

SC REVENUE RULING # 04-8

- SUBJECT:** Fundraising Events by Nonprofit Organizations
(Sales Tax, Admissions Tax, ABC)
- EFFECTIVE DATE:** Applies to all periods open under the statute.
- SUPERSEDES:** All previous documents and any oral directives in conflict herewith.
- REFERENCES:** S. C. Code Ann. Section 12-36-90 (2000; Supp. 2003)
S. C. Code Ann. Section 12-36-910 (2000; Supp. 2003)
S. C. Code Ann. Section 12-36-2120(41) (Supp. 2003)
S. C. Code Ann. Section 12-36-70 (2000)
S. C. Code Ann. Section 40-6-370 (Supp. 2003)
S. C. Code Ann. Section 12-21-2410 (2000)
S. C. Code Ann. Section 12-21-2420 (2000; Supp. 2003)
S. C. Code Ann. Section 61-6-500 (Supp. 2003)
S. C. Code Ann. Section 61-6-510 (Supp. 2003)
S. C. Code Ann. Section 61-6-2000 (Supp. 2003)
S. C. Code Ann. Section 61-4-550 (Supp. 2003)
S. C. Code Ann. Section 61-4-240 (Supp. 2003)
S. C. Code Ann. Section 61-6-1620(B) (Supp. 2003)
SC Regulation 7-403 (Supp. 2003)
- AUTHORITY:** S. C. Code Ann. Section 12-4-320 (2000)
S. C. Code Ann. Section 1-23-10(4) (Supp. 2003)
SC Revenue Procedure #03-1
- SCOPE:** The purpose of a Revenue Ruling is to provide guidance to the public and to Department personnel. It is a written statement issued to apply principles of tax law to a specific set of facts or a general category of taxpayers. **A Revenue Ruling is an advisory opinion; it does not have the force or effect of law and is not binding on the public.** It is, however, the Department's position and is binding on agency personnel until superseded or modified by a change in statute, regulation, court decision, or advisory opinion.

INTRODUCTION:

Questions have arisen concerning the application of the sales tax, admissions tax and the alcoholic beverage laws to fundraisers conducted by charities.

Such fundraisers may invite anyone who contributes \$1,000 or more or may be promoted as a \$1,000 per plate fundraising dinner. Other fundraisers may sell food or other items at or near the market rate and use the amount over and above costs for the organization's charitable purpose.

The following will discuss the law and, based on this discussion, provide examples in a question and answer format in order to explain the application of the sales tax, admissions tax, and the alcoholic beverage laws to such fundraisers.

LAW AND DISCUSSION:

SALES TAX:

Code Section 12-36-910 imposes "a sales tax, equal to five percent of gross proceeds of sales, ... upon every person engaged . . . within this State in the business of selling tangible personal property at retail."

The measure of the sales tax, "gross proceeds of sales," is defined at Code Section 12-36-90, in part, as:

... the value proceeding or accruing from the sale, lease, or rental of tangible personal property.

(1) The term includes:

* * * *

- (b) the proceeds from the sale of tangible personal property without any deduction for:
 - (i) the cost of goods sold;
 - (ii) the cost of materials, labor, or service;
 - (iii) interest paid;
 - (iv) losses;
 - (v) transportation costs;
 - (vi) manufacturers or importers excise taxes imposed by the United States; or
 - (vii) any other expenses.

In reviewing the above code sections, it appears that the entire charge may be subject to the sales tax. Such a conclusion appears to be consistent with previous court cases and Commission Decisions. [See Meyers Arnold v. South Carolina Tax Commission, 285 S.C. 303, 328 S.E. 2d 920 (1985 App.) (lay away fees for lay away sales); Regency Towers Association, Inc. v. South

Carolina Tax Commission, Horry County Court of Common Pleas, Case No. 88-CP-26-1109 (1989) (maid service at a hotel); and Commission Decisions #90-38 and #91-64 (engraving charges as part of the sale of trophies).] These cases and decisions concerned whether or not certain services incidental to, or associated with, the sale of tangible personal property should be included in “gross proceeds of sales.”

The so-called “true object” test is generally used to delineate sales of services from sales of tangible personal property. Applying this test to the matter at hand, it must be determined whether the meal or the donation is the true object of these fundraisers.

If the meal is the true object, then the donation is incidental to the sale of the meal and the entire charge for the ticket would be subject to the sales tax. If the true object of the transaction is to make a donation to charity, then the meal would be incidental to the donation and the amount received would not be subject to the sales tax.

The “true object” test is best described in 9 Vanderbilt Law Review 231 (1956), wherein it is stated:

The true test then is one of basic purpose of the buyer. When the product of the service is not of value to anyone other than the purchaser, either because of the confidential character of the product, or because it is prepared to fit the purchaser’s special need - a contract or will prepared by a lawyer, or the accident investigation report prepared for an insurance company - this fact is evidence tending to show that the service is the real purpose of the contract. When the purpose of the contract is to produce an article which is the true object of the agreement, the final transfer of the product should be a sale, regardless of the fact that special skills and knowledge go into its production. Under this analysis, printing work, done on special order, and of significant value only to the particular customer, is still a sale. The purchaser is interested in the product of the services of the printer, not in the services per se. Similarly, it would seem that contracts for custom-produced articles, be they intrinsically valuable or not, should be classified as sales when the product of the contract is transferred.

The Vanderbilt Law Review article, in quoting Snite v. Department of Revenue, 398 Ill. 41, 74 N.E. 2d. 877 (1947), also establishes the following general rule:

If the article sold has no value to the purchaser except as a result of services rendered by the vendor, and the transfer of the article to the purchaser is an actual and necessary part of the services rendered, then the vendor is engaged in the business of rendering service, and not in the business of selling at retail. If the article sold is the substance of the transaction and the service rendered is merely incidental to and an inseparable part of the transfer to the purchaser of the article sold, then the vendor is engaged in the business of selling at retail, and the tax which he pays . . . [is measured by the total cost of the article and services]. If the service rendered in connection with an article does not enhance its value and there is a fixed or ascertainable relation between the value of the article and the value of the service rendered in connection therewith, then the vendor is engaged in the business of selling at retail and also engaged in the business of furnishing service, and is subject to tax as to the one business and tax exempt as to the other.

While the above quotes do not establish rigid rules, they do provide general guidance in determining the purpose of a transaction, and are particularly helpful in addressing the issues at hand.

Code Section 12-36-2120(41) exempts from the sales and use tax sales made by certain nonprofit organizations. The statute exempts:

items sold by organizations exempt under Section 12-37-220 A(3) and (4) and B(5), (6), (7), (8), (12), (16), (19), (22), and (24) if the net proceeds are used exclusively for exempt purposes and no benefit inures to any individual. An organization whose sales are exempted by this item is also exempt from the retail license tax provided in Article 5 of this chapter;

To simplify the administration of the exemption (Code Section 12-36-2120(41)), organizations should complete and file Form ST-387– Application for Sales Tax Exemption under Code Section 12-36-2120(41), "Exempt Organizations."

The statute does not require an organization to obtain an exemption certificate in order to purchase items exempt under this exemption. However, the Department recommends that organizations apply for the exemption certificate. If an organization is issued a certificate, this will simplify for the organization the purchase from suppliers of items tax-free for resale. Otherwise, suppliers may be reluctant to sell items tax-free (for resale) to an organization that does not have a retail license or does not have some other documentation showing that it qualifies for the exemption. The exemption certificate assures the supplier that the SC Department of Revenue has reviewed the matter and determined, based on information supplied with the application, that the organization qualifies for the exemption and that the supplier may sell items tax-free for resale to the organization. However, it should be noted that if it is determined that an organization does not meet the requirements of the statute or is not otherwise operating in an exempt manner, then the certificate will not be issued or will be revoked if previously issued.

Nonprofit organizations coming within the exemption are:

- (1) public libraries and churches;
- (2) charitable trusts and foundations used exclusively for charitable and public purposes;
- (3) The American Legion, the Veterans of Foreign Wars, the Spanish American War Veterans, the Disabled American Veterans, and Fleet Reserve Association or any similar Veterans Organization chartered by the Congress of the United States;
- (4) The Young Women's Christian Association, Young Men's Christian Association and the Salvation Army;
- (5) The Boy's and Girl's Scouts of America;

- (6) The Palmetto Junior Homemakers Association, the New Homemakers of South Carolina, the South Carolina Association of Future Farmers of America and the New Farmers of South Carolina;
- (7) Any religious, charitable, eleemosynary, educational, or literary society, corporation, or other association;
- (8) Volunteer Fire Departments and Rescue Squads;
- (9) All community owned recreation facilities opened to the general public and operated on a nonprofit basis; and,
- (10) nonprofit or eleemosynary community theater companies, symphony orchestras, county and community arts councils and commissions and other such companies, which is used exclusively for the promotion of the arts.

Note, this exemption only applies to sales or purchases for resale by the above nonprofit organizations. Purchases of property used by such nonprofit organizations (i.e., computers, furniture, supplies, etc.) do not come within the exemption.

Finally, with respect to auctioneers, Code Section 12-36-70 defines the term “retailer” to include every person “selling or auctioning tangible personal property whether owned by the person or others.” In addition, Code Section 40-6-370 states that the provisions Chapter 6 of Title 40, which governs auctioneers, apply to auctions conducted by a licensed auctioneer on behalf of a charitable, civic, or religious organization. As such, a licensed auctioneer is liable for the sales tax on the “gross proceeds of sales” of the items sold at an auction he is conducting on behalf of a nonprofit organization, whether or not he is donating his time and expertise, if the licensed auctioneer is engaged in the business of selling tangible personal property at retail¹ or is conducting the auction on behalf of his employer (e.g. an auction house) who is engaged in the business of selling tangible personal property at retail. However, if a nonprofit organization does not use a licensed auctioneer, or uses a licensed auctioneer who is not engaged in the business of selling tangible personal property at retail, then the nonprofit organization is liable for the sales tax on such sales unless the nonprofit organization qualifies for the exemption from the tax under Code Section 12-36-2120(41).

ADMISSIONS TAX:

Code Section 12-21-2410 reads:

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

¹ A licensed auctioneer who only works as an employee for an auction house is not engaged in the business of selling at retail. The auction house is the retailer.

- (3) The word "person" means individual, partnership, corporation, association or organization of any kind whatsoever.

Code Section 12-21-2420 reads, 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 tax imposed by this section shall be paid by the person or persons paying such admission price . . .

In summary, the tax is upon "paid admissions" and the person paying the admission is the taxpayer with respect to the tax, whether that person is an individual, a partnership, or corporation. Furthermore, "paid admissions" constitute the amounts paid by patrons to enter into or use a place of amusement.

Over the years, the Department of Revenue has reviewed several times the issue of what charges are includable in "paid admissions." Essentially, the determination is based on what the patron must pay to enter into or use a place of amusement.

Therefore, we must determine whether or not a person is paying to enter into or use a place of amusement when considering the application of the admissions tax to fundraising events.

Code Section 12-21-2420(4) exempts from the admissions tax:

... admissions charged by any eleemosynary and nonprofit corporation or organization organized exclusively for religious, charitable, scientific, or educational purposes; or the presentation of performing artists by an accredited college or university; provided, that the license tax herein levied and assessed shall be collected and paid upon all paid admissions to all athletic events of any institution of learning above the high school level; provided, however, that carnivals, circuses, and community fairs operated by eleemosynary or nonprofit corporations or organizations organized exclusively for religious, charitable, scientific, or educational purposes shall not be exempt from the assessment and collection of admissions tax on charges for admission for the use of or entrance to rides, places of amusement, shows, exhibits, and other carnival facilities, but not to include charges for general gate admissions except when the proceeds of any such carnival, circus, or community fair are donated to a hospital; provided, further, that no admissions tax shall be charged or collected by reason of any charge made to any member of a nonprofit organization or corporation for the use of the facilities of the organization or corporation of which he is a member.

Code Section 12-21-2420(11) exempts from the admissions tax:

... admissions to events other than those events enumerated in item (4) of this section, sponsored and operated exclusively by eleemosynary, nonprofit corporations or organizations organized exclusively for religious, charitable, scientific, civic, fraternal, or

educational purposes when the net proceeds derived from admissions to the events shall be immediately donated to an organization operated exclusively for charitable purposes. The term “net proceeds” shall mean the portion of the gross admissions proceeds remaining after necessary expenses of the event have been paid. This item shall not apply to an event in which the above organizations receive a percentage of gross proceeds or a stated fixed sum for the use of its name in promoting the event.

Nonprofit organizations qualifying for this exemption may apply for an exemption certificate using Form L-2068.

ALCOHOLIC BEVERAGE LAWS:

The following code sections concern the issuance of temporary licenses or permits with respect to the possession, sale, and consumption of alcoholic liquors, beer, and wine at fundraisers conducted by nonprofit organizations. The statutes concerning alcoholic liquors will address either the possession, sale, and consumption of liquor in containers larger than two ounces (“big bottles”) or the possession, sale, and consumption of liquor in containers equal to or less than two ounces (“minibottles”).

Please note that some of the code sections discussed below permit the possession and consumption of alcoholic liquors, beer and wine, but do not permit the sale of these beverages. In determining which permit, if any, a nonprofit organization must obtain, it is important whether or not the alcoholic liquor, beer, or wine will be sold. For purposes of the ABC laws, alcoholic liquor, beer, or wine is sold if there is a per drink charge, if an admissions fee is charged to enter a place or event where these beverages are provided, if a donation is accepted with respect to the event where these beverages are provided, if tickets are sold with respect to the event where these beverages are provided, if such beverages are provided as part of a meal for which consideration, direct or indirect, is accepted or required, or if any consideration is accepted or required with respect to the event where these beverages are provided. In addition, please note that the temporary permits discussed below that allow the sale, possession and consumption of alcoholic liquors, beer, and wine may be issued for use in any designated area of a commercial establishment, whether or not such area is within a licensed establishment for the sale and consumption of such beverages (i.e. a meeting room in a licensed restaurant or a ballroom in a licensed hotel), or in a private residence.

Sale of Beer and Wine at Fairs and Special Functions: Code Section 61-4-550 concerns the sale of beer and wine and states:

The department may issue permits running for a period not exceeding fifteen days for a fee of ten dollars per day. Such special permits shall be issued only for locations at fairs and special functions.

Beer or Wine Provided Without Charge: When a function is held in an unlicensed premises, a permit is not necessary if a nonprofit organization provides beer or wine at the function free of charge or free of any consideration whatsoever. However, a permit may be required under local law and the nonprofit organization should contact the local municipality or county to determine if a permit is required. Please see the introduction to this section, “Alcoholic Beverage Laws,” for a discussion of what constitutes consideration under the ABC laws.

Possession and Consumption of Alcoholic Liquors from Big Bottles at a Private Function:

Code Section 61-6-1620(B) concerns the possession and consumption of liquor from big bottles and states:

Alcoholic liquors may be possessed or consumed in separate and private areas of an establishment whether or not the establishment includes premises which are licensed pursuant to Sections 61-6-1600 or 61-6-1610, where specific individuals have leased these areas for a function not open to the general public.

With respect to Code Section 61-6-1620(B), Regulation 7-403, which concerns the possession and consumption of alcoholic liquors from big bottles in a separate and private area of an establishment, states:

A. Lease must be written. When a separate and private area of an establishment is leased by a holder of a sale and consumption license to a specific individual or individuals for a function not open to the general public pursuant to Section 61-6-1620(B), the terms of the lease agreement shall be reduced to writing and a copy of that instrument shall be retained by the licensee upon the licensed premises.

B. Purchase, Delivery and Possession of Alcoholic Beverages. When a separate and private area of an establishment is leased by a specific individual or individuals for a function not open to the general public pursuant to Section 61-6-1620(B), the host or sponsor of said function, or the designated agent or representative of said host or sponsor must purchase and deliver to the leased area any alcoholic beverages to be possessed and consumed therein and must remain constantly in actual possession of these beverages until such time as the function is concluded, at which time all alcoholic beverages must be removed from the leased area and taken to a location where they may be legally stored. Nothing contained herein shall prohibit the host or sponsor or his designated agent or representative from having other persons, whether employed by the licensee or employed by the host or his agent or representative, from mixing and serving alcoholic beverages belonging to the host of the party.

C. Termination of Lease. In the event that the area leased pursuant to Section 61-6-1620(B), is located upon the premises of an establishment holding either a sale and consumption license or a retail beer and wine permit, the lease agreement shall automatically terminate at two o'clock in the morning. To permit or knowingly allow the possession and consumption of any alcoholic beverages upon the premises of the establishment after two o'clock in the morning shall constitute a violation against the license or permit. Such violation shall constitute sufficient cause for the South Carolina Department of Revenue to revoke or suspend said license or permit.

At any event where alcoholic liquor is possessed and consumed under the provisions of the above regulation, beer and wine may also be possessed and consumed.

Possession, Sale, and Consumption of Liquor from Minibottles: Code Section 61-6-2000 concerns the possession, sale, and consumption of liquor from minibottles. This section also applies to beer and wine pursuant to the provisions of Code Section 61-4-240 (see below). Code Section 61-6-2000 states:

In addition to the minibottle licenses authorized under subarticle 1 of this article, the department may also issue a temporary license for a period not to exceed twenty-four hours to nonprofit organizations which authorizes these organizations to purchase and sell at a single social occasion alcoholic liquors in minibottles. Notwithstanding any other provision of this article, the issuance of this permit authorizes the organization to purchase alcoholic liquors in minibottles from licensed retail dealers in the same manner that persons with biennial minibottles licenses are authorized to make these purchases. The fee for the permit is thirty-five dollars payable at the time of application. The permit application must include a statement by the applicant as to the amount of alcoholic liquors to be purchased and the nature and date of the social occasion at which they are sold. The issuance or nonissuance of permits authorized under this section is within the sole discretion of the department.

Possession and Consumption of Liquor from Big Bottles at a Publicly Owned Auditorium, Coliseum, or Armory: Code Sections 61-6-500 concerns the possession and consumption of liquor from big bottles. Code Section 61-6-500 states:

(A) Notwithstanding any other provision of law, the authorities in charge of a publicly-owned auditorium, coliseum, or armory may allow the possession and consumption of beer, wine, and alcoholic liquors on their premises.

(B) It is unlawful for a person to possess or consume beer, wine, or alcoholic liquors on the premises of a publicly-owned auditorium, coliseum, or armory unless the authorities in charge specifically have approved the possession or consumption of those beverages. A person who violates the provisions of this section is guilty of a misdemeanor and, upon conviction, must be fined not more than one hundred dollars or imprisoned not more than thirty days.

Possession, Sale, and Consumption of Liquor from Big Bottles: Code Section 61-6-510 concerns the possession, sale, and consumption of liquor from big bottles. This section also applies to beer and wine pursuant to the provisions of Code Section 61-4-240 (see below). Code Section 61-6-510 states:

The department may issue a temporary permit to allow the possession, sale, and consumption of alcoholic liquors. This permit is valid for a period not to exceed twenty-four hours, and may be issued only to bona fide nonprofit organizations that have been in existence and operating for at least twelve months before the date of application, to nonprofit educational foundations, and to political parties and their affiliates duly certified by the Secretary of State. The department must charge a nonrefundable filing fee of thirty-five dollars for processing each application. The department in its discretion must specify the terms and conditions of the permit. For purposes of this section, “nonprofit organization” means an organization not open to the general public, but with a limited membership and established for social, benevolent, patriotic, recreational, or fraternal purposes.

Sale of Beer and Wine: Code Sections 61-6-2000 and 61-6-510 only allow the sale of liquor. So the question arises as to whether beer or wine may be sold at these same functions. This is addressed in Code Section 61-4-240, which allows beer and wine to be sold at these functions upon the issuance of a temporary permit for the sale of beer and wine.

CONCLUSIONS:

The following will explain, through examples, the application of the sales tax, admissions tax, and alcoholic beverage laws to fundraising events conducted by a nonprofit organization:

Example 1:

Facts:

A nonprofit organization holds a \$1,000 a plate function to raise money for a specific purpose. At this function, persons paying the \$1,000 will be served a meal and will listen to a speech by a famous person. A professional caterer will provide the meal and will be paid \$20 a plate by the nonprofit organization. Alcoholic liquors (poured from big bottles), beer, and wine will be provided by the nonprofit organization and will be available at no additional charge for any person of legal drinking age.

Answer:

Sales Tax: The caterer, as a retailer, must have a retail license and is liable for the sales tax on the “gross proceeds of sales” of all the meals charged at \$20 a plate to the nonprofit organization. The \$1,000 paid to the nonprofit organization by the persons attending the fundraiser is a charitable contribution for sales tax purposes and is not consideration received from the sale of tangible personal property.

Admissions Tax: The \$1,000 paid to the nonprofit organization by the persons attending the fundraiser is a charitable contribution and is not a charge to enter into and use a place of amusement. As such, it is not subject to the admissions tax

Alcoholic Beverage Laws: The nonprofit organization must obtain the temporary permits authorized under Code Sections 61-6-510 (alcoholic liquors) and 61-4-240 (beer and wine) in order to allow the possession, sale, and consumption of alcoholic liquors, beer, and wine at the fundraiser. This temporary permit only applies to those nonprofit organizations falling within the definition of “nonprofit organization” as set forth in Code Section 61-6-510 or those nonprofit organizations that constitute a nonprofit education foundation.

If the nonprofit organization does not qualify for the temporary permit under Code Section 61-6-510, then the nonprofit organization may obtain the temporary permits authorized under Code Sections 61-6-2000 (alcoholic liquors) and 61-4-240 (beer and wine) in order to allow the possession, sale, and consumption of alcoholic liquors via minibottles and beer and wine at the fundraiser.

Example 2:

Facts:

A nonprofit organization is conducting a social. For \$50.00 a person, members and guests will receive a meal and will be entertained by, and be able to dance to the music of, a local band. Alcoholic liquors (poured from big bottles), beer, and wine will be provided by the nonprofit organization and will be available at an additional charge for any person of legal drinking age.

Answer:

Sales Tax and Admissions Tax: The nonprofit organization, as the retailer, must have a retail license and is liable for the sales tax on the “gross proceeds of sales” of the portion of the charge representing the meal and the drinks (alcoholic liquors, beer, wine, etc.) and is liable for the admissions tax on the portion of the charge representing the admissions charge. See SC Private Letter Ruling #92-5 for information and an example of a charge subject to both the sales tax and the admissions tax.

However, if the nonprofit organization qualifies for the exemption under Code Section 12-36-2120(41), the sale of the meals by the nonprofit organization to its members and visitors will not be subject to the sales tax provided the nonprofit organization has applied for and received an exemption certificate from the department. Nonprofit organizations that have obtained the exemption certificate are not required to obtain a retail sales tax license. See SC Revenue Procedure #03-6 for more information concerning the sales tax exemption under Code Section 12-36-2120(41).

Also, if the organization and the transaction qualify for the exemption under Code Section 12-21-2420, the admissions charged by the nonprofit organization will not be subject to the admissions tax². A nonprofit organization may seek a determination as to whether it qualifies for the admission tax exemption under Code Section 12-21-2420 by completing the Application for Admissions Tax Exemption - Form L-2068.

Alcoholic Beverage Laws: The nonprofit organization must obtain the temporary permits authorized under Code Sections 61-6-510 (alcoholic liquors) and 61-4-240 (beer and wine) in order to allow the possession, sale, and consumption of alcoholic liquors, beer, and wine at the fundraiser. This temporary permit only applies to those nonprofit organizations falling within the definition of “nonprofit organization” as set forth in Code Section 61-6-510 or those nonprofit organizations that constitute a nonprofit education foundation.

If the nonprofit organization does not qualify for the temporary permit under Code Section 61-6-510, then the nonprofit organization may obtain the temporary permits authorized under Code Sections 61-6-2000 (alcoholic liquors) and 61-4-240 (beer and wine) in order to allow the possession, sale, and consumption of alcoholic liquors via minibottles and beer and wine at the fundraiser.

² In addition to exempting nonprofit organizations organized exclusively for religious, charitable, scientific and educational purposes, Code Section 12-21-2420(4) also exempts charges made by a nonprofit organization, such as a nonprofit private country club, to its members for the use of its facilities. It should be noted that this exemption does not apply to charges to non-members (e.g., visitors).

Example 3:

Facts:

A nonprofit organization is conducting a social. For \$100.00 a person, members and guests will receive a meal and will be entertained by, and be able to dance to the music of, a local band. The \$100 is not for the purposes of raising money, but is being charged for the purposes of covering the costs of the social. Alcoholic liquors will be sold for an additional charge per drink via minibottles. Beer, and wine will also be sold for an additional charge per drink.

Answer:

Sales Tax and Admissions Tax: The nonprofit organization, as the retailer, must have a retail license and is liable for the sales tax on the “gross proceeds of sales” of the portion of the \$100 charge representing the meal and is liable for the admissions tax on the portion of the \$100 charge representing the admissions charge. The separate charges for the drinks (alcoholic liquors, beer, and wine) are also subject to the sales tax. See SC Private Letter Ruling #92-5 for information and an example of a charge subject to both the sales tax and the admissions tax.

However, if the nonprofit organization qualifies for the exemption under Code Section 12-36-2120(41), the sale of the meals by the nonprofit organization to its members and visitors will not be subject to the sales tax provided the nonprofit organization has applied for and received an exemption certificate from the department. Nonprofit organizations that have obtained the exemption certificate are not required to obtain a retail sales tax license. See SC Revenue Procedure #03-6 for more information concerning the sales tax exemption under Code Section 12-36-2120(41).

Also, if the organization and the transaction qualify for the exemption under Code Section 12-21-2420, the admissions charged by the nonprofit organization will not be subject to the admissions tax³. A nonprofit organization may seek a determination as to whether it qualifies for the admission tax exemption under Code Section 12-21-2420 by completing the Application for Admissions Tax Exemption - Form L-2068.

Alcoholic Beverage Laws: The nonprofit organization must obtain the temporary permits authorized under Code Sections 61-6-2000 (alcoholic liquors) and 61-4-240 (beer and wine) in order to allow the possession, sale, and consumption of alcoholic liquors via minibottles and beer and wine at the fundraiser.

Example 4:

Facts:

A church seeks to raise money for its youth programs. Each week the church holds a fellowship dinner. Members and visitors pay \$5.50 per meal. Alcoholic liquors, beer, and wine will not be provided or available at this event. The cost per meal to the church is \$4.50. As such, \$1.00 of every meal is deposited into a special church fund to pay for the youth programs.

³ See footnote #2.

Answer:

Sales Tax: The church, as the retailer, is liable for the sales tax on the “gross proceeds of sales” of all the meals charged at \$5.50 a meal to the members and visitors. The church may purchase prepared meals, or foodstuffs used to prepare the meals, tax free since such items will be resold to the members and visitors or constitute ingredients or component parts of the meal being sold by the church.

However, if the church qualifies for the exemption under Code Section 12-36-2120(41), the sale of the meals by the church to its members and visitors will not be subject to the sales tax provided the church has applied for and received an exemption certificate from the department. Churches that have obtained the exemption certificate are not required to obtain a retail sales tax license. See SC Revenue Procedure #03-6 for more information concerning the sales tax exemption under Code Section 12-36-2120(41).

Admissions Tax: The admission tax is not applicable to this example.

Alcoholic Beverage Laws: The alcoholic beverage laws are not applicable to this example.

Example 5:

Facts:

A church seeks to raise money for its youth programs. Each week the church holds a show (e.g., a puppet show, play) for pre-schoolers and others. Members and visitors pay \$1.00 to see the show. The money received is deposited into a special church fund to pay for the youth programs.

Answer:

Sales Tax: The sales tax is not applicable to this example.

Admissions Tax: The \$1.00 paid to the church by the persons attending the show is a charge to enter into and use a place of amusement. However, since the church qualifies for the exemption under Code Section 12-21-2420(4), the admissions price charged by the church will not be subject to the admissions tax.

Alcoholic Beverage Laws: The alcoholic beverage laws are not applicable to this example.

Example 6:

Facts:

A nonprofit organization is conducting a private event for invited guests only. No donation, entrance fee, or consideration of any kind will be required of the guests. The guests will receive a meal and alcoholic liquors, beer, and wine will be provided. No donation or consideration of any kind will be accepted or required.

Answer:

Sales Tax: The nonprofit organization is not selling a meal or drinks and therefore is the user and consumer of the drinks and foodstuffs purchased to prepare the meal or the prepared meal if such a meal is purchased from a caterer. Therefore, the retailer selling the drinks, foodstuffs or prepared meal to the nonprofit organization must have a retail license and is liable for the sales tax on the “gross proceeds of sales” from the sale of the drinks, foodstuffs, or prepared meals. Please note that since the nonprofit organization is not selling the drinks or meal, the exemption under Code Section 12-36-2120(41) does not apply.

Admissions Tax: The admission tax is not applicable to this example.

Alcoholic Beverage Laws: The nonprofit organization may do one of the following:

(a) Alcoholic liquors, beer, and wine may be possessed or consumed in separate and private areas of an establishment whether or not the establishment includes premises which are licensed pursuant to Sections 61-6-1600 or 61-6-1610, where specific individuals have leased these areas for a function not open to the general public. Regulation 7-403 establishes the rules for conducting a private function at which alcoholic liquors will be served and at which no donations are accepted or consideration required. The nonprofit organization in this example may conduct this function without obtaining a permit for alcoholic liquors, beer, or wine provided the location and the host of the private function comply with the provisions of Regulation 7-403.

(b) Alcoholic liquors, beer, and wine may be possessed or consumed in a private residence.

(c) If the event will be held at a publicly owned auditorium, coliseum, or armory, the public authority in charge of the facility must specifically have approved the possession or consumption of those beverages on its premises. See Code Section 61-6-500 (alcoholic liquors). Since beer and wine will not be sold, a temporary permit is not necessary in order to possess and consume beer and wine at this function. In this case, the nonprofit organization is not required to obtain any temporary permits for the possession and consumption of alcoholic liquors, beer, and wine.

Example 7:

Facts:

A nonprofit organization will sell beer at a local festival in order to raise money.

Answer:

Sales Tax: The nonprofit organization, as the retailer, must have a retail license and is liable for the sales tax on the “gross proceeds of sales” of the beer.

However, if the nonprofit organization qualifies for the exemption under Code Section 12-36-2120(41), the sale of the beer by the nonprofit organization will not be subject to the sales tax provided the nonprofit organization has applied for and received an exemption certificate from

the department. Nonprofit organizations that have obtained the exemption certificate are not required to obtain a retail sales tax license. See SC Revenue Procedure #03-6 for more information concerning the sales tax exemption under Code Section 12-36-2120(41).

Admissions Tax: The admission tax is not applicable to this example.

Alcoholic Beverage Laws: The nonprofit organization must obtain the temporary permit authorized under Code Sections 61-4-550 (beer and wine) in order to allow the sale of the beer at the festival.

Example 8:

Facts:

A nonprofit organization will sell donated items at an auction to raise money. The nonprofit organization has secured the services of a licensed auctioneer who is engaged in the business of selling tangible personal property at retail. The licensed auctioneer may or may not be paid to conduct the auction.

Answer:

Sales Tax: Under the provisions of Code Section 12-36-70(1)(a), the licensed auctioneer is the retailer and must have a retail license. As such, the auctioneer is liable for the sales tax on the “gross proceeds of sales” of the items sold at the auction, even if the money collected at the auction is paid directly to the nonprofit organization.

Admissions Tax: The admission tax is not applicable to this example.

Alcoholic Beverage Laws: The alcoholic beverage laws are not applicable to this example. If alcoholic beverages are served at the auction, see the other examples for information on the type of permit, if any, that may be required under the ABC laws.

Example 9:

Facts:

A nonprofit organization will sell donated items at an auction to raise money. The nonprofit organization has secured the services of a licensed auctioneer who is not engaged in the business of selling tangible personal property at retail but who is employed by an auction house. The licensed auctioneer may or may not be paid to conduct the auction.

Answer:

Sales Tax:

(a) Under the provisions of Code Section 12-36-70(1)(a), the auction house is the retailer and must have a retail license if the licensed auctioneer is conducting the auction for the nonprofit

organization on behalf of the auction house (a retailer). As such, the auction house is liable for the sales tax on the “gross proceeds of sales” of the items sold at the auction, even if the money collected at the auction is paid directly to the nonprofit organization.

(b) If the licensed auctioneer is not conducting the auction on behalf of the auction house, then the nonprofit organization, as the retailer, must have a retail license and is liable for the sales tax on the “gross proceeds of sales” of the donated items. Since the licensed auctioneer is not engaged in the business of selling tangible personal property at retail outside of his work for his employer (the auction house), he is not the retailer. The nonprofit organization is the retailer.

However, if the nonprofit organization qualifies for the exemption under Code Section 12-36-2120(41), the sale of the donated items by the nonprofit organization will not be subject to the sales tax provided the nonprofit organization has applied for and received an exemption certificate from the department. Nonprofit organizations that have obtained the exemption certificate are not required to obtain a retail sales tax license. See SC Revenue Procedure #03-6 for more information concerning the sales tax exemption under Code Section 12-36-2120(41).

Note: If the licensed auctioneer is engaged in the business of selling tangible personal property at retail outside of his work for his employer (the auction house), then he is a retailer who must have a retail license. As such, if he is conducting an auction for a nonprofit organization, then he is liable for the sales tax on the “gross proceeds of sales” of the items sold at the auction (whether or not he is paid to conduct the auction), even if the money collected at the auction is paid directly to the nonprofit organization.

Admissions Tax: The admission tax is not applicable to this example

Alcoholic Beverage Laws: The alcoholic beverage laws are not applicable to this example. If alcoholic beverages are served at the auction, see the other examples for information on the type of permit, if any, that may be required under the ABC laws.

Example 10:

Facts:

A nonprofit organization will sell donated items at an auction to raise money. The nonprofit organization will not secure the services of a licensed auctioneer. A local television personality, who is not a licensed auctioneer, has agreed to conduct the auction.

Answer:

Sales Tax: The nonprofit organization, as the retailer, must have a retail license and is liable for the sales tax on the “gross proceeds of sales” of the donated items. Since a television personality conducting the auction is not a licensed auctioneer, the nonprofit organization is the retailer.

However, if the nonprofit organization qualifies for the exemption under Code Section 12-36-2120(41), the sale of the donated items by the nonprofit organization will not be subject to the sales tax provided the nonprofit organization has applied for and received an exemption

certificate from the department. Nonprofit organizations that have obtained the exemption certificate are not required to obtain a retail sales tax license. See SC Revenue Procedure #03-6 for more information concerning the sales tax exemption under Code Section 12-36-2120(41).

Admissions Tax: The admission tax is not applicable to this example.

Alcoholic Beverage Laws: The alcoholic beverage laws are not applicable to this example. If alcoholic beverages are served at the auction, see the other examples for information on the type of permit, if any, that may be required under the ABC laws.

Please note the following:

Longstanding Policy: The conclusions reached in the above examples also represent the longstanding policy of the department with respect to the application of the sales tax, admissions tax, and the alcoholic beverage laws to such fundraisers.

Administrative interpretations of statutes by the agency charged with their administration and not expressly changed by the legislative body are entitled to great weight. Marchant v. Hamilton, 279 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). See Statutes Key Nos. 219(3) & 223.5(2).

Other Facts and Circumstances: The application of the sales tax, admissions tax, and alcoholic beverage laws is determined by the facts and circumstances of a particular fundraiser. The intent of the parties, the market rate for the meal, entertainment, or other item being offered at the fundraiser, and other factors must be considered. In addition, all factors must be considered in determining whether or not an alcoholic beverage permit is required and the type of alcoholic beverage permit that may be required.

Applications: This advisory opinion references the following Departments of Revenue application forms. These application forms can be found on the Department's website at www.sctax.org under "Form and Instructions."

Form SCTC-111 - Business Tax Application. This application is used to apply for retail sales tax license. (After clicking on "Forms and Instructions, this form can be found by clicking on "Current Years Forms and Instructions" and then "Miscellaneous Forms.")

Form L-514 - Application for a license to operate a place of amusement. (After clicking on "Forms and Instructions, this form can be found by clicking on "Current Years Forms and Instructions" and then "License Tax Returns.")

Form ST-387 - Exemption application for nonprofit organizations that may be exempt from the sales tax with respect to their sales of tangible personal property. (After clicking on “Forms and Instructions, this form can be found by clicking on “Current Years Forms and Instructions” and then “Sales and Use Tax Returns.”)

Form L-2068 - Exemption application for nonprofit organizations that may be exempt from the admissions tax with respect to functions they sponsor. (After clicking on “Forms and Instructions, this form can be found by clicking on “Current Years Forms and Instructions” and then “License Tax Returns.”)

Form ABL 900 - Application for a temporary beer, wine, minibottle or alcoholic liquor license. (After clicking on “Forms and Instructions, this form can be found by clicking on “Current Years Forms and Instructions” and then “Alcoholic Beverage Licensing.”)

SOUTH CAROLINA DEPARTMENT OF REVENUE

s/Burnet R. Maybank III

Burnet R. Maybank III, Director

May 13, 2004
Columbia, South Carolina