State of South Carolina
Department of Revenue
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SC PRIVATE LETTER RULING #11-2

SUBJECT:	Country Club Service Fee (Sales and Use Tax, Admissions Tax)
REFERENCES:	S.C. Code Ann. Section 12-21-2410 (2000) S.C. Code Ann. Section 12-21-2420 (2000 and Supp. 2010) S.C. Code Ann. Section 12-36-60 (2000) S.C. Code Ann. Section 12-36-90 (2000 and Supp. 2010) S.C. Code Ann. Section 12-36-910 (2000 and Supp. 2010) S.C. Code Ann. Section 12-36-1110 (Supp. 2010) 27 S.C. Regs. 117-318.6 (Supp. 2010)
AUTHORITY:	S.C. Code Ann. Section 12-4-320 (2000) S.C. Code Ann. Section 1-23-10(4) (2005) SC Revenue Procedure #09-3
SCOPE:	A Private Letter Ruling is an advisory opinion issued to a specific taxpayer by the Department to apply principles of law to a specific set of facts or a particular tax situation. It is the Department's opinion limited to the specific facts set forth, and is binding on agency personnel only with respect to the person to whom it was issued and only until superseded or modified by a change in statute, regulation, court decision, or another Departmental advisory opinion, providing the representations made in the request reflect an accurate statement of the material facts and the transaction was carried out as proposed.

Question:

Is a mandatory fee imposed by The Members Club at ABC and XYZ on its members, designated as a Standardized Service Charge, subject to sales tax or, alternatively, admissions tax?

Conclusion:

The Standardized Service Charge, imposed by The Members Club at ABC and XYZ on its members, is not subject to sales tax because it is not associated with the sale of prepared food or any other tangible personal property. However, as a mandatory fee imposed on members of a country club, it is subject to admissions tax, unless the Club

qualifies for the exemption under Code Section 12-21-2420(4) for charges by a nonprofit entity to its members for use of the nonprofit entity's facilities. Note: The Department makes no determination in this advisory opinion as to whether in fact the Club qualifies for the exemption under Code Section 12-21-2420(4).

Facts:

The Members Club at ABC and XYZ is a country club that offers golf, tennis, swimming and dining amenities. Members can tailor their memberships to include all amenities, or only a few; however, the Club does not offer a dining only membership.

Membership dues, if not paid in advance, are billed on a monthly basis. For dining services, there is no mandatory or minimum charge; instead, dining charges are billed at the end of the month based on actual purchases during that month. If members voluntarily add a gratuity at the time of these purchases, the gratuity is reflected separately on the monthly bill.

Also billed on a monthly basis is a "Standardized Service Charge," a mandatory fee applied to the account of each member with dining privileges and an in-state address. Unlike dining charges, which are billed after purchase, the Standardized Service Charge is billed in advance of the month to which it applies. The Standardized Service Charge is not refunded or credited if a member makes no dining purchases during the applicable month.

The Club maintains a single account to which these mandatory fees are credited. From this account, the Club pays servers 18% of their dining sales each month as gratuity regardless of which member made the purchases (voluntary gratuities added at the time of purchase do not count toward or against this allocation). The Club retains the balance as income.

Sales Tax:

The issue is whether the Standardized Service Charge is subject to sales tax.

A sales tax equal to 6% of the gross proceeds of sales is imposed "upon every person engaged or continuing within this State in the business of selling tangible personal property at retail." S.C. Code §12-36-910(A) (5% sales tax imposed); see S.C. Code §12-36-1110 (additional 1% sales and use tax imposed).

Tangible personal property is defined as "personal property which may be seen, weighed, measured, felt, touched, or which is in any other manner perceptible to the senses." S.C. Code §12-36-60.[1] The sale of prepared food, which is tangible personal property, is subject to sales tax.

[1] It should be noted that certain intangibles and services are included as tangible personal property under Code Sections 12-36-60 and 12-36-910. This is noted for the sake of thoroughness; as such intangibles and services are not at issue here.

The measure of the tax is the gross proceeds of the sale. "Gross proceeds of sales" means the proceeds from the sale of tangible personal property without any deduction for the cost of materials, labor or service, or any other expenses. S.C. Code §12-36-90(1)(b). Mandatory gratuities are included in the gross proceeds of the sale of prepared food. 27 S.C. Regs. 117-318.6.

Here, the Standardized Service Charge is imposed without respect to any sale of prepared food. The Standardized Service Charge is billed and paid in advance. By contrast, dining charges are not incurred unless and until there is actual consumption and so are billed at the end of month in which they are incurred. Thus, the Standardized Service Charge is not a service charge associated with the sale of tangible personal property.

For these reasons, the Standardized Service Charge is not included in the gross proceeds of the sale of prepared food. It is not subject to sales tax.

Admissions Tax:

The question then arises whether the mandatory Standardized Service Charge is subject to admissions tax.

A 5% admissions tax is imposed "upon all paid admissions to all places of amusement" in South Carolina. S.C. Code §12-21-2420. The term "admissions" is defined as "the right or privilege to enter into or use a place or location." S.C. Code §12-21-2410.

Pursuant to longstanding Department policy, country club dues and other charges for the privilege of using the country club's facilities are subject to admissions tax unless exempt. For example, Code Section 12-21-2420(4) exempts from admission tax all charges to members of a nonprofit entity for the use of the nonprofit entity's facilities. *See, e.g., Columbia Country Club v. Livingston,* 252 S.C. 490, 167 S.E.2d 300 (1969) (country club dues, which the Tax Commission claimed were subject to the admissions tax, were exempt by reason of the country club's nonprofit status); *M.T. Golf, Inc. v. South Carolina Department of Revenue,* Docket No. 95-ALJ-17-0490-CC (S.C. Admin. L.Ct. filed Aug. 16, 1996) (country club dues were subject to admissions tax; requirements for nonprofit exemption were not met).

Here, the Club is a place of amusement that charges a fee for entry or use. Because the Standardized Service Charge is mandatory and paid in advance without respect to other purchases or fees, it is part of the amount paid by a member to enter into and use a place of amusement. Therefore, the Standardized Service Charge is subject to the admissions tax. However, if the Club qualifies as a nonprofit entity for admissions tax purposes and all other requirements for the exemption are met, the Standardized Service Charge would be exempt from admissions tax as a charge to the members of a nonprofit entity for use of the nonprofit entity's facilities under Code Section 12-21-2420(4). Note: The Department makes no determination in this advisory opinion as to whether in fact the Club qualifies for the exemption under Code Section 12-21-2420(4).

SOUTH CAROLINA DEPARTMENT OF REVENUE

s/James F. Etter
James F. Etter, Director

May 23, 2011
Columbia, South Carolina

CAVEAT: This advisory opinion is issued to the taxpayer requesting it on the assumption that the taxpayer's facts and circumstances, as stated, are correct. If the facts and circumstances given are not correct, or if they change, then the taxpayer requesting the advisory opinion may not rely on it. If the taxpayer relies on this advisory opinion, and the Department discovers, upon examination, that the facts and circumstances are different in any material respect from the facts and circumstances given in this advisory opinion, then the advisory opinion will not afford the taxpayer any protection. It should be noted that subsequent to the publication of this advisory opinion, changes in a statute, a regulation, or case law could void the advisory opinion.