

**In Re:                   Declaratory Ruling  
                              By the South Dakota  
                              Lottery Commission**

**Ruling 95-2  
Stock Ownership  
SDCL 42-7A-43**

**STATUTE:**                   SDCL 42-7A-43 requires that a video lottery operator, if a partnership or corporation, must be majority owned by South Dakota residents.

**PROCEDURE:**    The presumed and customary method of determining this majority percentage is to divide the number of outstanding shares by the number of shares owned by South Dakota residents. This percentage figure is reported to the Lottery by the operator.

**ISSUE:**                Should shares of stock of wholly-owned subsidiaries be included in the calculation to determine the residency requirement of video lottery operators mandated by SDCL 42-7A-43?

**BACKGROUND:**    A corporation which has stock held by a subsidiary may elect to treat such stock as treasury shares and not as outstanding stock if appropriate legal requirements and accounting principles are satisfied. If the corporation treats its stock in this manner, does the stock need to be included in calculating residency requirements per the above statute?

**RULING:**             Corporate video lottery operators may exclude shares owned by a wholly-owned subsidiary from the calculations required to determine compliance with SDCL 42-7A-43 upon submission of appropriate proof and treatment of the corporate stock structure that substantiates the stock exclusion. This ruling does not relieve video lottery operators from any obligations required in the permitting and license process.

**REASON:**            Corporations are permitted to treat shares of stock held by its subsidiary as treasury shares and not as outstanding shares of stock. Therefore, the calculations required to insure compliance with the video lottery operator residency requirement may be performed without inclusion of the treasury shares of stock provided the exclusion is properly documented.

Dated this 30th day of November, 1995.

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Burdette Solum, Chairman