
State of South Carolina
Department of Revenue
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Website Address: <http://www.sctax.org>

SC PRIVATE LETTER RULING #07-1

SUBJECT: Surcharge on Short-Term Vehicle Rental Contracts

REFERENCES: S.C. Code Ann. Section 56-31-50 (2006)
S.C. Code Ann. Section 56-31-20 (2006)

AUTHORITY: S.C. Code Ann. Section 12-4-320 (2000)
S.C. Code Ann. Section 1-23-10(4) (2005)
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set forth, and is binding on agency personnel only with respect to the person to whom it was issued and only until superseded or modified by a change in statute, regulation, court decision, or another Departmental advisory opinion, providing the representations made in the request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:

May ABC (ABC), when it files a rental surcharge return pursuant to Code Section 56-31-50, subtract from the rental surcharges remitted to the Department the property tax expenses for which it reimburses XYZ (XYZ), a separate entity that owns the vehicles ABC rents?

Conclusion:

ABC may reimburse XYZ for South Carolina property taxes, which XYZ pays on the vehicles ABC rents, and then subtract the amount of property taxes it reimburses XYZ from the rental surcharges it remits to the Department. However, the reimbursement of property taxes must be documented in the records of both taxpayers, ABC and XYZ. The combined amount subtracted by both taxpayers from the rental surcharges collected and reported on their respective rental surcharge returns may not exceed 100% of the South Carolina property tax paid for the year in question.

Facts:

ABC and XYZ are related corporations. Both are rental companies engaged in the business of renting motor vehicles in South Carolina as separate rental car franchises. Both corporations rent motor vehicles for periods of 31 or fewer days, and both corporations collect the South Carolina rental surcharge. Rental surcharges collected in excess of property taxes are required to be remitted to the South Carolina Department of Revenue.

XYZ is the owner of the fleet comprising all rental vehicles in question. By written agreement, XYZ shares the fleet with ABC for use in its separate car rental business, and ABC agrees to reimburse XYZ for a pro rata share of the property taxes owed on these rental vehicles. The pro rata share is computed as follows: the amount of ABC's rental revenue is divided by the total amount of both corporations' rental revenue and multiplied by an amount that represents property taxes paid by XYZ on the vehicles less property tax refunds received for vehicles that are sold.

Discussion:

South Carolina imposes a surcharge on short-term car rental contracts. Code Section 56-31-50(A) provides, in part, for the collection of the rental surcharge as follows:

Rental companies¹ engaged in the business of renting private passenger motor vehicles² or rental vehicles³ for periods of thirty-one days or less shall collect, at the time the vehicle or rental vehicle is rented in South Carolina, a five percent surcharge in each rental contract.

Code Section 56-31-50(B) provides, in part, for the retention and use of the rental surcharge as follows:

The surcharges must be retained by the vehicle owner, rental vehicle owner, or the rental company engaged in the business of renting private passenger motor vehicles or rental vehicles. The surcharges must be

¹ "Rental company" means "a person in the business of providing private passenger automobiles or rental vehicles to the public under the terms of a rental agreement." S.C. Code Ann. §56-31-20(1).

² "Private passenger vehicle" means "a private passenger motor vehicle including passenger vans and minivans that are intended primarily for the transport of persons." S.C. Code Ann. §56-31-20(5).

³ "Rental vehicle" means "a truck under 26,001 pounds gross vehicle weight and used in the transportation of personal property that is rented without a driver, and is not used by the customer for business purposes, or a trailer with a gross weight of not more than 6,000 pounds." S.C. Code Ann. §56-31-20(6).

placed in a segregated account by the vehicle owner, rental vehicle owner, or rental company once they are collected. Surcharges collected belong to the State and are not subject to creditor liens of the vehicle owner, rental vehicle owner, or rental company. Surcharges collected pursuant to this section may be used only by the vehicle owner, rental vehicle owner, or the rental company for reimbursement of the amount of personal property taxes imposed and paid upon these vehicles by the vehicle owner, rental vehicle owner, or rental company as provided by law. The collection and use of the surcharges are not gross receipts or revenue to the vehicle owner, rental vehicle owner, or rental company.

Code Section 56-31-50(C) provides, in part, for the reporting and remittance of all rental surcharges as follows:

On February fifteenth of each year all rental companies engaged in the business of renting private passenger motor vehicles or rental vehicles which collect surcharges pursuant to this section shall file a report with the Department of Revenue stating the total amount of South Carolina personal property taxes on private passenger motor vehicles or rental vehicles paid in the previous calendar year, the total amount of private passenger motor vehicle rental or rental vehicle revenues earned on rentals in South Carolina for the previous calendar year, and the amount by which the total amount of the surcharges for the previous year exceeds the total amount of personal property taxes on private passenger motor vehicles or rental vehicles paid for the previous calendar year. All surcharge revenues collected in excess of the total amount of personal property taxes on private passenger motor vehicles or rental vehicles must be remitted to the Department of Revenue's office for deposit in the state general fund.

South Carolina Form ST-394 is used for the reporting and remittance of rental surcharges.

As would be applied to the current facts, ABC is a rental company engaged in the business of renting private passenger motor vehicles or rental vehicles for periods not exceeding 31 days, and is thus required to collect a rental surcharge on each rental contract. The rental surcharges must be retained in a segregated account.

Code Section 56-31-50 permits a rental company such as ABC to use the rental surcharges “for reimbursement of the amount of personal property taxes imposed and paid upon these vehicles by the vehicle owner, rental vehicle owner, or rental company as provided by law.” The amount of rental surcharges due and the amount of property taxes paid are reported on Form ST-394. The amount of property taxes paid is subtracted from the amount of rental surcharges due, and the balance is remitted to the Department.

A question arises in this case because all property taxes on the vehicles in question are paid by XYZ. However, ABC reimburses XYZ for its pro rata share of the property taxes. Both parties have sought guidance from the Department.

Code Section 56-31-50 allows either the vehicle owner, XYZ, or the rental company, ABC, to use the rental surcharges for reimbursement of South Carolina personal property taxes. Therefore, ABC may reimburse XYZ for South Carolina property taxes, which XYZ pays on the vehicles ABC rents, and then subtract the amount of property taxes it reimburses XYZ from the rental surcharges it remits to the Department. However, the reimbursement of property taxes must be documented in the records of both taxpayers, ABC and XYZ. The combined amount subtracted by both taxpayers from the rental surcharges collected and reported on their respective rental surcharge returns may not exceed 100% of the South Carolina property tax paid for the year in question.

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

Ray N. Stevens, Director

February 12 _____, 2007
Columbia, South Carolina