
State of South Carolina
Department of Revenue
301 Gervais Street, P. O. Box 125, Columbia, South Carolina 29214

SC REVENUE RULING #96-8 (TAX)

SUBJECT: City and County Tourism and Restaurant Fees
(Sales Tax)

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

REFERENCE: S.C. Code Ann. Section 12-36-910 (Supp. 1995)
S.C. Code Ann. Section 12-36-920 (Supp. 1995)
S.C. Code Ann. Section 12-36-90 (Supp. 1995)

AUTHORITY: S.C. Code Ann. Section 12-4-320 (Supp. 1995)
SC Revenue Procedure #94-1

SCOPE: A Revenue Ruling is the Department of Revenue's official advisory opinion of how laws administered by the Department are to be applied to a specific issue or a specific set of facts, and is provided as guidance for all persons or a particular group. It is valid and remains in effect until superseded or modified by a change in the statute or regulations or a subsequent court decision, Revenue Ruling or Revenue Procedure.

Question:

Is a city or county tourism and restaurant fee, as described in the facts, charged by a restaurant or hotel to a customer includable in "gross proceeds of sales" and subject to the sales tax?

Conclusions:

A city or county tourism and restaurant fee charged by a restaurant or hotel to a customer is includable in "gross proceeds of sales" and subject to the sales tax **if the fee is imposed upon the retailer.**

A city or county tourism and restaurant fee charged by a restaurant or hotel to a customer is **not** includable in "gross proceeds of sales" and **not** subject to the sales tax **if the fee is imposed upon the customer and the retailer is merely a collection agent for the city or county.**

Facts:

Cities and counties are now imposing fees upon businesses that sell food and beverages or furnish sleeping accommodations for a fee. These fees are generally calculated as a percentage of the gross proceeds of sales of the foods and beverages or gross proceeds derived from

accommodations. Such businesses are usually required to collect these fees from their customers, but are still required to remit the fees to the city or county if they fail to collect it from their customers.

Questions have arisen as to whether these fees are includable in the gross proceeds of sales of the meals and accommodations, and therefore, are they subject to the State sales tax?

Discussion:

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." (Emphasis added.)

Code Section 12-36-920(A) imposes "a sales tax equal to seven percent on the gross proceeds derived from rental or charges for any rooms, campground spaces, lodgings, or sleeping accommodations furnished to transients by any hotel, inn, tourist court, tourist camp, motel, campground, residence, or any place in which rooms, lodgings, or sleeping accommodations are furnished to transients for a consideration." (Emphasis added.)

Code Section 12-36-90 defines "gross proceeds" and reads, in part:

Gross proceeds of sales, or any similar term, means 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 Meyers Arnold v. South Carolina Tax Commission, 285 S.C. 303, 328 S.E. 2d. 920 (1985), the Court of Appeals, in interpreting the definition of "gross proceeds of sales" with respect to lay away fees paid in conjunction with lay away sales, held:

Section 12-35-30 [now Section 12-36-90] defines gross proceeds of sales as "the value proceeding or accruing from the sale of tangible personal property ... without any deduction for service costs." But for the lay away sales, Meyers Arnold would not receive the lay away fees. The fees are obviously rendered in making lay away sales. For these reasons, this court holds the lay away fees are part of the gross proceeds of sales and subject to the sales tax.

The Commissioners, in Decision S-D-174, held a property damage waiver fee charged by a person engaged in the business of renting tangible personal property was subject to the sales tax. The Commission, in citing Meyers Arnold v. South Carolina Tax Commission, supra, stated:

Just as in Meyers Arnold, supra, the service fee here is taxable. But for the lease of tangible personal property, the taxpayer would not have received the fee. The fee is obviously charged for the additional service of providing a lease of property free from liability for damage. In the absence of such service, the lessee, under the taxpayer's lease agreements, would be "liable for any loss, theft, damage or destruction of leased property." We find and conclude the fee for the property damage waiver is part of gross proceeds of sale subject to tax.

In Decision S-D-127 the Commissioners held that "the amount in a lease contract equal to ad valorem taxes which is paid annually by the lessee to the lessor is includable in gross proceeds of sales."

Finally, a distinction must be made between local fees that are imposed upon the retailer and local fees that are imposed upon the customer. With respect to fees imposed upon the customer, the retailer is merely a collection agent for the local government that has enacted the fee by ordinance. As such, the fee the retailer is required to collect and hold in trust for the local government is not a receipt of the retailer. It is a receipt of the local government for whom the retailer is the collection agent. Therefore, local fees imposed upon the retailer's customers are not includable in "gross proceeds of sales."

A fee imposed upon the retailer is a receipt of the retailer. The retailer has the discretion to collect the fee from his customer, but he is not required to do so. As such, the fee when collected is a receipt of the retailer. When paid to the local government the fee is an expense of the retailer. Therefore, local fees imposed upon the retailer are includable in "gross proceeds of sales."

Therefore, the city and county fees in question, when imposed on the retailer, are part of gross proceeds of sales and therefore subject to the sales tax. [See also 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); Commission Decisions #90-38 and #91-64 (engraving charges as part of the sale of trophies); SC Revenue Ruling #93-1 (fueling and insurance charges

insurance charges as part of the rental of an automobile); SC Revenue Ruling #93-4 (computer software maintenance agreements as part of the sale of computer software); and SC Revenue Ruling #93-6 (extended warranties as part of the sale of tangible personal property).]

SC Revenue Ruling #96-8

SOUTH CAROLINA DEPARTMENT OF REVENUE

s/Burnet R. Maybank III
Burnet R. Maybank, III, Director

Columbia, South Carolina
June 12 _____, 1996

For questions concerning the city and county tourism and restaurant fees and the sales tax, please contact John P. McCormack at (803) 737-4438.