

THE STATE OF SOUTH CAROLINA  
In The Court Of Appeals

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APPEAL FROM THE ADMINISTRATIVE LAW COURT

Honorable Shirley C. Robinson, Administrative Law Judge

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Case No. 16-ALJ-17-0031-CC  
Appellate Case No. 2016-001082

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DEC 01 2016

Court of Appeals

The Hunter-Gatherer, LLC, d/b/a The Hunter-Gatherer Brewery,.....Respondent,

v.

South Carolina Department of Revenue,.....Appellant.

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RECORD ON APPEAL

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MAY 02 2016

**STATE OF SOUTH CAROLINA  
ADMINISTRATIVE LAW COURT**

**SC ADMIN. LAW COURT**

The Hunter-Gatherer, LLC, d/b/a The  
Hunter-Gatherer Brewery,  
  
Petitioner,  
  
vs.  
  
South Carolina Department of Revenue,  
  
Respondent.

Docket No. 16-ALJ-17-0031-CC

**ORDER GRANTING  
PETITIONER'S MOTION  
FOR SUMMARY JUDGMENT**

**APPEARANCES:**

Petitioner:  
Respondent:

Burnet R. Maybank, III, Esquire  
Lauren Acquaviva, Esquire

**STATEMENT OF THE CASE**

This matter is before the South Carolina Administrative Law Court (“the ALC” or “the Court”) pursuant to a Request for Contested Case Hearing filed by The Hunter-Gatherer, LLC, d/b/a The Hunter-Gatherer Brewery (“Petitioner”) challenging the final determination of the South Carolina Department of Revenue (“the Department”) denying Petitioner’s application for a brewery permit. In addition to the brewery for which Petitioner seeks a license in this case, Petitioner also owns the Hunter-Gatherer Brewery (“the Brewpub”), which is located on Main Street in Columbia. The Brewpub has a brewpub license issued pursuant to Article 17 of Title 61 (“Article 17”). While holding the brewpub license, Petitioner filed an application on November 19, 2015 for a brewery permit in order to open a “microbrewery” (“the Brewery”) at a separate location in Columbia while continuing to operate the Brewpub. By letter dated January 5, 2016, the Department denied taxpayer’s request for a brewery permit based on the three-tier law, which prohibits individuals from owning interests in businesses on different tiers (i.e., retail, manufacture, wholesale) simultaneously. According to the Department, the taxpayer would not be permitted to simultaneously own a brewpub, which it considers to be in the retail tier, and a brewery, which it considers to be in the manufacturer tier. Petitioner contested the Department’s denial, and the Department’s initial determination was upheld in a Final Determination issued on January 28, 2016. A hearing on the matter was held on March 9, 2016 before this Court. Because the parties stipulated to the facts and contest only the legal issues in this case, the hearing was in the manner of oral arguments in support of summary judgment.

## FACTUAL BACKGROUND

The parties stipulated to the following undisputed facts, which the Court incorporates in whole:

1. The Hunter-Gatherer Brewery is an existing brewpub located at 900 Main Street in Columbia. The owner/licensee is The Hunter-Gatherer, LLC. The Hunter-Gatherer, LLC holds a South Carolina Brewpub License and a Business Liquor by the Drink License at the 900 Main Street facility. The facility also has a current federal Brewery License. The brewpub manufactures approximately 1000 gallons of beer per month. In addition to manufacturing beer, the existing facility is a DHEC approved eating and drinking establishment. The brewpub has retail sales of food, wine, liquor, and the beer manufactured on-site.<sup>1</sup> The existing business has been in operation since October, 1995.

2. The Hunter-Gatherer, LLC has applied for an In-State Brewery License and an On-Premise Beer and Wine License for a separate facility located at 1402 Jim Hamilton Blvd. in Columbia. The Hunter-Gatherer, LLC is also applying for a federal Brewery License for the new location. The new facility will manufacture approximately 5000 gallons of beer per month to be sold to Southern Wines and Spirits, a distributor in South Carolina. The new facility will also have an area within the premises approved by the regulations of the Department of Health and Environmental Control governing eating and drinking establishments. Within the DHEC- approved area, the new facility will have retail sales of food, wine, and beer manufactured on-site (approximately 1000 gallons per month). The new business plans to open in August 2016.

3. The Hunter-Gatherer, LLC filed applications for a Brewery License and an On-Premises Beer and Wine License for the 1402 Jim Hamilton Blvd. property on or about November 19, 2015. After review, the Department of Revenue denied the application for the Brewery License, taking the position the applicant was not eligible to obtain a Brewery License because the applicant has an ownership or a financial interest in a business with a Brewpub License (i.e., The Hunter-Gatherer Brewery). The Department is holding the application for an On-Premises Beer and Wine License as well as the brewery license pending the determination regarding eligibility for the Brewery License.

4. The Hunter-Gatherer, LLC timely appealed the Department of Revenue's denial of the Brewery License application.

## ISSUE

Whether an individual with a brewpub license issued under Article 17 may concurrently hold a brewery permit.

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<sup>1</sup> "The Hunter-Gatherer, LLC is licensed . . . to sell beer of other beverage manufacturers[,] but does not do so at this time."

## LEGAL STANDARD

This Court has jurisdiction to hear this contested case pursuant to Section 12-60-30 of the South Carolina Code (2014). Generally, the party asserting the affirmative issue in an adjudicatory administrative proceeding has the burden of proof. See Leventis v. S.C. Dep't of Health & Envtl. Control, 340 S.C. 118, 133, 530 S.E.2d 643, 651 (Ct. App. 2000) (quoting 73A C.J.S. Public Administrative Law and Procedure § 128 at 35 (1983)). Here, Petitioner requested a contested case hearing and, therefore, has the burden of proof to show by a preponderance of the evidence that the Department's determination was incorrect. See id.; Anonymous (M-156-90) v. State Bd. of Med. Exam'rs, 329 S.C. 371, 375, 496 S.E.2d 17, 19 (1998) (quoting 2 Am.Jur.2d Administrative Law § 363 (1994)) (holding that the standard of proof in "administrative hearings is generally a preponderance of the evidence").

The ALC Rules provide "[t]he South Carolina Rules of Civil Procedure . . . in contested cases . . . may, in the discretion of the presiding administrative law judge, be applied to resolve questions not addressed by these rules." ALC Rule 68. The Court thus applies Rule 56(c) of the South Carolina Rules of Civil Procedure, which provides that summary judgment<sup>2</sup> is properly granted when the "pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that any party is entitled to a judgment as a matter of law." See Bovain v. Canal Ins., 383 S.C. 100, 105, 678 S.E.2d 422, 424 (2009) (quoting Rule 56(c), SCRPC). In determining whether summary judgment is proper, the Court construes all ambiguities, conclusions, and inferences arising from the evidence against the moving party. Byers v. Westinghouse Elec. Corp., 310 S.C. 5, 7, 425 S.E.2d 23, 24 (1992) (citation omitted).

"If a statute's language is plain, unambiguous, and conveys a clear meaning 'the rules of statutory interpretation are not needed and the court has no right to impose another meaning.'" Buist v. Huggins, 367 S.C. 268, 276, 625 S.E.2d 636, 640 (2006) (quoting Hodges v. Rainey, 341 S.C. 79, 85, 533 S.E.2d 578, 581 (2000)). "The words of the statute must be given their plain and ordinary meaning without resorting to subtle or forced construction to limit or expand the statute's operation." Id. (citation omitted). "The cardinal rule of statutory construction is to ascertain and effectuate the intent of the legislature." Id. (citation omitted).

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<sup>2</sup> Although neither party filed a formal motion for summary judgment, I find the parties agreed there no material facts at issue and the dispute could be properly determined as a matter of law.

## DISCUSSION

Based upon the arguments presented by the parties, and a thorough examination of the applicable statutes and jurisprudence, I conclude the following as a matter of law:

### A. Background Regarding Three-Tier Statute in South Carolina

The Department has denied the taxpayer's permit application based on Section 61-4-940(D) of the South Carolina Code, which provides:

A manufacturer, brewer, and importer of beer are declared to be in business on one tier, a wholesaler on another tier, and a retailer on another tier. A person or an entity in the beer business on one tier, or a person acting directly or indirectly on his behalf, may not have ownership or financial interest in the beer business operation on another tier. This limitation does not apply to the interest held on July 1, 1980, by the holder of a wholesale permit in a business operated by the holder of a retail permit at premises other than where the wholesale business is operated. For purposes of this subsection, ownership or financial interest does not include the ownership of less than one percent of the stock in a corporation with a class of voting shares registered with the Securities and Exchange Commission or other federal agency under Section 12 of the Securities and Exchange Act of 1934, as amended, or a consulting agreement under which the consultant has no control over business decisions and whose compensation is unrelated to the profits of the business.

The statute creates three tiers for beer: one for manufacturers, brewers, and importers; one for wholesalers; and one for retailers.

#### 1. Three-Tier System

##### a. Generally

This case involves a single narrow issue: whether the owner of a brewpub may also own a brewery under the state's three-tier statute for beer. "South Carolina, like many other states, regulates the commerce in alcoholic beverages through a three-tiered distribution and licensing scheme that separates manufacturing, wholesaling, and retailing interests into distinct tiers of operation in order to prevent 'tied houses' and other forms of vertical integration in the commerce in alcoholic beverages." John D. Geathers & Justin R. Werner, The Regulation of Alcoholic Beverages in South Carolina 241 (SC Bar 2007) (hereinafter "Geathers Treatise").

This three-tiered system of regulation, which traces its roots to the alcoholic beverage control acts passed in the wake of the repeal of Prohibition, is intended "to forestall the generation of such evils and excesses as intemperance and disorderly marketing conditions that had plagued the public and the alcoholic beverage industry prior to [P]rohibition" and is "aimed at two particular dangers: the ability and potentiality of large firms to dominate local markets through vertical and horizontal integration and the excessive sales of alcoholic beverages produced

by the overly aggressive marketing techniques of larger alcoholic beverage concerns.” Accordingly, under this three-tiered system, the licenses issued under Title 61 are generally divided into retail licenses that authorize the sale of alcoholic beverages to the public, wholesale licenses that authorize the purchase of alcoholic beverages from producers for resale to retailers, and manufacturing and importing licenses that authorize the production or importation of alcoholic beverages into the state.

Id. at 12. Further, according to the Geathers Treatise:

South Carolina’s alcoholic beverage licenses are also generally classified by the type of beverage they regulate. The two principal types of beverages regulated in this state are the beer and wine defined as “nonintoxicating” and “nonalcoholic” beverages and full-blooded “alcoholic liquors.” The manufacture, distribution, and sale of beer and wine are regulated by the brewery, winery, wholesale, and retail beer and wine permits authorized under Chapter 4 of Title 61, while the manufacture, distribution, and sale of alcoholic liquors are governed by the liquor manufacturers’, wholesalers’ and retail dealers’ licenses and the liquor-by-the-drink licenses authorized under the ABC Act in Chapter 6 of Title 61. These references to tier and beverage type are the principal means by which alcoholic beverage licenses are identified in South Carolina—e.g., “retail liquor license,” or “a wholesale beer permit,” or “a liquor manufacturer’s license.”

Id. at 12–13. Additionally:

Title 61 provides for several types of permits, licenses, and certificates that are required for various activities related to the manufacture, production, and importation of beer and wine in South Carolina. These several permits, licenses, and certificates can be divided into two basic categories: those related to the operation of breweries and wineries within the state, and those related to the importation of beer and wine into the state from out-of-state manufacturers and importers.

Id. at 125.

A person must obtain a permit from the Department prior to constructing, maintaining, or operating a brewery or winery in South Carolina. These brewery and winery permits allow the holders of the permits to manufacture the beer and wine defined as nonalcoholic and non-intoxicating beverages under Title 61, and to sell the beer and wine they produce to permitted wholesalers in the state. Despite being classified in the manufacturing tier of the three-tiered distribution system, these domestic producers are freed from some of the typical requirements placed upon manufacturers of beer and wine.

Id. at 126.

**b. Rationale**

The Geathers Treatise goes on to state:

In addition to broad violation provisions preventing unlicensed activities and enforcing general compliance with the regulatory scheme, Title 61 contains a

multitude of more narrow violation provisions and quasi-violation regulatory provisions that target specific, prohibited activities. One category of these specific violation provisions and regulations is that set of provisions designed to ensure the integrity of the alcoholic beverage industry. In contrast to violation provisions primarily focused on protecting public health and morality in retail sales of alcoholic beverages, such as prohibitions upon sales to intoxicated persons and restrictions on Sunday sales, these provisions seek to regulate the business practices of the alcoholic beverage industry so that the industry operates in a manner that best serves the public interest. *These provisions, which trace their roots to the alcoholic beverage control acts passed in the wake of the repeal of Prohibition, are intended "to forestall the generation of such evils and excesses as intemperance and disorderly marketing conditions that had plagued the public and the alcoholic beverage industry prior to [P]rohibition" and are "aimed at two particular dangers; the ability and potentiality of large firms to dominate local markets through vertical and horizontal integration and the excessive sales of alcoholic beverages produced by the overly aggressive marketing techniques of larger alcoholic beverage concerns."*

Id. at 240–241 (emphasis added). The Geathers Treatise further notes:

These prohibitions and regulations related to the three-tiered scheme *are not, however, without exception*. Certain retail interests owned by beer and wine wholesalers are grandfathered into the three-tiered scheme; wineries may retail wine directly to customers in certain circumstances; and it is questionable as to whether domestic manufacturers of alcoholic liquors are prohibited from holding interests in wholesale or retail liquor businesses.

Id. at 242–43 (emphasis added).

**B. The Brewpub License is a “Hybrid Permit” outside the Three-Tier System**

Petitioner owns and is licensed to operate a brewpub. In 1994, the General Assembly enacted special legislation for brewpubs. The brewpub legislation follows in part:

Section 61-4-1700. Definitions.

For purposes of this article:

- (1) “Brewpub” means a tavern, public house, restaurant, or hotel which produces on the permitted premises a maximum of two thousand barrels a year of beer for sale on the premises.

S.C. Code Ann. § 61-4-1700 (2009).

Section 61-4-1720. Permit in Lieu of Certain Other Permits.

The brewpub permit provided for in this article *is in lieu of a permit required for the manufacture of beer or sale of beer and wine including, but not limited to, a brewer's and retailer's permit*. The sale of alcoholic liquors for consumption on the premises by the drink requires an appropriate license which may be issued to the holder of a brewpub permit who meets all other qualifications for the license under this title.

Id. at § 61-4-1720 (2009) (emphasis added).

Section 61-4-1740. Authority of Permittee.

A brewpub permit authorizes the holder to:

- (1) produce on the permitted premises a maximum of two thousand barrels a year of beer for sale:
  - (a) on draft for consumption on the premises;
  - (b) in a sanitary container brought to the premises by the purchaser and filled at the tap by the permittee at the time of sale; and
  - (c) in bottles for consumption by the purchaser off the premises;
- (2) sell the beer of a producer which has been purchased from a wholesaler through the normal three-tier distribution chain set forth in Section 61-4-940;
- (3) serve food or otherwise be qualified as a public eating establishment. This provision may not be construed to exempt a permittee or licensee from the requirement that food must be served in order for a license for the consumption of alcoholic liquors on the premises to be issued.

Id. at §61-4-1740 (2009). The clear purpose of this legislation is to foster the growth of brewpubs by allowing them to lawfully engage in both manufacturing and retail activity which might otherwise run afoul of the state's three-tier statute. The Geathers Treatise describes the enabling legislation as follows:

*In addition to the basic hierarchy of beer and wine permits described above—i.e., retailers', wholesalers', and manufacturers' permits—Title 61 provides for a hybrid permit that authorizes the operation of a brewpub in which a permittee may both manufacture and retail beer as part of the same business on the same licensed premises.*

Geathers Treatise at 131 (emphasis added).

A person wishing to operate a brewpub must obtain a permit from the Department to do so. As defined by the licensing statutes, a brewpub is a tavern, public house, restaurant, or hotel that produces and sells beer on the permitted premises. A brewpub permit authorizes its holder to produce a maximum of two thousand barrels of beer per year on the permitted premises, to sell the beer it produces and other beers and wines on the premises, and to serve food or otherwise be qualified as a public eating establishment . . . . Given the nature of the activities authorized under these brewpub permits, the permits are declared to be "in lieu of a permit required for the manufacture of beer or sale of beer and wine including, but not limited to, a brewer's and retailer's permit . . . . Moreover, the brewpub statutes specifically acknowledge that, although the *brewpub permit is a distinct permit under Title 61*, it authorizes activities that would ordinarily be covered by a retail beer and wine permit.

Id. at 131–32 (emphasis added).

According to Section 61-4-1720: “The brewpub permit . . . is in lieu of a permit required for the manufacture of beer or sale of beer and wine including, but not limited to, a brewer’s and retailer’s permit.” The Court concludes that this sentence means the holder of a brewpub permit needs only one permit, whereas normally their actions would require two separate permits: a brewer permit and a retailer permit.

Nothing in Article 17 directly addresses whether a person may own a brewpub and a separate interest elsewhere in any one of the three tiers. The issue does not seem to implicate Section 61-4-940(D), for brewpubs constitute an exception allowing one to essentially straddle two tiers, rather than identifying themselves with any one tier.

Based on the foregoing, a brewpub appears to be neither a manufacturer, nor a wholesaler, nor a retailer for purposes of the three-tier system. The three-tier prohibition does not refer to “brewpubs.” And nowhere in Article 17 does the South Carolina Code define a brewpub as either a retailer or a manufacturer. Because the three-tier system does not identify a brewpub within the three-tier system, and because Section 61-4-1720 acknowledges that brewpubs both manufacture and conduct retail sales of beer, the Department appears to have incorrectly determined that a brewpub falls exclusively in the retail tier.

Brewpubs are, by definition, simultaneously manufacturers and retailers. Instead of altering the three-tier system, Article 17 created an exception to the normal three-tier system; allowing a brewpub to manufacture and retail beer as an exception to, and outside of, the normal three-tier system in South Carolina. There is no language in Article 17 that states or implies that a brewpub operates in the retail tier.

A review of other jurisdictions confirms that many states treat brewpubs as an exception outside the three-tier system. See, e.g., David R. Scott, Comment, *Brewing Up a New Century of Beer*, 3 Wake Forest J. L. & Pol’y 417, 418 (2013) (“The three-tier distribution system is a product of state law, which frequently provides for certain exceptions to the general rule, most common of which is the brewpub exception.”) (citing Andrew Tamayo, *What’s Brewing in the Old North State: An Analysis of the Beer Distribution Laws Regulating North Carolina’s Craft Breweries*, 88 N.C. L. Rev. 2198, 2201 (2010)).

Moreover, to the extent other states using the three-tier system identify a brewpub within the three-tier system, there is a statute which explicitly makes that designation. For example, the Texas statute provides:

(d) The holder of a brewpub license may not hold or have an interest either directly or indirectly, or through a subsidiary, affiliate, agent, employee, officer, director, or other person, in a manufacturer's or distributor's license or any other license or permit in the manufacturing or wholesaling levels of the alcoholic beverage industry regardless of the specific names given to permits or licenses in Title 3 of this code. *The holder shall be considered a "retailer" for purposes of Section 102.01 of this code.*

Tex. Alco. Bev. Code Ann. § 74.01 (West 2015) (emphasis added). South Carolina has no such provision. Based on the foregoing, it is reasonable to conclude that the General Assembly intended on fostering the growth of brewpubs by keeping them as an exception separate and apart from the three-tier system.

### **C. Effect on Three-Tier System**

The Department has expressed grave concerns about the far-reaching effects of a finding that the General Assembly intended brewpubs to be an exception outside the three-tier system. I find their concerns unfounded based on the extremely limited nature of this Court's ruling. Article 17 is substantively different from other statutes within the three-tier system, which tend to permit off-tier activities. Most importantly, Article 17 specifically identifies the required licensure as a "brewpub permit" which is required "instead of or in place of" a permit within the three-tier regime. See Black's Law Dictionary, "in lieu of" (10th ed. 2014). This implies the brewpub permit is a separate permit outside the system, and thus not tied to any one tier.

While the three-tier statutes have been amended through the years to allow greater off-tier activity, those increasingly allowed activities do not affect either the identification of the business within or the limitations enforced under the three-tier system. For example, in 2014, the General Assembly enacted legislation authorizing South Carolina breweries to "sell beer produced on its licensed premises to consumers on site for on-premises consumption within an area of its licensed premises approved by the rules and regulations of the Department of Health and Environmental Control governing eating and drinking establishments and other food service establishments." S.C. Code Ann. § 61-4-1515(B) (Supp. 2015). "These establishments also may apply for a retail on-premises consumption permit for the sale of beer and wine of a producer that has been purchased from a wholesaler through the three-tier distribution chain set forth in Section 61-4-735 and Section 61-4-940." *Id.* However, while the amendment increased retail activities of breweries on the manufacturing tier, it did not go so far as to create a hybrid permit which is required "instead of or in place of" a permit on the three-tier system. In fact, the General Assembly codified the

continued application of the three-tier statute by providing: “[c]hanges to the brewery laws pursuant to subsection (B) and this subsection do not alter or amend the structure of the three-tier laws of this State, and the wholesalers and the breweries must not discriminate in pricing at the producer or wholesaler levels.” *Id.* at § 61-4-1515(C)(5). *See also id.* at § 61-4-720 *et seq.* (winery authorized to conduct retail sales to consumers) & § 61-6-1120 *et seq.* (micro-distilleries authorized to conduct retail sales to consumers).


Moreover, Section 61-4-1720, which provides that “the brewpub permit provided for in this article is in lieu of a permit required for the manufacture of beer or sale of beer and wine including, but not limited to, a brewer’s and retailer’s permit,” can be differentiated from other statutes within the three-tier system which permit off-tier activity. For example, Section 61-6-1120, which addresses micro-distillery licenses, provides that “[a] micro-distillery is not required to obtain an additional manufacturing and retail liquor license required pursuant to this title.” *Id.* at § 61-6-1120(B) (Supp. 2015). While these sections may appear similar, Section 61-6-1095(A) specifically defines a “Micro-distillery” as “a *manufacturer* who distills, blends, and bottles alcoholic liquors on the licensed premises.” *Id.* at § 61-6-1095(A) (Supp. 2015) (emphasis added). Thus, there can be no confusion as to whether a micro-distillery is outside the three-tier system. The General Assembly could have similarly classified brewpubs within the three-tier system but did not. Stated another way, brewpubs are a narrow exception to the three tier statutes, which otherwise remain in full force and effect.

#### **ORDER**

**THEREFORE, IT IS HEREBY ORDERED** that the Department’s Determination regarding a violation of the three-tier statute in this matter is **REVERSED**.

**IT IS FURTHER ORDERED** that the Department of Revenue shall complete the standard investigation of the proposed location to determine compliance with the statutory requirements for licensure, as outlined in the Department’s Final Determination.

AND IT IS SO ORDERED.

  
SHIRLEY C. ROBINSON  
Administrative Law Judge

May 2, 2016  
Columbia, South Carolina

CERTIFICATE OF SERVICE  
To wit: that I, the undersigned, have caused to be  
served this order in the above entitled action upon all  
parties to this lawsuit by depositing a copy thereof  
in the United States mail, postage paid, or in the emergency  
Mail Service addressed to the party, or their attorney(s).

This 2 day of May 2016  
By: Jecklin Mendez  
Judicial Law Clerk

## DEPARTMENT DETERMINATION

### **Applicant:**

The Hunter-Gatherer, LLC  
d/b/a The Hunter-Gatherer Brewery  
1402 Jim Hamilton Blvd.  
Columbia, SC 29205

### **File No:**

32071596-PWY

### **Date of Application:**

November 19, 2015

### **Matter in Dispute:**

1. Is The Hunter-Gatherer, LLC, d/b/a The Hunter-Gatherer Brewery (Applicant), eligible to obtain a brewery permit while simultaneously having ownership or a financial interest in a business with a brewpub permit pursuant to S.C. Code Ann. § 61-4-940(D) (2009)?

### **Determination:**

1. The Applicant is not eligible to obtain a brewery permit because the Applicant has ownership or a financial interest in a business with a brewpub permit.

### **Relevant Facts:**

1. On or about November 19, 2015, the Department received an application for a brewery permit from the Applicant for the premises located at 1402 Jim Hamilton Blvd., Columbia, South Carolina (Proposed Location).
2. The business the Applicant seeks to operate is on the first tier of South Carolina's three-tiered distribution and licensing scheme.
3. On the application, the Applicant indicated that it did not have any ownership interest on any other distribution tier.<sup>1</sup>

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<sup>1</sup>It is the Department's understanding that the Applicant indicated it did not have any ownership interest on any other distribution tier because it is the Applicant's position that brewpubs are not on any tier. Therefore, the Department is not considering this to be a misstatement or concealment of fact.

4. The Department issued The Hunter-Gatherer, LLC, d/b/a The Hunter-Gatherer Brewery, a brewpub permit (32005275-PBB) for its location at 900 Main Street, Columbia, South Carolina in 1995. The Applicant continues to hold this permit as of the date of this Determination.
5. As a result of the filing of the application, the South Carolina Law Enforcement Division (SLED) conducted a standard investigation of the Proposed Location to determine compliance with the statutory requirements for licensure. SLED determined that the Proposed Location is still under construction and, therefore, needs to conduct a final inspection in order to determine whether the Proposed Location complies with the statutory requirements for licensure.<sup>2</sup>
6. On January 5, 2016, the Department mailed the Applicant a Conditional Application Denial Notice denying the application.
7. On January 8, 2016, the Department received the Applicant's protest letter via electronic mail.

**Analysis:**

**I. The Applicant is not eligible to obtain a brewery permit because the Applicant has ownership or a financial interest in a business with a brewpub permit.**

South Carolina has established a three-tiered distribution and licensing scheme "in order to prevent 'tied houses' and other forms of vertical integration in the commerce in alcoholic beverages." John D. Geathers & Justin R. Werner, The Regulation of Alcoholic Beverages in South Carolina 11 (S.C. Bar 2007). Specifically, § 61-4-940(D) provides in part:

A manufacturer, **brewer**, and importer of beer are declared to be in **business on one tier**, a wholesaler on another tier, and a **retailer on another tier**. A person or an entity in the beer business on one tier, or a person acting directly or indirectly on his behalf, may not have ownership or financial interest in the beer business operation on another tier.

(emphasis added). A brewery constitutes a tier one business and a retailer constitutes a tier three business. Id. The question then becomes whether a brewpub is a retailer.

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<sup>2</sup>The Applicant and the Department agree that a permit cannot be issued until a successful final inspection is completed. The Applicant and the Department further agree that the Applicant can return to the Administrative Law Court should the Department determine, based on the final inspection, that the Applicant does not meet all the statutory requirements for licensure.

While “retailer” is not defined in Title 61, the term “retailer” and other corresponding terms are defined in Title 12 for sales tax purposes. When reading S.C. Code Ann. §§ 12-36-70, 12-36-110, and 12-36-120 (2014) together, a “retailer” is clearly a person who sells tangible personal property to the end user or consumer. Moreover, the dictionary defines “retail” as “the sale of goods or commodities in small quantities **directly to consumers.**” American Heritage Dictionary of English Language 1487 (4th ed. 2000) (emphasis added). A brewpub is defined as “a **tavern, public house, restaurant, or hotel** which produces on the permitted premises a maximum of two thousand barrels a year of beer **for sale on the premises.**” S.C. Code Ann. § 61-4-1700 (2009) (emphasis added). Thus, because a brewpub sells beer, wine, food, and sometimes alcoholic liquor, all of which are goods, directly to consumers, a brewpub constitutes a retailer for purposes of the three-tiered distribution and licensing scheme.<sup>3</sup>

Here, the Applicant currently owns and operates a brewpub, which is a retail business. Because the Applicant has ownership or a financial interest in a retail business – a tier three business – it cannot also have ownership or a financial interest in a brewery – a tier one business. Therefore, the Applicant does not qualify for a brewery permit due to the Applicant’s ownership or financial interest in a beer retail business.

**Conclusion:**

**If you agree with this Department Determination, please withdraw (in writing) your application within thirty days of the date of this Determination. If you disagree, please appeal the Determination within such thirty day period as noted on the attached cover letter.**

January 28, 2016

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<sup>3</sup>Examples of other types of retailers that sell beer, wine, and/or liquor in South Carolina include convenience stores, restaurants, nonprofit private clubs, and hotels, none of which are specifically mentioned in § 61-4-940(D). Instead, the statute broadly refers to the aforementioned types of businesses as “retailers” for purposes of the three-tiered distribution and licensing scheme.

STATE OF SOUTH CAROLINA  
ADMINISTRATIVE LAW COURT DIVISION  
Docket No. 16-ALJ-17-0031-CC

The Hunter-Gatherer, LLC, d/b/a )  
The Hunter-Gatherer Brewery, )  
 )  
Petitioners, )  
 )  
v. )  
 )  
South Carolina Department of )  
Revenue, )  
 )  
Respondents. )  
----- )

COPY

**ADMINISTRATIVE HEARING**

\*\*\*\*\*

Wednesday, March 9, 2016  
10:05 a.m. - 11:00 a.m.

The hearing before the Honorable Shirley Robinson was taken at the Edgar A. Brown Building, 1205 Pendleton Street, Suite 224, Columbia, South Carolina, on the 9th day of March, 2016 before Barbara S. Ham, Court Reporter and Notary Public in and for the State of South Carolina.



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0015

APPEARANCES

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Attorney for Respondent

Also Present:

Kevin Varner  
Chad McGowan

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EXHIBITS

(There were no exhibits marked during the deposition.)

STIPULATIONS

It is stipulated and agreed that this hearing is being taken pursuant to the rules of the Administrative Law Court and the South Carolina Rules of Civil Procedure.



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1 **THE COURT:** If everyone is ready we can get started.  
2 The case is The Hunter-Gatherer, LLC d/b/a The  
3 Hunter-Gatherer Brewery, Petitioners vs. The  
4 South Carolina Department of Revenue. It is  
5 Docket number 16-ALJ-17-0031. In this case the  
6 Department denied the Petitioners application  
7 for a brewery permit because after finding that  
8 the Petitioner already had a financial interest  
9 in a brewpub and that they could not issue a  
10 permit because of the three tier.

11 **MS. ACQUAVIVA:** Correct, Your Honor.

12 **THE COURT:** What we're here today on. The parties  
13 have all agreed on the facts and I've got your  
14 stipulations, signed stipulations, and we are  
15 here to hear legal arguments on the issue.  
16 I've got that correct?

17 **MR. MAYBANK:** Correct. Very good.

18 **MS. ACQUAVIVA:** Yes.

19 **THE COURT:** Mr. Maybank, are you ready?

20 **MR. MAYBANK:** Yes, thank you, Your Honor. And  
21 before beginning we want to very much thank the  
22 Department of Revenue and this Court, the  
23 Department of Revenue issued an expedited  
24 Department determination, they didn't have to  
25 do that. The Court gave us an expedited



1 hearing today and you didn't have to do that.  
2 If we prevail, Mr. Varner plans on spending a  
3 bunch of money and obviously he didn't want to  
4 spend a bunch of money until we had everything  
5 worked out with you all. So we are very much  
6 appreciative of both the Department of Revenue  
7 and Your Honor in accommodating us. I  
8 represent Hunter-Gatherer one of the first  
9 brewpubs in South Carolina and it's just a  
10 block away. They have a very, I don't get  
11 there much for lunch, but they have a very good  
12 supper by the way. And Mr. Varner, who is here  
13 with us today, he applied for a brewery permit.  
14 He would like to open a brewery in one of the  
15 out parcels of Owens Air Force field which is  
16 five or six or ten miles away. His application  
17 put the DOR in a very difficult position and  
18 actually it was the General Assembly that  
19 placed the DOR in a difficult position because  
20 they -- the General Assembly decades ago they  
21 re-codified it in 1996, but decades ago the  
22 General Assembly passed the Three Tier Statute  
23 and they had passed the Three Tier Statute for  
24 beer a separate one for wine and one for liquor  
25 and on the Beer Three Tier Statute they have



1 subsequent papered it with numerous amendments  
2 and numerous exceptions over the years. And  
3 the General Assembly never went back and  
4 amended the Three Tier Statute almost  
5 whatsoever. So they passed brewpubs, they  
6 passed brewery, they passed micro-brewery.  
7 They would pass winery and they've never went  
8 back and amended the Three Tier Statute itself  
9 which in this case would be the Beer Three Tier  
10 Statute. They did it for beer, they did it for  
11 wine and then they did it for liquor without  
12 ever making a consistent or delaying back.  
13 They never cleaned up the Three Tier Statute to  
14 say, how a brewpub, a micro-brewery, a micro-  
15 distiller or a winery fit within there. And  
16 one reason the General Assembly so cheerfully  
17 passed on these amendments without really even  
18 thinking about it perhaps is because the Three  
19 Tier Statute had nothing to do with public  
20 health, safety or the public good. It relates  
21 exclusively to sort of the regulation, the  
22 competitiveness within the beer, wine, and  
23 liquor industry. So it really just regulates  
24 the industry. It's got nothing to do with  
25 public health, safety or for welfare and so for



1 that reason they probably feel very comfortable  
2 doing these various and sundry amendments, you  
3 know, when the public and health and safety is,  
4 you know, was not involved. With that  
5 background and as you know why we are here  
6 today is Mr. Varner wants to open a micro-  
7 brewery in a separate location while continuing  
8 to operate the brewpub. And the Department of  
9 Revenue, placed in a very difficult position,  
10 denied the application because they said the  
11 brewpub sells beer, wine, food, all of which  
12 are goods directly to consumers, therefore a  
13 beer pub constitutes a retailer. Therefore,  
14 according to the Department, we couldn't own a  
15 brewpub which is a retail -- which they felt to  
16 be a retailer and a micro-brewery which they  
17 considered to be a manufacturer. So in their  
18 view those constituted two different tiers and  
19 therefore they couldn't issue the license. Our  
20 arguments and we have three alternate  
21 arguments, but our first argument is that  
22 because brewpubs were never added to the Beer  
23 Three Tier Statutes after the enactment of the  
24 Brewpub Legislation and because a brewpub  
25 license is a hybrid permit allowing sales both



1 to consumers and to a manufacturer it's an  
2 exception to and outside of the three tier  
3 system. A brewpub is neither a retailer nor a  
4 manufacturer which means the Petitioner only  
5 owns one business, the brewery, within the  
6 three tier system. And I'll get into the flesh  
7 of that in a second. Our second argument is to  
8 the extent that the a brewpub must be placed  
9 within the three tier system and our first  
10 argument is that it is outside the three tier  
11 system but to the extent the court has to --  
12 feels obligated to put a brewpub in the three  
13 tier system, it is a "brewer of beer" and  
14 therefore being a brewer, a brewpub is a  
15 manufacturer. Which means the micro-brewery  
16 and the brewpub are owned on the same  
17 manufacturing tier. So they are on there. Not  
18 on two different tiers, they are on the same  
19 tier, the manufacturing tier. The third  
20 argument is to the extent the court feels a  
21 brewpub has to be placed in a three tier  
22 system, its not an exception, and the court  
23 agrees with the Department of Revenue that a  
24 brewpub is a retailer, we would argue given  
25 that 2014 changes in the micro -- I refer to it



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1 as the micro-brewery and the General Assembly  
2 uses the term brewery. But we would argue that  
3 those 2014 changes expand the scope of allowing  
4 sales to consumers, brewers are now basically  
5 exactly like brewpubs. They are manufacturers  
6 and retailers and therefore if a brewpub is a  
7 retailer a brewery is a retailer. Which means  
8 a micro-brewery and the brewpub are on the same  
9 retail tier. So to repeat. We have today --  
10 we have a single narrow issue, whether the  
11 owner of a brewpub may also own a micro-brewery  
12 under the state's Three Tier Statute for beer.  
13 Our first argument is a brewpub license is a  
14 hybrid permit outside of the three tier system.  
15 Our brewpub, just a few blocks away, and went  
16 in to effect because in 1994 the General  
17 Assembly enacted special legislation for  
18 brewpubs. The Brewpub Legislation states under  
19 definitions, under Section 61-4-1700, brewpub  
20 means a tavern, public house, restaurant, or  
21 hotel which produces, i.e. manufacturers, on  
22 the permitted premises a maximum of 2,000  
23 barrels of beer for sale on the premises which  
24 is retail. Then Section 61-4-1720 states the  
25 brewpub permit provided for in this article is



1 in lieu of a permit required for the  
2 manufacture of beer, i.e. manufacturing, or  
3 sale of beer and wine retail, which is retail,  
4 including but not limited to a brewer's and  
5 retailer's permit. So that section basically  
6 says the brewpub permit is in lieu of a brewer  
7 or a retailer permit. Then Section 61-4-1740  
8 says a brewpub permit authorizes the holder to:  
9 (1) produce on the permitted premises a maximum  
10 of 2,000 barrels a year of beer for sale,  
11 that's classic manufacturing: (a) on draft or  
12 consumption on the premises, that's retail; in  
13 bottles for consumption by the purchaser off  
14 the premises, that's retail activity, or serve  
15 -- and serve food or otherwise be qualified as  
16 a public eating establishment. That's a retail  
17 transaction and the obvious purpose of the  
18 brewpub legislation was to foster the growth or  
19 really allow brewpubs -- lawfully allowing them  
20 to engage in both manufacturing, producing  
21 2,000 barrels a year, and retail activity which  
22 otherwise would not be allowed under the Three  
23 Tier Statute. Judge Gathers, there is a very  
24 good liquor treatise that Justice Gathers wrote  
25 and it's extremely good but he described



1 enabling legislation for brewpubs as follows:  
2 in addition to the basic hierarchy of beer and  
3 wine permits described above, i.e. retailers,  
4 wholesales and manufacturer permits, Title 61  
5 provides for a hybrid permit. It goes on to  
6 say given the nature of activities authorized  
7 under these brewpub permits, the permits are  
8 declared to be "in lieu of a permit required  
9 for the manufacturer of beer or sale of beer  
10 and wine including, but not limited to, a  
11 brewers and retailers permit." Moreover the  
12 Brewpub Statute specifically acknowledge that  
13 although a brewpub permit is a distinct permit  
14 under Title 61, it authorizes activities that  
15 would ordinarily be covered by a retail beer  
16 and wine permit. So Justice Gathers referred  
17 to the brewpub permit as a "distinct permit"  
18 under Title 61 and he basis that on Section 61-  
19 4-1720 which states the brewpub permit is in  
20 lieu of a permit required for the manufacturer  
21 of beer or sale of beer and wine including, but  
22 not limited to, a brewer and retail permit. So  
23 our argument is that the brewpub appears to be  
24 neither a manufacturer nor a wholesaler nor a  
25 retailer for purposes of the three tier -- the



1 beer three tier system. The three tier  
2 prohibition which has been in law, you know,  
3 since the '50s recodified in '96, it doesn't  
4 refer to brewpubs. So when the General  
5 Assembly 1994 authorized brewpubs they did not  
6 amend the brewpub -- the beer three tier  
7 legislation to include brewpubs. And nowhere  
8 in Article 17 does the South Carolina Code  
9 define a brewpub as either a retailer or a  
10 manufacturer. And in fact brewpubs are by  
11 definition both. They manufacturer 2,000  
12 barrels of beer a year and they sell both food,  
13 beer and wine to retail customers, classic  
14 retail activity. So instead of amending the  
15 three tier system in 1994, Article 17, the  
16 General Assembly created an exception to the  
17 normal three tier system allowing a brewpub to  
18 manufacturer and retail beer as an exception to  
19 and outside of the normal three tier system and  
20 specifically there is no language in Article 17  
21 that states or implies a brewpub operates in  
22 the retail tier for purposes of the Three Tier  
23 Statute. Wikipedia which by the way I found to  
24 be quite good. I go to Wikipedia now almost as  
25 much as I go to WestLaw. But Wikipedia in it's



1 discussion of the three tier system it  
2 described brewpubs as the most common  
3 exception. Moreover, in other states, lots of  
4 states now probably more than half the states  
5 now have brewpub authorizing legislation. And  
6 in those states the statute explicitly places  
7 a brewpub within the three tier system. So in  
8 our brief we noted in the Texas Statute, the  
9 holder of a brewpub permit shall be considered  
10 a retailer for purposes of the Texas Three Tier  
11 Statute. So in Texas the General Assembly,  
12 they passed a daily legislation for brewpub and  
13 they said a brewpub is in the retail tier. Our  
14 General Assembly didn't do that. They didn't  
15 pass such a provision. In fact they didn't do  
16 either of two things they could have done.  
17 First of all the brewpub permit authorizing  
18 legislation they could have classified a  
19 brewpub as either a manufacturer or a retailer  
20 and they didn't do that. Second of all they  
21 could have amended the Beer Three Tier Statute  
22 to specifically include brewpubs and they  
23 didn't do that. The beer -- the brewpub  
24 enabling legislation is totally silent on the  
25 three tier system and the Beer Three Tier



1 Statute is totally silent on brewpubs. So it's  
2 certainly reasonable based on that the General  
3 Assembly intended to make a brewpub a hybrid  
4 exception separate and apart from the three  
5 tier system. So our first argument quite  
6 simply is, brewpubs aren't in the three tier  
7 system and therefore our brewery is on one  
8 tier, manufacturing, and we haven't violated  
9 the three tier system because a brewpub is not  
10 in the three tier system. So that our first  
11 argument. Our second argument is that if it's  
12 not a hybrid, if the court feels obligated to  
13 put the brewpub within the three tiers a  
14 brewpub is a brewer on the manufacturing tier.  
15 And the plain language in the statute states a  
16 brewpub is a brewer under the manufacturing  
17 tier. Section 61-4-940(d) provides "a  
18 manufacturer, brewer and importer of beer are  
19 declared to be in business on one tier." So  
20 that would be on the manufacturing tier. So  
21 again that statute says a manufacturer, brewer,  
22 an importer of beer are declared to be in  
23 business on one tier. Now a brewpub is a  
24 tavern which: (1) produces on the permitted  
25 premises a maximum of 2,000 barrel a year of



1 beer and Three Tier Statue specifically groups  
2 all producers of beer, either those engaged in  
3 the business of brewing beer in the same tier.  
4 So a brewpub manufacturer of beer therefore it  
5 is a brewer for purposes of the Three Tier  
6 Statute which places all manufacturer, brewer  
7 and importer of beer to be on business on one  
8 tier. So it would be considered to be a  
9 manufacturer. In other states addressing this  
10 issue and we've listed these in the brief, have  
11 classified brewpubs as manufacturers. For  
12 example, Alabama uses a substantially similar  
13 three tier system with an exception for  
14 brewpubs. When summarizing alcohol regulation  
15 in Alabama, the Alabama Law Institute  
16 categorized a brewpub as an exception within  
17 the manufacturing tier. It's an exception  
18 because it's allowed to sell retail. But it's  
19 in the manufacturing tier and authorized to  
20 engage in retail activity. So Alabama placed  
21 it in the manufacturing tier. Federal law  
22 treats a brewpub as a "brewerer" for purposes  
23 of federal licensure requirements. So brewpubs  
24 are required to obtain the identical licenses  
25 as breweries for the brewing of beer under



1 Federal Law. Now we quote the statute on page  
2 12 of the brief. And when we applied, for  
3 example, for brewery permits under Alcohol and  
4 Tobacco Tax as a brewer the Federal agency has  
5 a tutorial, getting started in the beer  
6 industry and step two, this is all on page 12,  
7 step two is identify your desire type of beer  
8 operations. The next important start -- step  
9 in getting started in the beer industry is  
10 deciding which type of beer operations you are  
11 going -- are going to be picked up. And they  
12 list type of beer operations, brewery/brewpub,  
13 and then they list other beer operations,  
14 retail, dealer and beer. So the Federal agency  
15 considers a brewpub to be the exact same as a  
16 brewery for purposes of Federal regulation,  
17 licensing and permits. So the Feds consider a  
18 brewpub to be a manufacturer as well. And to  
19 make life ever tougher, if we go on these exact  
20 same issues presented in wine and liquor. Wine  
21 has -- allows the sale of wine by a winery  
22 located in the state. It specifically allows  
23 a winery to both manufacture wine and sell wine  
24 to retail customers. So it specifically allows  
25 both manufacturing and retail activity. If we



1 look at the liquor law, there's a Liquor Three  
2 Tier Statute and in 2009 the General Assembly  
3 authorized the micro-distilleries. And a  
4 micro-distillery means a manufacturer who  
5 distills blends and bottled alcoholic liquors  
6 and a licensed premises means where -- a  
7 location where the liquor is made and retail  
8 sales. And the micro-distillery license states  
9 very similar to the brewpub. A micro-  
10 distillery is not required to obtain an  
11 additional manufacturing and retail liquor  
12 license required pursuant to this Title. On  
13 page 17 of our brief we cite, 61-6-1120. So  
14 micro-distillery language is almost identical  
15 to the brewpub, the General Assembly has  
16 authorized a manufacturer to engage in retail  
17 activity. Moving on to, Your Honor, the  
18 statute that we're involved with today is for  
19 beer is 61-4-940 and that statute on its face  
20 has three exceptions. And then there are a  
21 whole bunch of other exceptions. For example,  
22 61-4-735(d) has long allowed a manufacturer of  
23 beer, it says a manufacturer of beer may own in  
24 whole or in part a business that holds an on-  
25 premises retail beer and wine permit. So



1 that's been in the law for many years and  
2 specifically allows a manufacturer to hold a  
3 retail license. Now that statute -- when the  
4 brewery legislation came in they should have  
5 amended that statute but they didn't but the  
6 brewery legislation is much more specific in  
7 that regard. But my point is our General  
8 Assembly thinks 61-4-735(d) has been in the  
9 statutes for at least 20 years. It specifically  
10 says a manufacturer of beer may hold the  
11 license for a retail permit. Because a micro-  
12 brewery will make direct sales to consumers it  
13 should be treated as a retail. So our third  
14 argument is -- the first argument is a brewpub  
15 is outside the three tier and therefore not a  
16 brewery because we're only a one tier. The  
17 second argument is if a brewpub is not an  
18 exception and it's got to be placed on a tier,  
19 it should be placed on the manufacturing tier  
20 and therefore we haven't violated the Three  
21 Tier Statute because a brewery is a classic  
22 manufacturer. The third argument is if the  
23 Department of Revenue is right that a brewpub  
24 is a retail -- belongs under the retail tier  
25 then our argument is a brewery belongs on the



1 retail tier for the exact same reasons as  
2 they've given for a brewpub. So in 2014 our  
3 General Assembly authorized legislation  
4 authorizing South Carolina breweries to be  
5 micro-breweries which are larger than brewpubs.  
6 So the different between a brewery and a  
7 brewpub is a brewpub is limited to just 2,000  
8 gallons a year and a brewery or micro-brewery  
9 has no cap so to speak. So what in -- in  
10 Section 61-4-1515 which was enacted in 2014 it  
11 goes on as follows and basically authorizes all  
12 kinds of retail activity so the statute just  
13 subsection "a" says a brewery, a manufacturer,  
14 licensed in the state is authorized to offer  
15 samples of beer to consumers on its licensed  
16 premises, that's retail. Sales or sampling  
17 sales to or sampling by consumers is  
18 authorized, that's retail. A brewery must  
19 develop a system to monitor the amounts of beer  
20 sampled or sold to a consumer for on-premises  
21 consumption, that's retail. The brewery must  
22 sell beer at licensed premises at a price  
23 approximated retail sales generally charge for  
24 identical beverages, that's retail. A brewery  
25 must remit appropriate taxes to the Department



1 of Revenue for billed sales in an amount equal  
2 to and in a manner apply for excise taxes. A  
3 brewery also must remit appropriate sales and  
4 use taxes and local hospitality taxes. Well  
5 sales and use taxes and local hospitality taxes  
6 aren't imposed on manufacturers they are only  
7 imposed on retail. So that's yet another  
8 retail example in this statute. It goes on to  
9 say a brewery must provide and they must  
10 approve alcohol enforcement training for  
11 employees who serve beer on the licensed  
12 premises to consumers, that's retail. And then  
13 it goes on to say in subsection "b" in addition  
14 to the sampling and sales provisions set forth  
15 in subsection "a", a brewery licensed in this  
16 state is authorized to sell and produce beer  
17 produced on its licensed premises to consumers  
18 onsite for on-premises consumption, that's  
19 classic retail. It has to do it within an area  
20 licenses premises approved by DHEC governing  
21 eating and drinking establishments, that's  
22 retail. And then it goes on to say in  
23 subsection "d", a brewery located in the state  
24 is authorized to sell beer on its licensed  
25 premises for off-premises consumption, that's



1 retail. So we have about 14 subsections and in  
2 our brief we've identified them which authorize  
3 a manufacturer to engage in retail activity.  
4 So basically after 2014 breweries can now sell  
5 beer produced on-site. Breweries can now  
6 produce beer on it's location for sale both on-  
7 site and off-site consumption as well as sales  
8 of food. This means they are basically  
9 operating on the retail tier. They're selling  
10 beer, wine, food, all of which are goods  
11 directly to consumers. Now that quote to the  
12 extent they are selling beer, wine, food, other  
13 goods directly to consumers, that's straight  
14 out of the Department's determination. That's  
15 the Department's determination for why a  
16 brewpub is on the retail tier. That exact  
17 language authorizes the sell of beer, wine and  
18 food is in the brewery legislation. So  
19 breweries can sell beer, wine and food exactly  
20 the way brewpubs can sell beer, wine and food.  
21 And unfortunately the 2014 legislation was  
22 passed after Justice Gathers barred that so  
23 unfortunately it's -- Justice Gathers doesn't  
24 copy that. So in conclusion, we request that  
25 the Department and the court determine that our



1 ownership of a brewery and a brewpub does not  
2 violate the three tier system so that we can  
3 own a brewery permit as well. As we've argued,  
4 Article 17, the Brewpub Legislation and the  
5 subsequent failure to amend the Beer Three Tier  
6 Statute to confirm to the presence of brewpubs  
7 demonstrates that brewpubs are outside of the  
8 three tier system. The General Assembly in the  
9 Brewpub Legislation never references three tier  
10 and they have never amended three tier to  
11 include brewpubs and therefore brewpubs are  
12 outside of the three tier system. And again,  
13 not to be repetitive, the reason the General  
14 Assembly might have done that without even  
15 thinking about it is the three tier is not for  
16 public health, safety or welfare. It's got  
17 nothing to do with public health, safety and  
18 welfare. It just has to do with a regulation  
19 of the beer industry and so why would the  
20 General Assembly care in that regard. Second  
21 of all, reasonable people can differ on which  
22 tier brewpubs and breweries go. Both of them  
23 -- the legislation is actually quite similar.  
24 They are -- both are allowed to sell beer on  
25 and off premises. Both are allowed to sell



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1 wine. Both are allowed to sell food. So  
2 arguably both are -- since they are both  
3 authorized to engage in substantial retail  
4 activity perhaps both are in the retail tier.  
5 A brewpub and a brewery are on the retail tier  
6 because they are authorized to conduct the  
7 exact same retail activity. In actually 17  
8 different subsections of the brewery  
9 legislation authorizes breweries to engage in  
10 retail activity. So you can -- reasonable  
11 people can argue that brewpubs are an exception  
12 to the three tier system. Reasonable people  
13 can argue that brewery and brewpubs are on the  
14 retail tier, they are authorized to engage in  
15 the exact same retail activity and reasonable  
16 people can conclude they are both on the  
17 manufacturing tier. So our argument is quite  
18 simply, brewpubs are outside the three tier  
19 system therefore we can own a brewery license.  
20 Second of all they are both retail on the  
21 retail tier and third of all they are on the  
22 same manufacturing tier. Justice Gathers talks  
23 about the purpose of the three tier is designed  
24 to put the businesses and distinct tiers of  
25 operation in order to prevent tied houses and



1 other forms of vertical integration in Congress  
2 and alcoholic beverages. It's designed to  
3 prevent, you know, Budweiser from dominating  
4 both the wholesale and retail levels, it's  
5 designed to keep certain competition down and  
6 obviously a small brewpub and a small micro-  
7 brewery have nothing to do in that regard. So  
8 in conclusion, I want to say again we very much  
9 appreciate the DOR accommodating us by issuing  
10 the expedited Department's determination. We  
11 very much appreciate your giving an expedited  
12 hearing and we wanted to note on the record  
13 that if we prevail before the court, we  
14 acknowledge we have to go back to the DOR for  
15 the permit. So if we -- the court authorizes  
16 the brewery and a brewpub the DOR isn't just  
17 going to send us a license, we have to submit  
18 the application and it has to be processed in  
19 a normal fashion. I just wanted to put that on  
20 the record. Thank you, Your Honor.

21 **THE COURT:** Thank you, Mr. Maybank. And I'm trying  
22 to not cough. Trying not to disturb you with  
23 my coughing. Unfortunately, the bug didn't  
24 pass me. Ms. Acquaviva.

25 **MS. ACQUAVIVA:** Thank you, Your Honor. Lauren



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1 Acquaviva on behalf of the Department. Before  
2 I begin my argument I do just want to hand up  
3 a few documents if I may. Some I have created  
4 and some are printouts of statutes or articles.

5 **THE COURT:** Okay.

6 **MS. ACQUAVIVA:** I've attempted, hopefully a  
7 successful attempt at simplifying the Three  
8 Tier System in South Carolina. As you're  
9 aware, the Petitioner here owns a brewpub  
10 downtown and they are applying for a brewery  
11 permit a few miles away. Now for a general  
12 overview of South Carolina's Three Tier System.  
13 In South Carolina the Three Tier System breaks  
14 businesses into tiers not permits. Nowhere if  
15 you look in using 61-4-940 as an example, it  
16 says declared to be in business on one tier.  
17 It doesn't say brewery permits are on one tier,  
18 wholesale permits are on one tier, it's looking  
19 at the business. So in that sense and this  
20 diagram that I made is the entire Three Tier  
21 System in South Carolina so it's not just beer.  
22 I've reflected generally beer, wine and liquor  
23 and it's not all inclusive, these are just  
24 examples. So on the first tier we have  
25 businesses that make or produce beer, wine and



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1 liquor to be sold to distributors. That is the  
2 general purpose of the first tier. Those types  
3 of businesses include, but are not limited to,  
4 producers, manufacturers, breweries, wineries,  
5 importers, distilleries; even bottlers and  
6 labelers are put on the first tier. The first  
7 tier businesses sell their products to the  
8 second tier businesses which are made up of  
9 businesses that distribute the beer, wine and  
10 liquor to retailers. The second tier is pretty  
11 easy, that's mostly made up of wholesales and  
12 distributors. The third and final tier is the  
13 retail tier. Those are the businesses that  
14 sell beer, wine and liquor to the end user or  
15 consumer. Those types of businesses are  
16 restaurants, hotels, private clubs, convenience  
17 stores, taverns, clubs and bars. Now when you  
18 look at the different types of business on this  
19 -- in our three tier system as Mr. Maybank has  
20 stated, the legislature has since made  
21 exceptions to permits allowing them, different  
22 permit holders, to participate in activities  
23 that may traditionally fall on another tier.  
24 But that does not change the tier that that  
25 business is on. And I'll start with a brewery



1 as an example because that is part of what is  
2 at issue today. A brewery by statute, 61-4-  
3 940, falls on the first tier. A brewery makes  
4 beer. It then sells its beer to a distributor  
5 to be ultimately sold to a retailer to be sold  
6 to a consumer. Now the legislature has  
7 authorized, more recently, in 2014, breweries  
8 to have a limited retail business. Now if you  
9 look at the second page that I've handed up, I  
10 made a comparison of the brewpub and brewery  
11 statutes in laymans terms so you kind of get  
12 the gist of the different activities that both  
13 permit holders are allowed to have. Now  
14 breweries are unlimited in the amount of beer  
15 that they can make and they can sell to  
16 wholesalers. Their retail activity however is  
17 limited. If you note there's sampling and  
18 their off-sale -- off-premise sales are limited  
19 to be in conjunction with tourists. If they  
20 choose that legislature has authorized a  
21 brewery to apply for and obtain an otherwise  
22 qualify an on-premises retail beer and wine  
23 permit so that they can sell for on-premise  
24 consumption only beer and wine from other  
25 manufacturers, producers of beer and wine. And



1           it is very limited. So when you look at the  
2           general business big picture, common sense,  
3           what is a brewery? A brewery is a business  
4           that makes beer. So they are on the first  
5           tier. I would also like to point out if you  
6           look at 61-4-1515 let's see how many sections  
7           it's broken down into, it looks C5, they say  
8           that changes to the brewery laws pursuant to  
9           subsection "b" and this subsection, so the  
10          subsections that allow the limited retail  
11          activity, do not alter or amend the structure  
12          of the three tier laws of this state. So the  
13          legislature explicitly said it's still a  
14          manufacturing business. It is still on the  
15          first tier. We're just allowing, we being the  
16          legislature, breweries to do some limited  
17          retail activities. That does not make the main  
18          retail business for the three tier system. Now  
19          to look a brewpub. The very beginning  
20          definition of a brewpub defines a brewpub as a  
21          tavern, public house, restaurant or hotel. It  
22          then goes on to say which produces beer for  
23          consumption on the premises. But the very  
24          beginning of that definition, those are all  
25          retail businesses, tavern, public house,



1 restaurant or hotel. A brewpub is a retail  
2 business. The brewpub in this case  
3 specifically is a restaurant that happens to  
4 brew beer. Now Mr. Maybank drew your attention  
5 to the definition of micro-distillery and said,  
6 I think you said it was on page 17, yes, page  
7 17, that a micro-distillery is defined similar  
8 to a brewpub and I would disagree. The very  
9 first three words in the definition of micro-  
10 distillery says means a manufacturer. That's  
11 very different from the first handful of words  
12 in the brewpub statute which says is defined as  
13 and lists for retail businesses. And I think  
14 that the applicant misunderstood the  
15 Department's determination in the sense that  
16 when we said that because a brewpub can retail  
17 beer, wine, food and alcoholic liquor, it's  
18 classified as a retail business. Big picture  
19 if you look at the footnote in the  
20 determination, a brewpub is no different with  
21 the exception that it is allowed to produce a  
22 limited amount of beer on its premises, than a  
23 restaurant, hotel, private club or other retail  
24 business. So we are looking at the overall  
25 business structure of a brewpub in determining



1 that it falls on the third tier. The other  
2 issue that the Petitioner takes with the three  
3 tier definition is that the legislature didn't  
4 amended 61-4-940 to add brewpub but I would  
5 like to point out the third tier just says  
6 retailer. It doesn't say restaurants, hotels,  
7 private clubs, convenience stores are on  
8 another tier, it says retailer. So what is a  
9 retailer? A retailer is a business that sells  
10 products to the end user or consumer. The  
11 bottom of the chain. If you look at a brewpub,  
12 they cannot sell their beer through a  
13 wholesaler to get to other retailers like a  
14 brewery can at the top of the chain. A brewpub  
15 is stuck at the bottom. They can only sell  
16 their own beer to their own customers. Now  
17 they are allowed to sell other peoples beer and  
18 wine but they have to purchase that beer and  
19 wine through the three tier system from a  
20 wholesaler which came from the producer. So  
21 when you look at the system, the big picture of  
22 the system, and the nature of the businesses in  
23 the system, it should be clear that a brewery  
24 and I think the statue makes this part clear,  
25 is on the first tier. A brewpub is a retail



1 business. It is no different than a  
2 restaurant. This brewpub in particular, in  
3 this case, is almost identical to a restaurant  
4 with the exception that it can make a limited  
5 amount of beer on its premises. Therefore the  
6 Department's position is that because a brewpub  
7 is a retailer for purposes of the three tier  
8 distribution system, it is on the third tier  
9 and because a brewery is on the first tier the  
10 applicant is not eligible to have financial  
11 interest in both tiers and they are not  
12 qualified then for the brewery permit. Now to  
13 address some of the more substantive arguments  
14 from the applicant. If this court accepts the  
15 applicant's or Petitioner's argument that a  
16 brewpub is not on a tier because it has a mix  
17 of activities then breweries are not on a tier  
18 anymore, wineries aren't on a tier anymore and  
19 micro-distilleries aren't on a tier anymore so  
20 the end result of that is we've just wiped out  
21 the three tier system in South Carolina. So  
22 that argument must fail because of the  
23 devastating effect it has on our three tier  
24 system. And I'd also briefly like to take  
25 issue with Mr. Maybank's characterization that



1 the three tier system is only for economic  
2 purposes. If you read articles about the three  
3 tier system and you look back at the history  
4 there is also a temperance purpose to the three  
5 tier system. The reason prohibition came about  
6 was because people were consuming alcohol  
7 excessively so they banned alcohol. When they  
8 came out of prohibition some states developed  
9 the three tier system and part of that goal,  
10 part of the theory, was through this economic  
11 three tier prevention of tied houses it would  
12 also prevent people from consuming alcohol in  
13 excessive amounts. So there is a public health  
14 and safety reason behind the three tier system.  
15 I think when the legislature made exceptions  
16 allowing business on the different tiers to  
17 mingle in other activities they recognized that  
18 those harms of leading to excessive consumption  
19 of alcohol were not present with those  
20 exceptions. The Petitioner's first alternative  
21 is that if you find a brewpub should be on a  
22 tier it should be on the first tier, the  
23 manufacturing tier. And they point to Alabama  
24 statute and I have given you a copy of  
25 Alabama's entire statute. If you look at



1 Alabama's statute, it's very different from  
2 South Carolina's statute. Again the very  
3 beginning of their definition of brewpub which  
4 is found in 28-4A-2 of the Alabama Code, they  
5 say a brewpub is any premises upon which a beer  
6 is actively and continuous manufactured or  
7 brewed. So the beginning of their definition  
8 encompasses manufacturing activities whereas  
9 South Carolina's definition encompasses retail  
10 activities. In fact, if you look at Alabama's  
11 brewpub statute their brewpub is not very  
12 different from South Carolina's brewery. And  
13 before I get any further and talk about other  
14 states, I would like to point out that I don't  
15 think it would be very helpful for this court  
16 to look at other state's laws because they are  
17 so different. Since I did just get their pre-  
18 trial brief at 4:00 o'clock on Monday, I  
19 haven't had the opportunity to look through  
20 every state's alcohol laws particularly  
21 relating to brewpubs and if this court is  
22 interested in that information I would be happy  
23 to submit a post-trial brief on that. But a  
24 cursory overview, the statutes are so different  
25 and if you just look at the few that I've



1 provided, Alabama and Texas, and I've also  
2 pulled one from Minnesota because that was one  
3 of the first ones that came up in my quick  
4 search and compare it to South Carolina's their  
5 definitions of brewpubs are very different.  
6 Their three tier systems are very different.  
7 So it's almost more confusing to look at other  
8 states for guidance because they are so  
9 different. Another reason that a brewpub  
10 should not be on the manufacturing tier is  
11 because of our constitution. The constitution  
12 in Article 8A states that only restaurants,  
13 hotels, and non-profit private clubs can obtain  
14 a liquor by the drink license. That is a  
15 constitutional mandate. Brewpubs are allowed  
16 to obtain a liquor by the drink license by  
17 statute which means the legislature presumed  
18 that a brewpub must satisfy that constitutional  
19 requirement. So they must be a restaurant,  
20 hotel or private club if they are allowed to  
21 have a liquor by the drink license which they  
22 are. Notably, breweries are not eligible to  
23 obtain a liquor by the drink license because  
24 they are not a restaurant, hotel or private  
25 club. They are a manufacturer. So because of



1 the constitutional restrictions again a brewpub  
2 could not be on the first tier. Finally, as to  
3 the Petitioner's second alternative that if you  
4 find a brewpub is on the retail tier then a  
5 brewery should be on the retail tier. As I  
6 stated earlier clearly a brewery is a business  
7 that produces beer. The legislature has  
8 allowed limited activities to let a brewery  
9 mingle in retail activities. That does not  
10 make them a retail business and I would submit  
11 that 61-4-940 specifically places brewers of  
12 beer which is a brewery on the first tier. So  
13 it could be counterintuitive to the precise  
14 language of the statute to say that a brewery is  
15 now on the retail tier. Because again as I was  
16 saying in discussing their primary argument,  
17 that would then put a winery and a micro-  
18 distillery on the third tier as well. And that  
19 again wipes out the three tier system because  
20 that means you can own a brewery, a restaurant,  
21 and you can operate essentially on the first  
22 and third tiers so if the legislature intended  
23 to maintain a three tier system in South  
24 Carolina the Petitioner's theory fails because  
25 their theory destroys the three tier system in



1 South Carolina. So in sum, looking at the big  
2 picture of the three tier system in South  
3 Carolina and focusing on the fact that the  
4 three tier system categorizes businesses into  
5 tiers, not permits, a brewery is clearly a  
6 business that makes or produces beer putting it  
7 on the first tier and a brewpub is a business  
8 that acts as a restaurant, sells beer, wine,  
9 can sell liquor to direct consumers and it can  
10 make a limited amount of its own beer but it  
11 can only sell that beer to its customers. The  
12 beer that a brewpub makes can never be sold at  
13 another retailer. Therefore, a brewpub is  
14 clearly a retail business and should fall in  
15 the third tier. Because of that the applicant  
16 is not eligible for a brewery permit because it  
17 already has a financial interest in a third  
18 tier business.

19 **MR. MAYBANK:** So briefly, Your Honor.

20 **THE COURT:** Uh-huh.

21 **MR. MAYBANK:** We would certainly agree. The first  
22 tier is a manufacturer or brewery. The  
23 Department argues a brewpub is not a  
24 manufacturer and again, I will repeat, the  
25 definition of a brewpub, brewpub means a tavern



1 which produces like manufacturers on the  
2 permitted premises a maximum of 2,000 barrels  
3 of beer a year for sale. So manufacturing  
4 2,000 barrels of beer certainly sounds like  
5 manufacturing to me. And the permit goes on  
6 the say, it states, 61-4-720, it says the  
7 brewpub permit provided for in this article is  
8 in lieu of a permit required for the  
9 manufacturer of beer. Why would it say it's in  
10 lieu of the -- a permit requires the  
11 manufacturer of the beer unless it otherwise  
12 would have required a permit for the  
13 manufacturer of beer. And then it goes on say,  
14 the brewpub permit provided in this article is  
15 in lieu of a permit required for the  
16 manufacturer of beer or sale of beer and wine  
17 including, but not limited to, a brewer's  
18 permit. First tier, brewer's permit. And 61-  
19 4-1740 says a brewpub permit permits,  
20 authorizes the holder to produce a maximum of  
21 2,000 barrels a year. That's classic  
22 manufacturing activity. And Justice Gathers  
23 describes all of that in addition to the basic  
24 hierarchy of beer and wine permits, Title 61  
25 provides for a hybrid permit. It's a -- a



1 hybrid permit is a distinct permit under 61, it  
2 authorizes manufacturing and retailing  
3 activity. In the handouts, the Minnesota  
4 distribution handout she just gave us it says  
5 brewpubs however do not fit neatly into any one  
6 tier and until recently in Minnesota brewpubs  
7 were the only manufacturers that could sell  
8 beer on the premises and that's on page two of  
9 her handout. Her -- the Department's handout  
10 describes brewpubs as manufacturers. We're  
11 certainly not here to destroy the three tier  
12 system. We're saying that a brewpub and there  
13 are a very limited number of brewpubs in South  
14 Carolina and they sell a microscopic percentage  
15 of beer. We're just saying they are outside of  
16 the three tier system. We've not destroyed the  
17 three tier system saying brewpubs are out of  
18 the three tier system. And we're not  
19 destroying the three tier system by saying a  
20 brewpub and a brewery are manufactures, they  
21 are on the same tier. And we're not destroying  
22 the three tier system by saying that breweries  
23 and brewpubs are both on the retail tier. The  
24 General Assembly said both can sell -- both can  
25 produce beer, they can sell beer on-premises,



1 they can sell beer off premises, they can sell  
2 food and they can sell wine. The General  
3 Assembly explicitly allows them to do that  
4 activity. We are not asking for and you would  
5 not be granting the wholesale destruction of  
6 the three tier system authorizing them to what  
7 the General Assembly has authorized them to do.  
8 And in vain of we're tearing down the three  
9 tier system by allowing that, I'll repeat, 61-  
10 4-735(d) has for decades said that a  
11 manufacturer of beer may own in whole or in  
12 part a business that holds an on-premises  
13 retail beer permit. That statute has been on  
14 the books for decades. So for decades a  
15 brewery could hold an on-premises retail beer  
16 -- could own a business that holds a retail  
17 beer and wine permit. So your decision today  
18 in favor of Hunter-Gatherer is hardly the  
19 wholesale destruction of the three tier system,  
20 that statute has been on the books for decades.  
21 That's all we have, Your Honor.

22 **THE COURT:** Thank you, Mr. Maybank. You both have  
23 given me quite a bit of information. Ms.  
24 Acquaviva ---

25 **MS. ACQUAVIVA:** Yes.



1 THE COURT: --- I've got one issue I would like to  
2 address.

3 MS. ACQUAVIVA: Sure.

4 THE COURT: Now Mr. Maybank's first argument is that  
5 the brewery is a hybrid unit that doesn't fall  
6 under any one of the tiers. Now if I agreed  
7 with that argument, how would that damage the  
8 three tier system?

9 MS. ACQUAVIVA: If your finding was limited and it  
10 was very specific that just a brewpub is not on  
11 a tier, it would have a damaging affect. If  
12 you had a broad ruling that the reasoning  
13 behind it was because it participates in mixed  
14 activities, then that would also include  
15 theoretically breweries, wineries and micro-  
16 distilleries because they also have mixed  
17 activities. So it really depends on how you  
18 come to that conclusion. So if your conclusion  
19 is based on the nature of -- because it's mixed  
20 activities, that would destroy the three tier  
21 system because then you would ultimately be  
22 saying that not only brewpubs but breweries,  
23 wineries, micro-distilleries and any other  
24 business that the legislature choose to give an  
25 exception to in the future is no longer on a



1 tier. Which means I could own -- Anheuser-  
2 Busch could own a brewery, they're not on a  
3 tier. So they can also own a wholesale  
4 business because that wouldn't violate the  
5 three tier law and now here we have Anheuser-  
6 Busch because they are a big company, will  
7 monopolize the beer industry in South Carolina  
8 because they will be able to wholesale not just  
9 the beer they make but any other producers  
10 beer. And that is the inherit purpose behind  
11 the three tier system is to prevent that  
12 vertical integration. And just to point out,  
13 if you look at the rest of 61-4-735, the  
14 exception, while it says that a manufacturer  
15 can own a retail business, that retail business  
16 still has to go through a wholesaler to  
17 purchase their product and the amount of  
18 product from that manufacturer that they can  
19 sell is limited. So there is restrictions in  
20 place in that statute to prevent 100 percent  
21 tied houses to destroy the three tier system.  
22 If we say a brewpub is an exception that means  
23 a brewpub can participate on any other tier.  
24 They could -- Hunter-Gatherer could be a  
25 wholesaler if they wanted to and own a brewpub



1 on the side. They could own other restaurants  
2 which the Department would submit they  
3 currently can do or they can own breweries and  
4 wineries or any other type of manufacturer and  
5 not violate the three tier law because  
6 essentially you'd be saying that a brewpub  
7 doesn't count. It doesn't fit in this picture.  
8 So you can own a brewpub and then do anything  
9 else you want on one of these other tiers. And  
10 that is, you know, again using Anheuser-Busch  
11 as an example, what if they come in and open up  
12 a whole bunch of brewpubs. They're making beer  
13 at the producer level. I can't tell you  
14 exactly what would happen but one would presume  
15 that because we have the three tier system to  
16 avoid that type of vertical integration, the  
17 legislature doesn't ultimately want that. And  
18 so that's why I think that's the inherent harm  
19 in finding a brewpub is an exception to the  
20 three tier rule. I also think if the  
21 legislature wanted it to be an exception they  
22 would have specifically said a brewpub does not  
23 fall in our three tier system. Instead the  
24 three Tier Statute comes prior in the code  
25 before Article 17 where the brewpub statute is.



1 So one would presume the three tier law applies  
2 to every business covered in Title 61 or in  
3 this instance Chapter 4, beer and wine. So if  
4 the legislature wanted to exclude a brewpub  
5 they could have said so. Contrary to Mr.  
6 Maybank's argument that if they wanted to  
7 include it they could have said so. They did  
8 say so when they said a retailer is on the  
9 third tier as a brewpub is a restaurant. Thank  
10 you.

11 **THE COURT:** Anything from Mr. Maybank?

12 **MR. MAYBANK:** No, Your Honor.

13 **THE COURT:** Okay. Very good.

14 **MR. MAYBANK:** And we would be perfectly happy with  
15 the order she just described, very narrowly  
16 saying a brewpub is outside the three tier.

17 **THE COURT:** Okay. I am not going to make a ruling  
18 right now. I need to study this and do some  
19 research myself. And Mr. Maybank when I was  
20 reading your brief I did note that you included  
21 information from Wikipedia?

22 **MR. MAYBANK:** Right.

23 **THE COURT:** I've got a very bright niece that lives  
24 with me. She's in sixth grade. We were doing  
25 research on an article that she was doing for



1 one of her classes and I was helping her a  
2 little bit and she says, oh, I can't use that,  
3 my teacher says they're not reliable.

4 **MR. MAYBANK:** Well, I have a seven year old who is  
5 moving in with me this Friday so I know what  
6 you speak. I tell my law clerks to start with  
7 Wikepedia and not Westlaw. You actually --  
8 sometimes you can't cite, you know, Wikepedia  
9 is not the most authorized thing but I find it  
10 very helpful. Actually I'm sorry, I tell my  
11 law clerks to start with Goggle before Westlaw.  
12 We actually find better stuff now on Goggle  
13 than we do on Westlaw and Google will always  
14 promptly take you to Wikepedia.

15 **MS. ACQUAVIVA:** Yeah.

16 **THE COURT:** Okay. But that didn't need to be on the  
17 record. I am concluding the hearing. I am  
18 going to take this under consideration and do  
19 further research and then I'll get with you and  
20 let you know my decision.

21 **MS. ACQUAVIVA:** Thank you, Your Honor.

22 **MR. MAYBANK:** Thank you.

23 **THE COURT:** Thank you all for coming.

24 (There being no further questions, the hearing  
25 concluded at 11:00 A.M.)



**CERTIFICATE**

This is to certify that the within hearing consisting of forty three (43) pages, is a true and correct transcript of the testimony given by said witnesses after being duly sworn; said hearing was reported by the method of Stenomask with Backup.

I further certify that I am neither employed by nor related to any of the parties in this matter or their counsel; nor do I have any interest, financial or otherwise, in the outcome of same.

IN WITNESS WHEREOF I have hereunto set my hand and seal on August 1, 2016.

*Barbara S. Ham*

Barbara S. Ham  
Court Reporter

Notary Public for South Carolina  
My Commission Expires: April 13, 2026



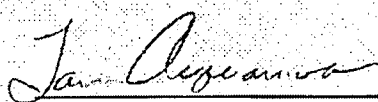
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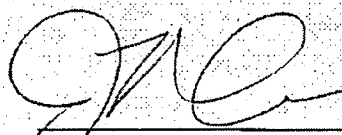
On-Premises Beer and Wine License pending the determination regarding eligibility for the Brewery License.

4. The Hunter-Gatherer, LLC timely appealed the Department of Revenue's denial of the Brewery License application.

The parties so stipulate.

  
\_\_\_\_\_  
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Date: February 11, 2016

  
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Attorneys for Petitioner  
The Hunter-Gatherer, LLC

Date: February 11, 2016

# South Carolina's Three-Tier Distribution System

## 1<sup>st</sup> Tier

The businesses that make/produce beer, wine, and liquor to be sold to distributors

Producer  
Manufacturer

Brewery  
Winery

Importer  
Distillery

## 2<sup>nd</sup> Tier

The businesses that distribute beer, wine, and liquor to retail businesses and other wholesalers

Wholesaler  
Distributor

## 3<sup>rd</sup> Tier

The businesses that sell beer, wine, and liquor to the end user/consumer

Restaurant  
Hotel

Private Club  
Convenience Store

Tavern  
Pub/Bar

## A comparison of Brewpubs and Breweries in South Carolina

### Brewpub

- Defined as a “tavern, public house, restaurant, or hotel” which produces beer for sale on the premises.
- Limited to producing 2,000 barrels per year.
- Can NOT sell to a wholesaler.
- Can sell its own beer:
  - On draft for consumption on the premises;
  - In customers’ containers for consumption off the premises;
  - In bottles for consumption off the premises.
- Can sell beer from a producer as long as it is purchased through a wholesaler.
- Can obtain a liquor by the drink license.
  - Only restaurants, hotels, and nonprofit private clubs may obtain a liquor by the drink license (see Article VIII-A of the South Carolina Constitution).

### Brewery

- A business that produces beer.
- No limit on the amount of beer it can produce.
- Can sell to a wholesaler (must go through a wholesaler to have its beer sold by retailers).
- Can sell its own beer with limits:
  - Samples for on premises consumption may be sold in conjunction with a tour; limited to 48oz in 24 hrs.;
  - Containers for off premises consumption may be sold with a tour; limited to 288oz in 24 hrs.;
  - Drinks for on premises consumption only in a “food service” area;
  - Can apply for an on premises beer and wine permit.
- Can NOT obtain a liquor by the drink license.

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DEC 01 2016

SC Court of Appeals

THE STATE OF SOUTH CAROLINA  
In The Court Of Appeals

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APPEAL FROM THE ADMINISTRATIVE LAW COURT  
Honorable Shirley C. Robinson, Administrative Law Judge

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Case No. 16-ALJ-17-0031-CC  
Appellate Case No. 2016-001082

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The Hunter-Gatherer, LLC, d/b/a The Hunter-Gatherer Brewery,.....Respondent,

v.

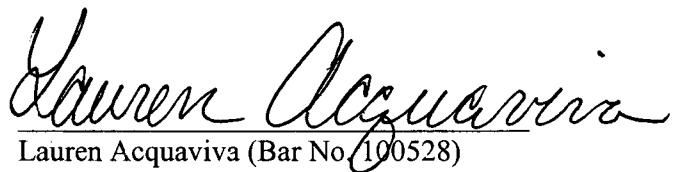
South Carolina Department of Revenue,.....Appellant.

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**CERTIFICATE OF COUNSEL**

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Pursuant to Rule 210(g), SCACR, the undersigned certifies that this Record on Appeal contains all material proposed to be included by the above-referenced parties and not any other material.



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