



STATE OF SOUTH CAROLINA
DEPARTMENT OF REVENUE
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SC INFORMATION LETTER #20-23

SUBJECT: Charges Imposed by Retailers Due to COVID-19
(Sales Tax)

DATE: August 5, 2020

AUTHORITY: S.C. Code Ann. Section 12-36-910 (2014)
S.C. Code Ann. Section 12-36-71 (Supp. 2019)
S.C. Code Ann. Section 1-23-10(4) (2005)
SC Revenue Procedure #09-3

SCOPE: An Information Letter is a written statement issued to the public to announce general information useful in complying with the laws administered by the Department. An Information Letter has no precedential value.

PURPOSE

As a result of the on-going COVID-19 pandemic, many retailers have implemented changes in their operations, reduced operating hours, and changed the method and type of products offered. In an effort to implement social distancing and public health and safety measures, businesses have made investments in personal protective equipment, new cleaning and sanitization measures, customer signage, shields at customer service areas, and employee safety training. In addition, certain retailers, such as restaurants, have expanded the use of outdoor dining, takeout, curbside services, and delivery services.

In order to recover a portion of the lost sales revenue during the pandemic or to recover some of the costs incurred to implement necessary health and safety measures, some retailers are increasing the sales price of items sold to consumers or may add a separate fee to a customer's bill, such as a COVID-19 surcharge or fee or a handling charge.

The purpose of this Information Letter is to remind retailers and consumers of the application of the sales and use tax to an additional COVID-19 surcharge or fee, a handling fee, a takeout charge, or similar charge.

South Carolina Sales Tax Requirements – General Rule under Code Sections 12-36-910(A) and 12-36-90

South Carolina law imposes a sales tax equal to 6% (plus applicable local sales tax) of the “gross proceeds of sales” upon every person engaged in South Carolina in the business of selling tangible personal property at retail. Gross proceeds of sales includes all value that comes from or is a direct result of the sale of tangible personal property. Therefore, under South Carolina law, a COVID-19 surcharge or fee, a handling fee, a takeout charge, or a similar fee charged by a retailer, as part of the sale of tangible personal property, is includable in gross proceeds of sales, and subject to the sales tax, unless otherwise exempt.

EXAMPLES

The examples provided below illustrate the state and local sales tax applicability to charges imposed by a retailer due to COVID-19.

Example 1 – Restaurant Adds a Separate COVID-19 Surcharge Fee to the Sales Price of Ready to Eat Meals

Restaurant X sells hot meals for dine-in or take out. Because of the increased inventory and operating costs due to the COVID-19 pandemic, X is temporarily adding a 10% COVID-19 surcharge to each order. Customer A purchases a meal for \$20. The customer is charged a \$2 COVID-19 surcharge. Since the COVID-19 surcharge is a part of the “gross proceeds of sales,” the basis or measure upon which the sales tax (state and applicable local tax) is calculated is \$22.

Example 2 – Restaurant Adds a Separate Carryout Fee to the Sales Price of Ready to Eat Meals

Restaurant Y’s dine-in service is limited because of social distancing measures and now has increased sales of meals for takeout or curbside pickup. Y adds a separate \$2 carryout fee to each meal to recover the cost of takeout supplies and new staff and food safety measures. Customer B is charged \$10 for the meal and a \$2 carryout fee. Since the additional fee is a part of the “gross proceeds of sales,” the basis or measure for calculating the applicable sales tax (state and applicable local tax) is \$12.

Example 3 – Restaurant Sells Frozen Meals for Curbside Pickup

Restaurant Z now sells frozen meals for takeout or curbside pickup. Z adds a separate \$2 carryout fee to each meal. Customer C is charged \$28 for a frozen casserole and a \$2 carryout fee. Restaurant Z is located in a county that imposes the “Local Option”¹ sales that does not exempt sales of unprepared food. Since the additional fee is a part of the “gross proceeds of sales,” the basis or measure upon which the sales tax is calculated is \$30.

¹ See Code Section 4-10-10.

The \$30 is exempt from the state sales tax, since the 6% state sales tax does not apply to the sale of “unprepared food” that lawfully may be purchased with US Department of Agriculture food coupons.² However, the \$30 is subject to the applicable local sales tax in the local jurisdiction in which the delivery of the meal occurred.

Note: The answer would be different if the local jurisdiction in which delivery of the meal occurred imposes a local sales tax that exempts the sale of unprepared food. For example, if Restaurant Z was located in a local jurisdiction which imposed a local sales tax that exempts sales of unprepared food (e.g., the “Capital Projects” tax), then the sale of the \$30 meal is exempt from both the state and the local sales taxes.³

See Example 1 for the applicable sales tax (state and local) on ready to eat meals also sold by Restaurant Z.

Example 4 – Restaurants Meals are Sold Via an Online Food Ordering, Payment, and Delivery Retailer (Marketplace Facilitator⁴) and Directly by the Restaurant

Restaurant R’s meals are now being sold through the website or mobile app of Company M, an online meal ordering, payment, and delivery company (i.e., a marketplace facilitator). Customer D orders a sandwich through Company M’s app and pays Company M \$20 via its mobile app (\$15 for the meal, \$4 delivery fee, and a \$1 COVID-19 surcharge). Company M’s employee picks up the meal from Restaurant R and delivers the meal to Customer D. Since the delivery fee and the COVID-19 surcharge are part of the “gross proceeds of sales,” the basis or measure upon which the sales tax (state and applicable local tax) is calculated is \$20. Company M, the marketplace facilitator, is the retailer, and is responsible for remitting the sales tax. Restaurant R has no sales tax responsibility for the sale of takeout meals sold through Company M.

Restaurant R is also continuing to sell meals at its retail location for dine-in or pickup by the customer for dining at home. Restaurant X is temporarily adding a \$1 COVID-19 surcharge to each meal. Customer B visits Restaurant R and purchases a ready to eat takeout meal for \$15. The customer is charged a \$1 COVID-19 surcharge. Since the COVID-19 surcharge is a part of the “gross proceeds of sales,” the basis or measure upon which the sales tax (state and applicable local tax) is calculated is \$16. Restaurant R is the retailer and is responsible for remitting the sales tax.

² See Code Section 12-36-2120(75), Regulation 117-337, “Sales of Unprepared Food” and SC Revenue Ruling #07-4, “Exemption for Unprepared Food.”

³ Local sales and use taxes may or may not be imposed on the sale of unprepared food. For information on which local sales and use taxes collected by the Department are imposed on sales of unprepared food, see SC Information Letter IL #20-2.

⁴ For additional information, see SC Revenue Ruling #19-6, “Marketplace Facilitators and Third Parties Whose Products are Sold Via a Marketplace – Guidance and Tax Obligations.”