

SC PRIVATE LETTER RULING #06-1

**SUBJECT:** DVD Movie Rentals Through Vending Machines  
(Sales & Use Taxes)

**REFERENCES:** S.C. Code Ann. Section 12-36-70 (2000)  
S.C. Code Ann. Section 12-36-100 (2000)  
S.C. Code Ann. Section 12-36-110 (2000)  
S.C. Code Ann. Section 12-36-910 (2000 & Supp. 2005)  
S.C. Code Ann. Section 12-36-1310 (Supp. 2005)  
SC Revenue Ruling #95-2

**AUTHORITY:** S.C. Code Ann. Section 12-4-320 (2000)  
S.C. Code Ann. Section 1-23-10(4) (2000)  
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set forth, and is binding on agency personnel only with respect to the person to whom it was issued and only until superseded or modified by a change in statute, regulation, court decision, or another Departmental advisory opinion, providing the representations made in the request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:

Are sales or rentals by ABC Company of movies in DVD format to customers, exclusively through the use of an automated DVD vending machine as described in the facts, subject to the sales tax?

Conclusion:

Sales or rentals by ABC Company of movies in DVD format to customers, exclusively through the use of an automated DVD vending machine as described in the facts, are not subject to the sales tax.

However, sales to, or purchases by, ABC Company of movies in DVD format for resale through automated DVD vending machines are subject to the sales and use tax.

Facts:

ABC Company owns and operates DVD-rental vending machines. The machines operate mechanically and allow customers to select movies for rental, pay for the rental via a credit card, take possession of the movies, and return the movies after viewing. The customer may either return the DVD to the machine or keep the DVD; in the latter case the customer will be charged the sales price of the DVD. The machines are checked and restocked by ABC Company on a regular basis. ABC Company executes agreements allowing it to place its machines within supermarkets in South Carolina. ABC Company does not engage in over-the-counter sales or rentals.

Discussion:

Code Section 12-36-910, which imposes the sales tax, provides:

(A) A sales tax, equal to five percent of the gross proceeds of sales, is imposed upon every person engaged or continuing within this State in the business of selling tangible personal property at retail.

Code Section 12-36-1310, which imposes the use tax, provides:

(A) A use tax is imposed on the storage, use, or other consumption in this State of tangible personal property purchased at retail . . . at the rate of five percent of the sales price of the property. . . .

Therefore, for either the sales tax or the use tax to apply, there must be a retail sale (purchase) of tangible personal property. The sales tax is imposed on the retail sale of tangible personal property and the use tax is imposed on the storage, use or consumption of tangible personal property that has been purchased at retail.

Leases of tangible personal property are considered “sales” for purposes of the sales and use taxes. Section 12-36-100 states, in part, as follows: “‘Sale’ and ‘purchase’ mean any transfer, exchange, or barter, conditional or otherwise, of tangible personal property for a consideration including . . . (2) a rental, lease, or other form of agreement. . . .” Further, Code Section 12-36-70 defines the terms “retailer” and “seller” to include every person “renting, leasing, or otherwise furnishing tangible personal property for a consideration.” See also *Edisto Fleets, Inc. v. South Carolina Tax Comm’n*, 256 S.C. 350, 182 S.E.2d 713 (1971) (the leasing of motor vehicles constituted taxable “sales”).

Although sales and use taxes generally apply to the sale of tangible personal property, in accordance with South Carolina statutes, the sale of property (except cigarettes and soft drinks in closed containers) through a vending machine does not constitute a retail sale. The terms “sale at retail” and “retail sale” are defined at Code Section 12-36-110, in part, to include “all sales of tangible personal property except those defined as wholesale sales. . . .” This specifically includes the following:

(g) sales of tangible personal property, other than cigarettes and soft drinks in closed containers, to vendors who sell the property through vending machines. *The vendors are deemed to be the users or consumers of the property. . . .*

S.C. Code Section 12-36-110 (Emphasis added). In SC Revenue Ruling #92-5, the Department relied on Section 12-36-110 in determining that vending machine vendors were users or consumers of certain property they purchased for sale through vending machines (with the exception of cigarettes and soft drinks in closed containers) and that such purchases were retail purchases subject to the sales or use tax. As would be applied to the current facts, the sale to, or purchases by, ABC Company of movies in DVD format for placement in its machines is subject to the sales or use tax. However, when a customer enters a supermarket and rents a DVD from a ABC Company machine, neither sales nor use tax applies to that transaction. (See SC Revenue Ruling #92-5.)

CAVEAT: This advisory opinion is issued to the taxpayer requesting it on the assumption that the taxpayer's facts and circumstances, as stated, are correct. If the facts and circumstances given are not correct, or if they change, then the taxpayer requesting the advisory opinion may not rely on it. If the taxpayer relies on this advisory opinion, and the Department discovers, upon examination, that the facts and circumstances are different in any material respect from the facts and circumstances given in this advisory opinion, then the advisory opinion will not afford the taxpayer any protection. It should be noted that subsequent to the publication of this advisory opinion, changes in a statute, a regulation, or case law could void the advisory opinion.

SOUTH CAROLINA DEPARTMENT OF REVENUE

s/Ray N. Stevens, Director

---

Ray N. Stevens, Director

Februray 8, 2006  
Columbia, South Carolina