



STATE OF SOUTH CAROLINA
DEPARTMENT OF REVENUE

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SC REVENUE RULING #21-14

SUBJECT: Professional Services Rendered by, and Retail Sales Made by Opticians, Ophthalmologists, and Optometrists
(Sales and Use Tax)

EFFECTIVE DATE: Applies to all periods open under the statute.

REFERENCES: S.C. Code Ann. Section 12-36-90 (2014)
S.C. Code Ann. Section 12-36-110 (2014)
S.C. Code Ann. Section 12-36-910 (2014)
SC Regulation 117-308.1
SC Regulation 117-308.7
SC Regulation 117-309.17
SC Regulation 117-324

AUTHORITY: S.C. Code Ann. Section 12-4-320 (2014)
S.C. Code Ann. Section 1-23-10(4) (2005)
SC Revenue Procedure #09-3

SCOPE: The purpose of a Revenue Ruling is to provide guidance to the public. It is an advisory opinion issued to apply principles of tax law to a set of facts or general category of taxpayers. It is the Department's position until superseded or modified by a change in statute, regulation, court decision, or another Department advisory opinion.

OVERVIEW

Eye care professionals include ophthalmologists, optometrists, and opticians. While their responsibilities differ, each plays a role in providing vision care. In general, ophthalmologists are medical doctors that specialize in all areas of eye health and perform eye surgery; optometrists identify and treat certain eye conditions, perform eye exams, and prescribe eyeglasses or contact lenses. An optician is a maker or dealer in optical items and instruments, grinds lenses to prescription, and dispenses eyeglasses or contact lenses. Today, prescription frames and lenses are purchased in a doctor's office, another business inside a doctor's office, a store in the mall, or online.

Depending upon their business operations, an ophthalmologist or optometrist can also be an optician. The eye care professional can be a professional service provider, a retailer, or both. The application of the sales tax depends on how these eye care professionals conduct their business.

The purpose of this advisory opinion is to provide guidance to eye care professionals, patients with and without vision care insurance, and customers regarding the applicability of the sales tax, including the measure of the tax, for charges for prescription eyeglasses. For purposes of this advisory opinion, references to the term “eyeglasses” means prescription eyeglasses, prescription sunglasses, or prescription contact lenses and includes the lenses (bifocal, trifocal, progressive, etc.), coatings, tinting, and magnetic sunglasses made specifically for the prescription eyeglasses.

Topics discussed in this advisory opinion are:

- Retail sales of eyeglasses sold by an optician and the use of vision care insurance;
- Professional services rendered by an ophthalmologist or optometrist;
- Eyeglasses furnished by an ophthalmologist or optometrist only to their patients; and
- A dual business where an ophthalmologist or optometrist provides professional services and prescription eyeglasses as part of professional services rendered to patients and also sells prescription eyeglasses to non-patients as an optician.

A discussion of the law is followed by eight examples that illustrate the topics discussed. An appendix provides a brief explanation of the applicability of the use tax in certain transactions.

QUESTIONS

1. Are charges by an optician to a customer for prescription eyeglasses, including charges to the customer’s insurance company, includable in “gross proceeds of sales” and subject to the sales tax?
2. Are charges by an ophthalmologist or optometrist to a patient for professional services (e.g., eye exam) subject to the sales tax?
3. What is the application of the sales tax to an ophthalmologist or optometrist who only furnishes prescription eyeglasses to patients as part of professional services rendered?
4. What is the application of the sales tax to an ophthalmologist or optometrist who both sells prescription eyeglasses to non-patients as an optician and furnishes prescription eyeglasses to patients as part of professional services rendered?
5. What is the application of the sales tax to an optician, ophthalmologist, or optometrist making retail sales of non-prescription sunglasses, binoculars, etc.?

CONCLUSIONS

1. Charges by an optician to a customer for prescription eyeglasses, including charges to the customer's insurance company, are includable in "gross proceeds of sales" and subject to sales tax. Since an optician is engaged in the business of selling tangible personal property at retail, opticians are subject to sales tax based on the "gross proceeds of sales" of tangible personal property sold at retail (e.g., prescription eyeglasses, non-prescription sunglasses, eyewear cases). See Examples 1 – 3.
2. Charges by an ophthalmologist or optometrist to a patient for professional services are not subject to sales tax. Since an ophthalmologist and an optometrist are engaged in the business of providing professional services, the charges for their professional services, which include all charges to the patient in connection with the eye exam and the prescription eyeglasses furnished the patient, are not subject to sales tax. See Example 4.
3. Charges by an ophthalmologist or optometrist to a patient for professional services are not subject to sales tax. Since an ophthalmologist and an optometrist are engaged in the business of providing professional services, the charges for their professional services, which include all charges to the patient in connection with the eye exam and the prescription eyeglasses furnished the patient, are not subject to sales tax. See Example 4.

However, since the ophthalmologist or optometrist is engaged in the business of providing professional services and only furnishes prescription eyeglasses to patients as part of professional services rendered, the sales to, or purchases by, the ophthalmologist or optometrist of tangible personal property for use in the performance of such professional services, including prescription eyeglasses furnished to patients, are subject to the tax. The measure of the tax is the cost of the supplies purchased by the ophthalmologist or optometrist. See Example 4.

4. Charges by an ophthalmologist or optometrist to a patient for professional services are not subject to sales tax. Since an ophthalmologist and an optometrist are engaged in the business of providing professional services, the charges for their professional services, which include all charges to the patient in connection with the eye exam and the prescription eyeglasses furnished the patient, are not subject to sales tax. See Example 4.

However, when an ophthalmologist or optometrist is engaged in the business of (1) providing professional services and furnishing prescription eyeglasses to patients as part of such professional services and (2) selling prescription eyeglasses to non-patients as an optician, the ophthalmologist or optometrist is to purchase all prescription eyeglasses at wholesale and remit the sales tax as follows:

- a. Prescription eyeglasses furnished to patients in connection with professional services rendered are subject to sales tax when withdrawn from inventory for use and furnished to the patient. The measure upon which the sales tax is calculated is the fair market value of the prescription eyeglasses.

- b. Sales of prescription eyeglasses to non-patients are subject to the sales tax. The measure upon which the sales tax is calculated is the “gross proceeds of sales” of the prescription eyeglasses. See Example 6.
5. Charges by an ophthalmologist, optometrist, or optician making sales of non-prescription sunglasses, barometers, telescopes, binoculars, and similar tangible personal property are subject to the sales tax based on the “gross proceeds of sales.” Such eye care professional is required to have a retail license and collect the sales tax upon the sales of such merchandise. See Example 5.

LAW and DISCUSSION

General Provisions – Persons Engaged in the Business of Selling Tangible Personal Property at Retail

Code Section 12-36-910(A) imposes a sales tax upon every person engaged or continuing within this State in the business of selling tangible personal property at retail. The measure or basis of the sales tax is “gross proceeds of sales.” Code Section 12-36-90 provides that “gross proceeds” is the value proceeding or accruing from the sale of tangible personal property. It includes the proceeds from the sale of tangible personal property without any deduction for the cost of goods sold; cost of materials, labor, or service; transportation costs; or any other expenses. However, “gross proceeds of sale” does not include a cash discount allowed and taken on sales.

Based upon the above, the “measure” of the sales tax is the total proceeds of a sale (i.e., it is the sum total of all consideration received in conjunction with the sale of tangible personal property, without any deductions, unless specifically provided).¹ The source of the amount received or earned is irrelevant (e.g., received from the customer, a third party such as an insurance company). What matters is whether the amount received or earned is the result of a retail sale of tangible personal property.

General Provisions - Persons Engaged in Providing Professional Services to their Patients

In order for the sales tax to apply to a transaction, there must be a “sale at retail” or a “purchase at retail.” Code Section 12-36-110 defines a “retail sale” as “all sales of tangible personal property except those defined as wholesale sales.” The term “retail sale” includes the sales of drugs and other supplies to medical doctors and optometrists, if furnished to their patients as a part of the service rendered. These professionals are deemed to be the “users” or “consumers” of the tangible personal property for use in providing their professional services. See Code Section 12-36-110(1)(i).

¹ Code Section 12-36-90, defining “gross proceeds” for sales tax purposes, and Code Section 12-36-130, defining “sales price” for use tax purposes, provides certain exclusions.

Regulation 117-308.1, concerning “Professional Services,” provides further guidance with respect to the taxability of charges by eye care professionals, such as charges for professional services or sales of tangible personal property. The regulation is summarized below:

- Receipts from the performance of professional services are not subject to the sales tax.
- The property used incidental to the performance of professional services by an ophthalmologist or optometrist is subject to tax on its sale to such ophthalmologist or optometrist (e.g., frames, lenses, and eye drops for use with contact lenses furnished to patients as part of professional services rendered, as well as examination equipment and supplies).
- An ophthalmologist or optometrist may in addition to rendering a professional service, also be in the business of making retail sales of tangible personal property (i.e., is also an optician). For instance, a doctor may sell medicines. In those cases where professionals are regularly engaged in the business of selling tangible personal property at retail (e.g., non-prescription sunglasses), they must obtain a retail license and remit the sales tax due on such sales.

Specific Sales Tax Provisions – Opticians, Ophthalmologists, and Optometrists Services and Sales

Regulation 117-308.7, “Ophthalmologists, Oculists and Optometrists”² specifically addresses the application of the sales tax. The regulation, as it specifically relates to each type of eye care professional or type of business, is provided below.

- **Optician Making Retail Sales:**
The optician is the maker and seller of eyeglasses. He does not examine eyes, but merely fills prescriptions supplied by the ophthalmologist or optometrist and must charge the tax on all sales by him to users or consumers. The optician is required to obtain a retail license and collect and remit the tax on the gross proceeds of such sales.
- **Ophthalmologist or Optometrist – Performing Personal Services and Taxation of Supplies Purchased and Used in Performing Services**

Ophthalmologists and optometrists are engaged primarily in rendering professional services and when they furnish, replace, or repair eye glasses, lenses or other such ophthalmic materials for their patients in connection with their services, the gross receipts from such services are not taxable, but they must pay the tax as consumers to their suppliers on all materials purchased by them for use in the performance of such service.

² The regulation also uses the term “oculist.” This is an outdated term that means an ophthalmologist or means an optometrist, depending on the context. The terms ophthalmologist and optometrist are used in this advisory opinion.

- **Ophthalmologist or Optometrist who is also an Optician (“Dual Business” - Sales of Prescription Eyeglasses to Non-patients and Furnishing Prescription Eyeglasses to Patients) – Measure of Sales Tax on Property Sold to Non-Patients or Withdrawn from Inventory to Furnish to Patients**

Ophthalmologists and optometrists who are also opticians must pay a tax based on the reasonable and fair market value of all tangible personal property withdrawn for use by them in filling their own prescriptions.

The term “reasonable and fair market value” is held to mean the retail sales price at which the property is offered for sale to the public in the absence of affirmative proof of the contrary. In no event can it be less than the cost of materials used, to include fabrication and service labor, and all other expenses which are a part of preparing the property for the patient, except that it shall not include charges for professional services in connection with examining the patient.³

Regulation 117-324, “Dual Business,” provides that persons who are both making retail sales and withdrawing for use, for example to provide prescription eyeglasses in connection with professional services, from the same stock of goods are to purchase at wholesale all of the goods so sold or used and report both retail sales and withdrawals for use under the sales tax law.

Regulation 117-309.17, “Withdrawals from Stock, Merchants,” provides guidance in determining what fair market value is on withdrawals for use by an ophthalmologist or optometrist who is also an optician, and states:

To be included in gross proceeds of sales is the money value of property purchased at wholesale for resale purposes and subsequently withdrawn from stock for use or consumption by the purchaser.

The value to be placed upon such goods is the price at which these goods are offered for sale by the person withdrawing them. All cash or other customary discounts which he would allow to his customers may be deducted; however, in no event can the amount used as gross proceeds of sales be less than the amount paid for the goods by the person making the withdrawal.

Note: The above portion of Regulation 117-308.7 concerning a “dual business” applies when the professional services business and the retail eyeglass business selling to non-patients are the

³ See *Colonial Stores, Inc. v. S.C. Tax Commission*, 168 S.E.2d 774, 776 (1969), where the Court reviewed the valuation of a use tax transaction and stated that a different valuation method applied to items purchased at wholesale and withdrawn for use. A use tax transaction is based on the cost of the item purchased while a “different rule of valuation applies where goods are purchased for resale but later withdrawn from stock and used by the taxpayer. In such case, the withdrawal is, in effect, treated as a sale at retail and the basis of valuation for tax purposes is ‘the reasonable and fair market value’ of the tangible personal property withdrawn.”

same legal entity (including disregarded legal entities).⁴ If the ophthalmologist or optometrist professional services business is a separate legal entity from the retail eyeglass business, then this portion of the regulation does not apply and the application of the sales tax applies to each legal entity separately depending on the type of business conducted. See Examples 7 and 8.

- **Retail Sales of Non-prescription Glasses by Optician, Ophthalmologist, or Optometrist**

All persons or companies, whether opticians, optometrists, or otherwise, making sales of such property as sunglasses, barometers, telescopes, binoculars, opera glasses, etc., are required to have a retail license and collect the sales tax upon the sales of such items of merchandise to the consumer or user thereof.

EXAMPLES

The following examples illustrate the concepts discussed above in this advisory opinion. For simplicity, these examples assume that all sales and purchases take place in South Carolina and all taxable transactions are subject to the sales tax, not the use tax. However, the application of the use tax would be the same for any similar transaction where the use tax may apply, such as a person engaged in business through the Internet as an out-of-state optician or the purchase of supplies from an out-of-state retailer by an ophthalmologist only providing professional services to patients.

For general information on how to determine whether a particular transaction is subject to sales tax or a use tax, as well as determining which party is legally liable for the applicable tax, see the Appendix.

I. Optician Making Retail Sales of Prescription Eyeglasses to Customers

Example 1 – Optician Sells Prescription Eyeglasses – Customer Pays Full Price

Facts: Optician A sells a pair of prescription eyeglasses to Customer B and charges \$500 for the frames and lenses (i.e., charges the full retail price). The total sales price paid by the customer is \$500.

Conclusion: Since Optician A is engaged in the business of selling tangible personal property at retail, the sale of the prescription eyeglasses to Customer B is subject to sales tax based on the “gross proceeds of sales” of the prescription eyeglasses. The “gross proceeds of sales” for the retail transaction, upon which the sales tax is calculated, is \$500.

⁴ See Commission Decision 90-23 (June 27, 1990) where a corporate taxpayer formed to sell eyeglasses to the public and carry on the activities of an optician and whose shareholders were ophthalmologists and optometrists. The Commission held the corporation is a separate and distinct entity from its shareholders.

Example 2 – Optician Sells Prescription Eyeglasses – Customer Receives 20% Discount

Facts: Optician A sells a pair of prescription eyeglasses to Customer C. Customer C has a 20% off discount coupon. The retail price is \$500 for the frames and lenses. Applying the discount of \$100, Optician A lowers the sales price to \$400.

Conclusion: Since Optician A is engaged in the business of selling tangible personal property at retail, the sale of the prescription eyeglasses to Customer C is subject to sales tax based on the “gross proceeds of sales” of the prescription eyeglasses. The “gross proceeds of sales” for the retail transaction, upon which the sales tax is calculated, is \$400 (\$500 less the \$100 discount allowed and taken).

Note: This example assumes the discount coupon is one in which the optician will not be reimbursed by a third party, such as the manufacturer of the frames, for accepting the coupon. If the coupon was one in which a third party reimbursed the optician for accepting the coupon, then the reimbursement by the third party to the optician would be includable in the “gross proceeds of sales” of the transaction, along with the amount paid by the customer, and subject to the sales tax. See Revenue Ruling #99-9, “Coupons and Discount Cards” for additional guidance.

Example 3 – Optician Sells Prescription Eyeglasses – Customer has Vision Care Insurance

Facts: Optician A sells a pair of prescription eyeglasses to Customer D, a customer with vision care insurance. While the retail price is \$500 for the frames and lenses, the sales price of the frames and glasses is \$400 to an “in-network” customer as a result of the agreement between Optician A and insurance company. The insurance company will reimburse Optician A \$150 for the frames and lenses. Customer D pays the remaining balance of \$250.

Conclusion: Since Optician A is engaged in the business of selling tangible personal property at retail, the sale of the prescription eyeglasses to Customer D is subject to sales tax based on the “gross proceeds of sales” of the prescription eyeglasses. The “gross proceeds of sales” for the retail transaction, upon which the sales tax is calculated, is \$400 (\$500 less the \$100 discount allowed and taken under the agreement with the insurance company). No deduction is allowed for the portion of the cost of the eyeglasses reimbursed to Optician A by the insurance company (\$150) since the source of the amount received is irrelevant in computing “gross proceeds of sales” - the measure of the sales tax.

II. Ophthalmologist or Optometrist – Prescription Eyeglasses Furnished Only to Patients in Connection with Professional Services (e.g., Private Doctor’s office)⁵

NOTE: This section does not apply to ophthalmologists or optometrists selling prescription eyeglasses to non-patients (i.e., carrying on a retail business having a substantial number of retail sales). See Section III below for examples applicable to ophthalmologists or optometrists performing a dual business as an optician.

⁵ This section also applies if the business entity providing the professional services to patients is in a separate legal entity from the optician business. See Example 7.

Example 4 – Ophthalmologist Furnishes Eye Exam and Provides Eyeglasses (One legal entity)

Facts: The business entity of Ophthalmologist B furnishes prescription eyeglasses only to patients in connection with the performance of the professional service (i.e., the business entity is not engaged in selling prescription eyeglasses to non-patients as an optician since it either does not make sales to non-patients or only makes casual and isolated sales to non-patients).

Ophthalmologist B performs an annual eye exam for Patient X for a fee of \$100. In connection with the eye exam, Patient X is furnished a pair of prescription eyeglasses for which he is charged an additional \$500. The total paid by Patient X is \$600. (The eyeglasses can be furnished at the same time as the eye exam or at a future time.) Ophthalmologist B purchased the supplies (frames and lenses) from Supplier/Manufacturer Z for \$200.

Conclusion: Since Ophthalmologist B is engaged in the business of providing professional services, and is not engaged in the business of selling tangible personal property at retail to non-patients as an optician, charges by Ophthalmologist B to Patient X are not subject to sales tax. The \$600 charged to Patient X (\$100 + \$500) are for nontaxable professional services rendered.

However, the purchase by Ophthalmologist B from Supplier/Manufacturer Z of the supplies used in furnishing prescription eyeglasses to Patient X (frames and lenses) is subject to the tax since Ophthalmologist B is considered “the user or consumer” of all materials purchased for use in the performance of personal services, including those items furnished to the patient as part of services rendered. The measure upon which the tax is calculated is \$200.

Example 5 – Ophthalmologist Sells “Non-prescription” Sunglasses to Patients

Facts: Ophthalmologist B above also sells non-prescription sunglasses only to patients (i.e., the business entity is not engaged in selling prescription eyeglasses to non-patients as an optician since it either does not make sales of prescription eyeglasses to non-patients or only makes casual and isolated sales of prescription eyeglasses to non-patients). Ophthalmologist B sells a pair of non-prescription sunglasses to Patient X for \$100.

Conclusion: Since Ophthalmologist B also sells non-prescription sunglasses to patients, Ophthalmologist B is engaged in the business of selling tangible personal property (i.e., non-prescription sunglasses) at retail, the sale of the non-prescription sunglasses to Patient X is subject to the sales tax based on the “gross proceeds of sales” of the non-prescription sunglasses. The “gross proceeds of sales” for the retail transaction, upon which the sales tax is calculated, is \$100.

Note: Notwithstanding Example 4, an ophthalmologist or optometrist making sales of non-prescription sunglasses, barometers, telescopes, binoculars, etc., is required to have a retail license and collect the sales tax upon the sales of such merchandise. See Regulation 117-308.7.

III. Dual Business – Ophthalmologist or Optometrist is also an Optician Making Substantial Retail Sales to Non-Patients (e.g., One stop vision care business in a mall)

NOTE: This section does not apply to ophthalmologists or optometrists selling prescription eyeglasses to patients only or operating as an optician carrying on a retail business having a substantial number of retail sales in a separate legal entity from the ophthalmology or optometry legal entity. See Section II above for examples applicable to these ophthalmologists or optometrists.

Example 6 – Ophthalmologist Performs Professional Services for Patients and Sells Eyeglasses to Non-Patients

Business Entity: ABC Eye Physicians and Optical Business (“ABC”) is a C corporation engaged in the business of providing professional eye care services to patients and engaged in the business of selling at retail prescription eyeglasses to non-patients. The application of the tax to sales to patients and sales to non-patients is illustrated below.

A. Prescription Eyeglasses Furnished to a Patient in Connection with Professional Services

Facts: Ophthalmologist C of ABC Corporation performs an annual eye exam for Patient Y for a fee of \$100. In connection with the eye exam, Patient Y is furnished a pair of prescription eyeglasses for \$500. The total paid by Patient Y is \$600. (The purchase of the eyeglasses can be at the same time as the eye exam or at a future time.) ABC purchases the supplies (frames and lenses) from Supplier/Manufacturer Z for \$200.

Conclusion: Since ABC is both engaged in the business of providing professional services to patients and is engaged in the business of selling tangible personal property at retail to non-patients, ABC is to purchase at wholesale (tax free) from Supplier/Manufacturer Z all of the goods furnished to patients as part of the professional services rendered to patients and all of the goods sold to non-patients. With respect to the prescription eyeglasses furnished to patients, ABC is liable for the sales tax when the prescription eyeglasses (i.e., frames and lenses) are withdrawn from inventory and furnished to Patient Y. See Regulations 117-308.7 and 117-324.

Unlike Example 4 above, ABC should not pay tax when the frames and lenses are purchased from Supplier/Manufacturer Z, but when they are withdrawn for use and furnished to the patient in connection with professional services. The measure of the tax on the withdrawal from inventory of the eyeglasses for Patient Y is \$500, “the retail sales price at which the property is offered for sale to the public in the absence of affirmative proof of the contrary” (i.e., reasonable and fair market value). Charges by ABC to Patient Y for professional services, which includes all charges to Patient Y in connection with the eye exam and the prescription eyeglasses furnished Patient Y (\$600), are not subject to sales tax.

Note: In many cases, the ophthalmologist or optometrist will pass the sales tax due on the withdrawal for use on to his or her patient. Since such ophthalmologist or optometrist is considered to be providing professional services and not selling the prescription eyeglasses to the patient, the sales tax passed on to the patient is considered a part of the overall charges for his or

her professional service. In this example, the tax, based on a measure of \$500, is due at the time the prescription eyeglasses are withdrawn from inventory to provide to Patient Y, but ABC may include that tax on the receipt or statement to Patient Y as part of the charges for the professional services rendered to Patient Y.

B. Retail Sale of Eyeglasses to a Non-patient

Facts: ABC does not provide professional eye services to Customer N. Customer N is a patient of an optometrist in the neighborhood. Customer N purchases a pair of prescription eyeglasses for \$500 from ABC (a corporation in which Ophthalmologist C is a shareholder).

Conclusion: Since ABC is engaged in the business of selling tangible personal property at retail, the sale of the prescription eyeglasses to Customer N is subject to sales tax based on the “gross proceeds of sales” of the prescription eyeglasses. The “gross proceeds of sales” for the retail transaction, upon which the sales tax is calculated, is \$500.

IV. Separate Legal Entities

Example 7 – Separate Corporations of an Ophthalmologist – One Corporation Furnishes Eye Exams and the Other Corporation Sells Eyeglasses in the Same Office (Two Separate Legal Entities)

Facts: Ophthalmologist G owns 100% of Doctor Corporation 1, the corporation from which he furnishes professional services (e.g., eye exams), but does not furnish prescription eyeglasses to patients in connection with the performance of the professional services. Ophthalmologist G also owns 100% of Optician Corporation 2, which is a separate legal entity from Doctor Corporation 1 that is located in the same office and operates an optician business engaged solely in selling prescription eyeglasses to patients of Doctor Corporation 1. Ophthalmologist G performs an annual eye exam for Patient X for a fee of \$100 and writes a prescription for a pair of bifocals. Patient X goes to Optician Corporation 2 in the optician area of the office and purchases frames and prescription lenses for \$500.

Conclusion: Charges by an ophthalmologist to a patient for professional services (e.g., eye exam) are not subject to sales tax. Since Doctor Corporation 1 is engaged in the business of providing professional services, the \$100 charge for providing an eye exam to Patient X is not subject to sales tax.

Charges by Optician Corporation 2, the optician business operating under a separate legal entity from Doctor Corporation 1, is engaged in the business of selling tangible personal property at retail and subject to the sales tax based on the “gross proceeds of sales” of prescription eyeglasses. The retail sale of prescription eyeglasses by Optician Corporation 2 to Customer X is subject to sales tax based on the “gross proceeds of sales” of the prescription eyeglasses. The “gross proceeds of sales” for the retail transaction, upon which the sales tax is calculated, is \$500.

Example 8 – Separate Single Member Limited Liability Companies (SMLLCs) of an Ophthalmologist – One LLC Furnishes Eye Exams and the Other LLC Sells Eyeglasses in the Same Office or Building (Two SMLLCs)

Facts: Ophthalmologist U is the single member of Doctor SMLLC 1, the SMLLC from which he furnishes professional services (e.g., eye exams), but does not furnish prescription eyeglasses to patients in connection with the performance of the professional services. Ophthalmologist U also is the single member of Optician SMLLC 2, a SMLLC that is located in the same office and operates an optician business engaged in selling prescription eyeglasses to patients of Doctor SMLLC 1. Both SMLLCs are disregarded for tax purposes under Code Section 12-2-25(B). Ophthalmologist U performs an annual eye exam for Patient X for a fee of \$100 and writes a prescription for a pair of bifocals. Patient X goes to Optician SMLLC 2 in the optician area of the office for frames and prescription lenses for \$500.

Conclusion: Since Doctor SMLLC 1 and Optician SMLLC 2 are both disregarded entities with the same single member (Ophthalmologist U), the taxpayer for sales tax purposes is Ophthalmologist U. As such, the application of the sales tax will depend on whether Ophthalmologist U, through Optician SMLLC 2, only provides prescription eyeglasses to his patients or provides prescription eyeglasses to his patients and is also engaged in the business of selling prescription eyeglasses to the public (i.e., non-patients).

- If Ophthalmologist U, through Optician SMLLC 2, only provides prescription eyeglasses to his patients, then the application of the sales tax would be handled in the same manner as described in Example 4.
- If Ophthalmologist U provides prescription eyeglasses to his patients and is also engaged in the business of selling prescription eyeglasses to the public (i.e., non-patients), then the application of the sales tax would be handled in the same manner as described in Example 6.

APPENDIX

While the discussion in this advisory opinion is limited to sales tax, it is possible that there may be some transactions that are subject to the use tax. Below is a brief explanation of the applicability of the sales tax or the use tax to a transaction and an explanation of which party (the seller or the purchaser) is legally liable for the tax.

- **How to Determine if a Tax is a Sales Tax or a Use Tax**

Guidance in determining whether the sales tax or the use tax applies to a retail sale of tangible personal property is provided below.

- A. Retail Sales at Locations in South Carolina. The sales tax applies to retail sales of tangible personal property at retail locations in South Carolina. Code Section 12-36-910.
- B. Retail Sales Shipped into South Carolina. Regulation 117-334 determines whether the sales or use tax applies to retail sales of goods shipped into South Carolina.

Sales Tax. Regulation 117-334.1, “Goods coming into this State – Sales Tax,” provides guidance with respect to the application of the sales tax on tangible personal property coming into South Carolina and reads, in part:

(A) When tangible personal property is purchased for use or consumption in this State and (1) the seller is engaged or continuing within this State in the business of selling tangible personal property at retail and (2) delivery is made in this State, such sale is subject to the sales tax if the order for the future delivery of tangible personal property is sent by the purchaser to, or the subsequent delivery of the property is made by, any local branch, office, outlet or other place of business of the retailer in this State, or agent or representative operating out of or having any connection with, such local branch, office, outlet or other place of business. The term “other place of business” as used herein includes, but is not limited to, the homes of district managers, representatives, and other resident employees, who perform services in relation to the seller’s functions in this State. Participation in the transaction in any way by the local office, branch, outlet or other place of business is sufficient to sustain the sales tax.

Based on this regulation, the sales tax would generally apply to the retail sale of tangible personal property coming from outside of South Carolina if the customer (1) places the order with a local office, store, place of business, representative, or employee in South Carolina or (2) the retailer delivers the property through a local office, store, place of business, representative, or employee in South Carolina. For example, the sales tax applies when a purchaser places an order online or by phone to an out-of-state retailer who then sends the purchaser’s request to its South Carolina store for delivery to, or pick up by, the South Carolina customer.

Use Tax. Regulation 117-334.2, “Goods coming into this State – Use Tax,” provides guidance with respect to the application of the use tax on tangible personal property coming into South Carolina and reads, in part:

(A) When tangible personal property is purchased for use or consumption in this State and delivery is made in this State, such sale is subject to the use tax if the order for future delivery is sent by the purchaser directly to the seller at a point outside this State, and the property is shipped into this State from a point outside this State directly to the purchaser or the purchaser’s designee, provided there is no participation whatever in the transaction by any local branch, office, outlet or other place of business of the retailer or by any agent or representative of the retailer having any connection with such branch, office, outlet, or other place of business. The term “other place of business” as used herein includes, but is not limited to, the homes of district managers, service representatives, and other resident employees, who perform substantial services in relation to the seller’s functions in this State.

Based on this regulation, the use tax would apply to the retail sale of tangible personal property coming from outside of South Carolina if the customer (1) places the order with an office, store, place of business, representative, or employee outside of South Carolina and (2) the retailer ships or delivers the property from an out-of-state location, provided there is no participation whatever in the transaction by any local branch, office, outlet or other place of business of the retailer or by any agent or representative of the retailer having any connection with such branch, office, outlet, or other place of business. For example, the use tax applies when a purchaser places an order online with an out-of-state retailer who fills the request from an office/store outside of South Carolina and ships the goods to the South Carolina customer via common carrier.

- **Who is Legally Liable for the Sales Tax or the Use Tax**

Code Section 12-36-910 imposes the sales tax on retailers engaged in business within South Carolina and applies to retail sales of tangible personal property within the State. Retailers making sales of tangible personal property in South Carolina are required to remit the sales tax to the Department. As such, the retailer is the person legally liable for the sales tax.

Code Section 12-36-1310 imposes the use tax on the purchaser on the purchase of tangible personal property at retail for use, storage, or other consumption in South Carolina. The use tax applies to purchases from out-of-state retailers and includes purchases from retailers made through the Internet (retailer’s website and retailer’s sales on auction sites), through out-of-state catalog companies, or when visiting another state or country. As such, the purchaser is the person legally liable for the use tax.

An out-of-state retailer must obtain a retail license and remit either the South Carolina sales tax or use tax on retail sales shipped into South Carolina if the out-of-state retailer has a physical presence in South Carolina or economic nexus with South Carolina. An out-of-state retailer that is not required to obtain a retail license and remit the South Carolina sales or use tax may, however, voluntarily obtain the retail license and collect and remit the tax to South Carolina.

Note: Either the South Carolina sales tax or the use tax applies to a single transaction, but not both.

SOUTH CAROLINA DEPARTMENT OF REVENUE

s/W. Hartley Powell

W. Hartley Powell, Director

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Columbia, South Carolina