



SC PRIVATE LETTER RULING #90-10

TO: XYZ, Inc.

SUBJECT: Meals - Nursing Care/Hospital Facilities
(Sales & Use Tax)

REFERENCE: S.C. Code Ann. Section 12-35-510 (1976)
S.C. Code Ann. Section 12-35-110 (Supp. 1988)
S.C. Code Ann. Section 12-35-30 (1976; Supp. 1988)
Regulation 117-166

AUTHORITY: S.C. Code Ann. Section 12-3-170 (1976)
SC Revenue Procedure #87-3

SCOPE: A Private Letter Ruling is a temporary document issued to a taxpayer, upon request, and it applies only to the specific facts or circumstances related in the request. Private Letter Rulings have no precedential value and are not intended for general distribution.

Questions:

1. Are the transactions between XYZ and the other facilities (ABC Clinic and X Convalescent Center) retail sales, subject to the sales tax, pursuant to Code Section 12-35-510?
2. If the transactions between XYZ and the other facilities are subject to the sales tax, what is the measure of the tax?
3. At what point is the sales tax due on meals provided to XYZ's patients?
4. What is the measure of the tax for meals provided to XYZ's patients?

Facts:

XYZ, Inc., ABC Clinic and Hospital, Inc. and X Convalescent Center are wholly owned subsidiary corporations of W, a closely held corporation. XYZ, operates a skilled care nursing facility. ABC Clinic operates an acute care hospital. X Convalescent Center operates an intermediate care nursing facility.

Meals for the patients/residents of each of these three facilities are prepared by the XYZ staff at the XYZ facility. The ingredients for the meals are purchased from various vendors and paid for by checks issued by XYZ. Sales tax is collected by these vendors from XYZ.

The XYZ staff coordinates meal preparation with the staffs of the other two facilities (as to number of meals required, special dietary needs, etc.). Following preparation of the meals at XYZ, ABC Clinic transports the meals to the other two facilities. Staff at each facility are responsible for serving of the meals to patients/residents. ABC Clinic and X Convalescent Center reimburse XYZ for all costs involved in providing the meals (i.e., cost of food, staff, overhead, etc.).

XYZ's kitchen facilities are utilized only for preparation of meals for the three facilities. XYZ does not prepare meals for other institutional users or the general public. ABC Clinic and X Convalescent Center do not have kitchens in their respective facilities. The managements of the three corporations have made the decision that one kitchen can service the three facilities more efficiently, more profitably, and at lower cost to the patients/residents than could separate kitchens at each facility.

Discussion:

To determine whether the transactions between XYZ and ABC Clinic and X Convalescent Center are subject to the sales tax, and; to determine the measure thereof, we must look to the statutes. __1. & 2.

Code Section 12-35-510, which imposes the sales tax, reads, in part:

In addition to all other licenses, taxes and charges imposed, there is levied...., upon every person engaged or continuing within this State in the business of selling at retail any tangible personal property whatsoever....an amount equal to [five] percent of the gross proceeds of sales of the business.

The term "person" is defined at Code Section 12-35-60, in part, as ...any individual, firm, copartnership, association, corporation, receiver, trustee or any other group or combination acting as a unit" (emphasis added).

"Business" is defined at Code Section 12-35-20, in part, as:

....all activities engaged in, or caused to be engaged in, with the object of gain, profit, benefit or advantage, either direct or indirect, and not excepting subactivities producing marketable commodities used or consumed in the main business activities each of which subactivities shall be considered business engaged in, taxable in the class in which it falls.

The term "gross proceeds of sales" (measure of the sales tax) is defined at Code Section 12-35-30, in part, as:

...the value proceeding or accruing from the sale of tangible personal property...without any deduction on account of the cost of the property sold, the cost of the materials used, labor or any other expenses whatsoever...

The terms "sale at retail" and "retail sale" are defined, in part, at Code Section 12-35-110, as:

....all sales of tangible personal property except those defined in this article as wholesale sales. The quantities of goods sold or prices at which they are sold are immaterial in determining whether or not a sale is at retail.

The term "sale" is defined at Code Section 12-35-100, in part, as:

Any transfer, exchange or barter, conditional or otherwise, in any manner or by any means whatsoever, of tangible personal property for a consideration; (emphasis added).

The term "wholesale sale" is defined at Code Section 12-35-170 as "not [to] include a sale..to users or consumers, not for resale".

Quoting further from Code Section 12-35-110:

Where meals and beverages are furnished by hospitals, infirmaries, sanitariums, nursing homes and like institutions, educational institutions, boarding houses and transportation companies without a separate charge being made, the hospitals, infirmaries, sanitariums, nursing homes and like institutions, educational institutions, boarding houses and transportation companies are deemed to be the users or consumers of the prepared meal....(emphasis added).

In other words, sales of prepared meals to hospitals, nursing homes and like institutions are retail sales.

This is further supported by Regulation 117-166, which reads, in part:

Hospitals, infirmaries, sanitariums, nursing homes and like institutions are deemed to be the users of consumers of such tangible personal property [meal, bandages, dressings, drugs, etc.] and the instate sellers of these items are required to report and remit the tax due on the sale of such property to the hospitals, infirmaries, sanitariums, nursing homes, and like institutions....

As for meals provided to XYZ's patients, we must, again, look to Code Section 12-35-110, which defines "sale at retail" as including:

...the withdrawal, use or consumption of any tangible personal property by anyone who purchases it at wholesale...

Also, Code Section 12-35-110 provides:

Where meals and beverages are furnished by hospitals, infirmaries, sanitariums, nursing homes and like institutions...[such institutions] are deemed to be the users or consumers....of the unprepared food products if [such institutions] purchase such products and prepare the meal.

Regulation 117-166 restates the above-quoted language in Code Section 12-35-110.

In addition, Regulation 117-174.82, reads:

Operators or businesses who are both making retail sales and withdrawing for use from the same stock of goods are to purchase at wholesale all of the goods so sold or used and report both retail sales and withdrawals for use under the Sales Tax Law.

As for the measure of the tax, upon withdrawal and use by XYZ of foodstuffs for its patients, Code Section 12-35-30 provides:

The term ["gross proceeds of sales"] shall also include the reasonable and fair market value of any tangible personal property previously purchased at wholesale which is withdrawn or used from the business or stock...(emphasis added).

Further, Regulation 117-174.225 provides, in part:

The value to be placed upon such goods [withdrawn for use] is the price at which these goods are offered for sale by the person withdrawing them. All cash or other customary discounts which he would allow to his customers may be deducted; however, in no event can the amount used as gross proceeds of sales be less than the amount paid for the goods by the person making the withdrawal.

Conclusions:

1. The providing of prepared meals by XYZ to ABC Clinic and X Convales- cent Center are retail sales, subject to the sales tax, pursuant to Code Section 12-35-510.
2. The measure of the sales tax ("gross proceeds of sales") on the sales by XYZ to the other facilities includes the total amount charged the facilities (i.e., cost of food, staff, overhead, etc.).
3. The sales tax on meals provided to XYZ's patients is due upon withdrawal of the unprepared foodstuff.
4. The measure of the sales tax ("gross proceeds of sales") upon withdrawals for use by XYZ is the fair market value (purchase price) of the unprepared foodstuff.

SOUTH CAROLINA TAX COMMISSION

s/S. Hunter Howard Jr.

S. Hunter Howard, Jr., Chairman

s/A. Crawford Clarkson Jr.

A. Crawford Clarkson, Jr., Commissioner

Columbia, South Carolina
March 28, 1990