected pursuant to § 61-9-310 are earmarked for any particular distribution.<sup>2</sup> Accordingly, you are advised that beer and wine permit and application fees received by the Commission pursuant to § 61-9-310 are to be credited to the General Fund of the State pursuant to 1982 Act No. 466 Part I § 1.

\*3 The application fees collected by the Commission pursuant to § 61-9-360 as amended by § 12 Part II of Act No. 466 for special permits, are likewise deposited and credited to the General Fund of the State for the same reasons.<sup>3</sup>

V.

#### PENALTIES AND FINES RECEIVED BY THE ALCOHOLIC BEVERAGE CONTROL COMMISSION

Section 61-13-510 of the Alcoholic Beverage Control Act authorizes the Commission to charge license holders prescribed administrative penalties for violations of the provisions of several of the chapters of the act. Section 61-13-520 directs that All penalties provided for in §§ 61-13-500 and 61-13-510 shall be paid into the State Treasurer for credit to the general fund of the State for public school use [Emphasis added].

Section 61-13-510 provides administrative penalties for violations of the chapters of laws dealing with beer and wine, manufacturers', wholesalers', and retail dealers' licenses, alcoholic liquor importation and the statutes of laws dealing with beer and wine and alcoholic liquor taxes. Accordingly, you are advised that all fines and penalties received by the Commission pursuant to § 61-13-510 are to be deposited in the General Fund for public school use.

Penalties for violations of Chapter 5 of the Alcoholic Beverage Control Commission Act [sale and consumption provisions], particularly § 61-5-110 thereof, are not included within the disbursement scheme directed by § 61-13-520. Thus, administrative fines and penalties generated by the Commission pursuant to § 61-5-110 are to be credited to the General Fund of the State pursuant to § 1 of Part I of Act No. 644, and are not earmarked for public school use.

If this office can offer further guidance, please call upon us.

Very truly yours,

Edwin E. Evans  
Senior Assistant Attorney General

#### Footnotes

- 1 Sections 61-3-120 and 61-9-660 were repealed by 1978 Act No. 644 Part II § 13. These repealed provisions basically provided for the same procedure as the proviso at 1982 Act No. 466 Part I § 82. This proviso has appeared in temporary provisions of the General Appropriation Act in recent years.
- 2 Section 12-21-1120 of the taxation statutes provides a disposition schedule for certain beer and wine taxes provided for by that Article [Article 7, Chapter 21 Title 12 of the Code]. The disposition scheduled pursuant to this section is by its express terms inapplicable to revenue raised by the Alcoholic Beverage Control Commission for permit and application fees.
- 3 Sections 12-21-1510 et seq. provide for the regulation of beer and wine producers and importers. Beer and wine producers are required to apply and pay an application fee to the Tax Commission for procurement of a producer's certificate. In addition, §§ 61-9-1210 et seq. of the Alcoholic Beverage Control Act provide that any person desiring to maintain a brewery or a winery shall pay to the Tax Commission an application fee. This opinion pertains only to the disbursement of license and application fees and fines and penalties payable to the South Carolina Alcoholic Beverage Control Commission.

1982 WL 189113 (S.C.A.G.)

End of Document

© 2015 Thomson Reuters. No claim to original U.S. Government Works.