

SC PRIVATE LETTER RULING #09-2

SUBJECT: Homeowners' Association Membership Assessment
(Admissions Tax)

REFERENCES: S. C. Code Ann. Section 12-21-2410 (2000)
S. C. Code Ann. Section 12-21-2420 (2000, Supp. 2008)

AUTHORITY: S. C. Code Ann. Section 12-4-320 (Supp. 2008)
S. C. Code Ann. Section 1-23-10(4) (Supp. 2008)
SC Revenue Procedure #05-2

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set forth, and is binding on agency personnel only with respect to the person to whom it was issued and only until superseded or modified by a change in statute, regulation, court decision, or another Departmental advisory opinion, providing the representations made in the request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 the entire homeowners' membership assessment for XYZ Club, Inc. subject to the admissions tax?

Conclusion:

The entire homeowners' membership assessment for XYZ Club, Inc. is not subject to the admissions tax.

Since a portion of the homeowners' membership assessment for XYZ Club, Inc. is used to maintain common areas unassociated with the places of amusements (*e.g.*, security, landscaping and road maintenance), only the portion of the homeowners' membership assessment that allows homeowners entrance to, and use of, the places of amusements maintained and operated by XYZ Club, Inc. is subject to the admissions tax.

The determination as to what portion of the homeowners' membership assessment for XYZ Club, Inc. allows homeowners entrance to, and use of, the places of amusements and is subject to the admissions tax is calculated as follows:

1. Determine a percentage by dividing all the expenses (direct and indirect) associated with all places of amusement for which the assessment is paid by the total expenses (direct and indirect) of XYZ Club, Inc.
2. Apply the above percentage to the total monthly homeowners' membership assessment.¹
3. The result is the portion of the homeowners' membership assessment for XYZ Club, Inc. that allows homeowners entrance to, and use of, the places of amusements.

Note: The portion of security, landscaping and road maintenance expenses associated with any places of amusement must be included in the expenses (direct and indirect) associated with all places of amusement for which the assessment is paid.

Facts:

XYZ Club, Inc. ("XYZ") is the owner and operator of a for-profit golf and country club in South Carolina. XYZ also owns the common property of the real estate development that surrounds the golf course.

XYZ charges a "lump sum" membership assessment each month to every homeowner inside the real estate development for the use of the community property, excluding the golf facilities. This membership assessment allows homeowners access to, and use of, the swimming pool, fitness center, tennis and bocce ball courts and community clubhouse for dining and special events. The invoice sent to the homeowner each month separately states the admissions tax.

A portion of the revenue from the membership assessment is also allocated to the maintenance of the real estate development's common grounds, which includes security, landscaping and road maintenance.

Discussion:

Code Section 12-21-2420 imposes the admissions tax and states in part:

There must be levied, assessed, collected, and paid upon paid admissions to places of amusement within this State a license tax of five percent. The license tax may be listed separately from the cost of admission on an admission ticket. ...

¹ Since XYZ separately states the admissions tax on its invoices to homeowners, it is not necessary to reduce the monthly homeowners' membership assessment by the admissions tax as was described in the "Findings of Fact" in the Administrative Law Court decision in *Savannah Lakes Village Club, Inc. v. South Carolina Department of Revenue*, 97-ALJ-17-0286-CC (S.C. Admin. L.Ct., filed March 11, 1998).

Code Section 12-21-2410 defines the terms “admissions,” “place,” and “person” and states:

For the purpose of this article and unless otherwise required by the context:

- (1) The word “admission” means the right or privilege to enter into or use a place or location;
- (2) The word “place” means any definite enclosure or location; and
- (3) The word “person” means individual, partnership, corporation, association, or organization of any kind whatsoever.

In summary, the admissions tax is imposed upon the paid right or privilege to enter into or use a place of amusement.

The admissions tax statute defines the word “admissions”; however, it does not elaborate as to what constitutes a “paid admissions.” It has been the longstanding policy of the Department to tax for admissions tax purposes only that portion of a property owners’ assessment that represents the price of the admissions. (A property owners’ assessment is one that typically allows the property owner access to, and use of, places of amusements within a real estate development, pays the costs of maintaining and operating these places of amusement, and also pays the costs of maintaining and improving the common areas and providing security for the real estate development.)

The Department’s longstanding method of calculating the taxable portion of a property owners’ assessment is described by the Administrative Law Court in *Savannah Lakes Village Club, Inc v. South Carolina Department of Revenue*, 97-ALJ-17-0286-CC (S.C. Admin. L.Ct., filed March 11, 1998), as follows:

19. The Department assessed dues paid for the use and enjoyment of the golf course and country club. Since the membership dues paid to Taxpayer also provide funding for nontaxable amenities, the Department calculated the portion subject to admissions tax in the following manner:

- a. The Taxpayer provided cash flow statements for the years 1991 through 1993. The cash flow statements indicated no allocation of monthly dues to the various amenities. Taxpayer identified operating expenses on the cash flow statements attributable to the golf course and country club.
- b. For each year under audit, the Department developed a percentage of the operating expenses attributable to the golf course and country club by dividing the operating expenses identified by Taxpayer as being attributable to the golf course and country club by the total amount of operating expenses of the Taxpayer.

c. The total amount of dues received for each respective year was then reduced by the applicable admissions tax.² The percentage described above was then applied to this total to determine the portion of the dues paid for the use and enjoyment of the golf course and country club.

20. The Department has used this method of apportioning taxable membership dues consistently in other cases.

Administrative interpretation of statutes by the agency charged with their administration and not changed by the legislative body are entitled to great weight. *Marchant v. Hamilton*, 297 S.C. 497, 309 S.E.2d 781 (1983). When as in this case, the construction or administrative interpretation of a statute has been applied for a number of years and has not been changed by the legislature, there is created a strong presumption that such interpretation or construction is correct. *Ryder Truck Lines, Inc. v. South Carolina Tax Commission*, 248 S.C. 148, 149 S.E.2d 435 (1966); *Etiwan Fertilizer Company v. South Carolina Tax Commission*, 217 S.C. 354, 60 S.E. 2d 682 (1950).

Based on the above, it is the opinion of the Department that since a portion of the homeowners' membership assessment for XYZ is used to maintain common areas unassociated with the places of amusements (*e.g.*, security, landscaping and road maintenance), only the portion of the homeowners' membership assessment that allows homeowners entrance to, and use of, the places of amusements maintained and operated by XYZ is subject to the admissions tax.

The determination as to what portion of the homeowners' membership assessment for XYZ allows homeowners entrance to, and use of, the places of amusements and is subject to the admissions tax is calculated as follows:

1. Determine a percentage by dividing all the expenses (direct and indirect) associated with all places of amusement for which the assessment is paid by the total expenses (direct and indirect) of XYZ.
2. Apply the above percentage to the total monthly homeowners' membership assessment.³
3. The result is the portion of the homeowners' membership assessment for XYZ that allows homeowners entrance to, and use of, the places of amusements.

² This step is only necessary if the admissions tax is not separately stated from the admissions price on the bill to the property owner.

³ Since XYZ separately states the admissions tax on its invoices to homeowners, it is not necessary to reduce the monthly homeowners' membership assessment by the admissions tax as was described in the "Findings of Fact" in the Administrative Law Court decision in *Savannah Lakes Village Club, Inc. v. South Carolina Department of Revenue*, 97-ALJ-17-0286-CC (S.C. Admin. L.Ct., filed March 11, 1998).

Note: The portion of security, landscaping and road maintenance expenses associated with any places of amusement must be included in the expenses (direct and indirect) associated with all places of amusement for which the assessment is paid.

SOUTH CAROLINA DEPARTMENT OF REVENUE

s/Ray N. Stevens

Ray N. Stevens, Director

March 16 _____, 2009
Columbia, South Carolina