



STATE OF SOUTH CAROLINA
DEPARTMENT OF REVENUE

300A Outlet Pointe Blvd., Columbia, South Carolina 29210
P.O. Box 12265, Columbia, South Carolina 29211

SC PRIVATE LETTER RULING #18-2

SUBJECT: Table Top Ordering and Bill Payment Tablets Used by a Restaurant - Monthly Service and Game Fees
(Sales and Use Tax)

REFERENCES: S.C. Code Ann. Section 12-36-910 (2014)
S.C. Code Ann. Section 12-36-1310 (2014)
S.C. Code Ann. Section 12-36-60 (2014)

AUTHORITY: S.C. Code Ann. Section 12-4-320 (2014)
S.C. Code Ann. Section 1-23-10(4) (2005)
SC Revenue Procedure #09-3

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set forth, and is binding on agency personnel only with respect to the person to whom it was issued and only until superseded or modified by a change in statute, regulation, court decision, or another Departmental advisory opinion, providing the representations made in the request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.

Questions:

1. Are charges by a vendor ("Vendor") to Taxpayer Corporation ("Taxpayer") for use in its restaurants of the Vendor's table top ordering and bill payment tablets, as described in the facts, subject to the sales and use tax?
2. Are charges by Taxpayer's restaurants to customers to play games on the table top ordering and bill payment tablets, as described in the facts, subject to the sales tax?

Conclusions:

1. The charges by the Vendor to Taxpayer for use in its restaurants of the Vendor's table top ordering and bill payment tablets, including the monthly service fees and the portion of the game fees paid to the Vendor as described in the facts, are subject to the sales and use tax.

Note: If the out-of-state Vendor has nexus with South Carolina, it is responsible for remitting the tax to the Department. If not, Taxpayer is liable for remitting the use tax to the Department. Under Code Section 12-36-1330, if Taxpayer has a receipt from the Vendor indicating the South Carolina tax has been paid, Taxpayer is relieved of the liability for the tax.

2. The charges by Taxpayer's restaurants to customers to play games on the table top ordering and bill payment tablets, as described in the facts, are not subject to the sales tax.

Facts:

Taxpayer is a full service casual dining company. The Taxpayer has begun using table top ordering and bill payment tablets ("tablets") in its restaurants. These tablets are used to facilitate order placement, order add-ons, checkout/payment, and customer satisfaction surveys. The use of the tablet allows for increased food and beverage sales, quicker table turnovers, and increased guest loyalty and satisfaction.

The tablet has a touch screen interface, and one is placed at each table. The tablet provides pictures and detailed descriptions of menu items; allows customers to place drink, appetizer, and entree orders; allows customers the option of paying their guest check by credit card, debit card, or gift card through the tablet;¹ and allows customers to complete customer satisfaction surveys.

An unrelated out-of-state company ("Vendor") supplies the tablets to the Taxpayer's restaurants for a monthly service fee (referenced below). The Vendor ships the tablets to the Taxpayer's restaurants located in South Carolina. The Vendor retains title to the tablets.

In addition to facilitating order placement and payment, the tablet allows customers to play games² for a fee. Customers are charged a \$1.00 fee to play unlimited games. The game application software resides within each tablet and operates independent of an internet connection when customers play the games. The \$1.00 game fee is included as a line item on the customer's food and beverage bill. No other content is available to customers on the tablet.

On average, over 80% of the customers use the tablet for ordering and/or payment at the end of the meal, while 12-20% purchase unlimited games. Per the agreement between the Vendor and the Taxpayer, the Taxpayer is responsible for collecting the game fees.

The Vendor charges the Taxpayer monthly service fees for the use of its tablets. Per their agreement, the Taxpayer keeps 100% of the game fees it collects each month, up to the amount of the monthly service fees. Any additional game fees collected each month must be split between the Taxpayer and the Vendor 80%/20%, respectively, in accordance with their agreement. The Taxpayer must pay the monthly service fees to the Vendor each month, regardless of any game fees collected.

¹ Customers also have the option of paying by these methods through their server/wait staff or through their own device utilizing their own cellular/data service.

² The tablet games do not contain free play features, are not used for gambling, and do not contain poker, blackjack, keno, lotto, bingo, craps, or any other game of chance of whatever name or kind. For more information see Code Sections 12-21-2710 and 12-21-2712.

Discussion:

Code Section 12-36-910(A) imposes “a sales tax, equal to [six] percent of gross proceeds of sales, upon every person engaged ... within this State in the business of selling tangible personal property at retail.”

Code Section 12-36-90 defines the term “gross proceeds of sales” 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.

Code Section 12-36-1310(A) imposes the use tax at the rate of six percent of the sales price of the property “on the storage, use, or other consumption in this State of tangible personal property purchased at retail for storage, use, or other consumption in this State.”

Code Section 12-36-130 defines the term “sales price” and reads in part:

“Sales price” means the total amount for which tangible personal property is sold, without any deduction for the cost of the property sold, the cost of the materials used, labor or service cost, interest paid, losses, or any other expenses.

In addition, Code Section 12-36-100 defines the terms “sale” and “purchase” to include a rental, lease, or other form of agreement.

Based on the above, sales at retail of tangible personal property include the rental of tangible personal property and are subject to the sales and use tax.

Code Section 12-36-110 defines “sale at retail” and “retail sale” and reads:

Sale at retail and retail sale mean all sales of tangible personal property except those defined as wholesale sales.

Code Section 12-36-120 defines “wholesale sale” and “sale at wholesale” to include the sale of “tangible personal property to licensed retail merchants...for resale, and do not include sales to users or consumers not for resale.”

Based on the above, the monthly service fee is a rental fee paid by the Taxpayer to the Vendor for use of the tablets. Since the Taxpayer is the user or consumer of the tablets, the rental of the tablets is a retail sale. As such, the charges by the Vendor to the Taxpayer for use of the Vendor’s table top ordering and bill payment tablet, including the monthly service fee and the portion of the game fees paid to the Vendor as described in the facts, are subject to the sales and use tax.³

The last issue to be addressed concerns the charges by Taxpayer’s restaurants to customers to play games on the tablets. The sales tax is imposed on the sale, lease, or rental of tangible personal property and upon certain communication services.⁴ The charge to play games on the tablet is not a charge for the sale, lease, or rental of tangible personal property and is not a charge for communication services.

Therefore, the charges by the Taxpayer’s restaurants to customers to play games on the tablets, as described in the facts, are not subject to the sales tax.

SOUTH CAROLINA DEPARTMENT OF REVENUE

s/W. Hartley Powell

W. Hartley Powell, Director

October 19 _____, 2018
Columbia, South Carolina

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.

³ The rental of the tablets is subject to any applicable local sales and use taxes administered and collected by the Department.

⁴ See Code Sections 12-36-910 and 12-36-100.