



STATE OF SOUTH CAROLINA
DEPARTMENT OF REVENUE
300A Outlet Pointe Blvd., Columbia, South Carolina 29210
P.O. Box 125, Columbia, South Carolina 29214-0575

SC PRIVATE LETTER RULING #24-3

SUBJECT: Flex Dollars – Educational Meal Plans
(Sales Tax)

REFERENCES: S.C. Code Ann. § 12-36-60
S.C. Code Ann. § 12-36-110
S.C. Code Ann. § 12-36-910
SC Regulation 117-305

AUTHORITY: S.C. Code Ann. § 12-4-320
S.C. Code Ann. § 1-23-10(4)
S.C. 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 by the taxpayer. Moreover, it is binding on agency personnel only with respect to the taxpayer and only until superseded or modified by a change in statute, regulation, court decision, or another Departmental advisory opinion, provided the presentations made in the request reflect an accurate statement of the material facts.

QUESTIONS:

Are meals or other food items sold to or purchased by students redeeming board plan “flex dollars” at an on-campus food service facility subject to sales tax?

CONCLUSION:

“Flex dollars” are options offered by educational institutions as part of the board plans students may select at the beginning of the term for meals or other food items provided by on-campus food service facilities. Therefore, sales of prepared meals and other food items to students using “flex dollars” are not retail sales and are not subject to the state sales tax.

FACTS:

The University owns various on-campus food service facilities including traditional residence hall dining facilities, coffee shops, quick casual restaurants, and even “branded” facilities. The Taxpayer, a food service company, has contracted to be an agent of a university located in South Carolina (the “University”) and provide food service management. According to its contract, the Taxpayer will provide the following services: 1) engage the University community with regard to on-campus dining options; 2) offer wellness, healthy-eating and nutritional programs for the school community; 3) menu planning; 4) purchase all food inventory (which the Taxpayer currently purchases tax free with the use of a resale certificate); and 5) prepare and service all meals and other food and beverages at the University’s on-campus food service facilities. Additionally, the Taxpayer partners with the University to determine the different “branded” facilities that will operate on-campus. Upon agreement, the Taxpayer will obtain the franchise license(s) for the “branded” facilities located on the University’s campus.

At the start of each semester, students choose from a variety of meal plan options and purchase the meal plans directly from the University. Should any sales tax become due on any portion of the meal plan charges, the tax is billed directly to the student by the University. The meal plans have two components: 1) a specified number of meals to which a student is entitled per semester; and 2) “flex dollars” that can be redeemed for meals and other food items at any on-campus food service facility.

The University then issues a “swipe card” loaded with each student’s associated meal plan and flex dollars. The card, which is for a student’s sole use, can be used to purchase meals and other food items at on-campus food service facilities. Certain on-campus food service facilities only accept flex dollars. When the card is “swiped”, the University’s system automatically reduces the appropriate number of meals and/or flex dollars from the corresponding student’s plan.

Meals may also be sold to individuals, including students, using traditional payment methods (i.e., cash, debit card, credit card, etc.). The Taxpayer does not charge sales tax on a student’s use of meal plans. However, the Taxpayer charges sales tax on non-meal plan purchases. As the Taxpayer makes both retail sales and withdraws for use from the same stock of goods, the Taxpayer asserts that it conforms to the requirements of S.C. Regulation 117-305.3 and purchases its food inventory tax free as a wholesale purchase and then reports the retail sales based on the gross proceeds of sales and withdrawals for use based on the property’s fair market value.

LAW AND ANALYSIS:

Section 12-36-910(A) states:

A sales tax, equal to [six]^[1] 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.

¹ S.C. Code Ann. § 12-36-1110 increased the sales and use tax rate by 1% beginning June 1, 2007.

Section 12-36-60 defines the term “tangible personal property” to mean “... personal property which may be seen, weighed, measured, felt, touched, or which is in any other manner perceptible to the senses ...” Finally, Section 12-36-110(1)(h) defines “sale at retail” and “retail sale” to include “...all sales of tangible personal property except those defined as wholesale sales ... (1) The term includes (h) sales of prepared meals, or unprepared food products used to prepare meals, to ... educational institutions ... if furnished as part of the service rendered. These institutions and companies are deemed to be the users or consumers of the property”.

Therefore, sales of unprepared food products used to prepare meals to educational institutions are retail sales of tangible personal property subject to state sales tax of six percent.

Regulation 117-305.1 provides additional guidance on board plans provided by educational institutions. The guidance distinguishes between board plans (plans for which students purchase all their meals for an entire semester or year at the beginning of the term for meals provided to students in a cafeteria) and meals or food that may be purchased by students or others on an individual basis at canteens, snack bars, and other places around campus. The regulation provides that sales of unprepared food products to an educational institution, or its agent, for use in furnishing meals under a board plan are retail sales subject to the sales tax; and sales of prepared meals to students under a board plan are not retail sales and are not subject to the state sales tax.

However, sales by an educational institution, or its agents, of meals and other food items (including the purchase of tickets that entitles the purchaser to several meals), other than those furnished under a board plan, are retail sales subject to the state sales tax. SC Regulation 117-305.1. Instances in which an educational institution, or its agent, make both retail sales (sales other than those under a board plan) and withdrawing for use from the same stock of goods (sales under a board plan), must purchase at wholesale all of the unprepared food products sold or used. The educational institution, or its agent, must then report retail sales based on gross proceeds of sales and withdrawals for use based on the property’s fair market value. SC Regulation 117-305.3.

In the question at hand, the Department must consider whether the use of flex dollars to purchase meals and other food items are considered part of a board plan pursuant to Section 12-36-110(1)(h) and SC Regulation 117-305.1.

Like meal plans, students purchase flex dollars from the University at the beginning of the term. Similarly, the number of flex dollars are reduced by the amount students purchase at an on-campus dining facility using swipe cards. Therefore, flex dollars are used in the same manner as meal plans and simply provide a more flexible option for students to purchase meals and other food items. As such, meals and other food items sold to or purchased by students redeeming meal plan flex dollars are not retail sales of tangible personal property subject to state and local sales tax. However, if flex dollars are used to purchase things other than meals and other food items, the sales are retail sales of tangible personal property subject to state and local sales tax. In each instance, the withdrawal of

unprepared food purchased at wholesale constitutes a retail sale and is subject to the tax based on the unprepared food's fair market value.

SOUTH CAROLINA DEPARTMENT OF REVENUE

s/W. Hartley Powell

W. Hartley Powell, Director

August 5, 2024
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.