



301 Gervais Street, P.O. Box 125, Columbia, South Carolina 29214

SC PRIVATE LETTER RULING #90-8

TO: XYZ Resort Travel Company

SUBJECT: Hotel Travel Points Program
(Sales Tax)

REFERENCE: S.C. Code Ann. Section 12-35-510 (1976)
S.C. Code Ann. Section 12-35-1120 (Supp. 1988)
S.C. Code Ann. Section 12-35-710 (Supp. 1988)
S.C. Code Ann. Section 12-35-140 (1976)
S.C. Code Ann. Section 12-35-100 (1976)
S.C. Code Ann. Section 12-35-70 (1976)

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:

At what point, if at all, are transactions related to XYZ's "Travel Program" program subject to the sales and accommodations taxes - upon sale of the travel points or upon their redemption?

Facts:

XYZ Resorts Travel Company, as part of its "Travel Program", will soon be selling memberships to the general public in a travel club. Participants will enter into an agreement with XYZ to purchase travel points, redeemable at the company's various resort facilities, and with companies that have contracted with XYZ. The travel points are valid for five years and may be used, in lieu of cash, for overnight accommodations, meals, greens fees and various services. The points may also be used for automobile rentals and airline tickets.

The agreement outlines the specific resort facilities and companies participating in the travel plan, and a catalog specifies the number of points needed for each accommodation, property or service. The program consists of two plans. The "Full Plan" costs \$4,990.00 for 500 points and the "Starter Plan" costs \$3,290.00 for 300 points. Prior to beginning our discussion of the

specific issue, we must review key provisions of the proposed travel program agreement, entitled: "Retail Installment Contract and Disclosure Statement/XYZ's Travel Program". The proposed agreement reads, in part:

This agreement is for the purchase of _____ points redeemable for accommodations at various facilities, travel and other benefits ("Travel Points") in XYZ's Travel Program as described below. You, the Purchaser (and Co-Purchaser, if any) may purchase the Travel Points for cash or on credit.....All benefits and services being purchased hereunder are referred to in this Agreement as the "Plan".

* * * * *

THE PLAN. The Plan is an arrangement by which a purchaser for a fee and annual dues as described herein, is entitled to select from a designated list of available participating Plan facilities and benefits for a specified time period. XYZRTC, the Seller of the Travel Points and the operator of the Plan, operates in more than nine states in the United States on its own account or through its affiliated companies...

* * * * *

THE POINT SYSTEM. Your purchase of Travel Points entitles you to redeem these points for accommodations at available participating facilities and benefits of the Plan as the same exist, from time to time, as published in the applicable XYZ Travel Program Catalog (the "Catalog"). Each available participating facility and benefit of the Plan is assigned a particular number of points in the Catalog, and your selection of available accommodations or benefits from the Catalog will cause your Travel Points account balance to be debited accordingly...

* * * * *

TERM OF AGREEMENT. This Agreement shall have a term ending five (5) years after the date appearing at the beginning of this Agreement or upon redemption by Purchaser of all Travel Points, whichever event shall occur first. All Travel Points must be used within this term, and any Travel Points remaining in your account balance upon the expiration of this Agreement will be forfeited.

* * * * *

THE PLAN IS FOR YOUR PERSONAL USE....You may only sell or transfer your rights and responsibilities hereunder with XYZRTC's prior written consent, which consent shall not be unreasonably withheld. Once Travel Points have been redeemed, they are not transferable except to immediate family members.....

Discussion:

The issue is whether the sale of the travel points, or their redemption, constitutes a sale of tangible personal property, subject to the tax.

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

...there is levied, upon every person engaged or continuing within this State in the business of selling at retail any tangible personal property whatsoever, including merchandise and commodities of every kind and character (not including, however, bonds or other evidences of debt or stocks), an amount equal to [five] percent of the gross proceeds of sales of the business.

Code Sections 12-35-1120 and 12-35-710 impose a combined sales and accommodations tax of seven percent on the "gross proceeds derived from the rental or charges for....accommodations".

Code Section 12-35-140 defines the term "tangible personal property", and reads:

The term "tangible personal property" means personal property which may be seen, weighed, measured, felt or touched or which is in any other manner perceptible to the senses, except notes, bonds, mortgages or other evidences of debt and stocks and shall include rooms, lodgings or accommodations furnished to transients for a consideration.

For the purposes of this chapter the term "tangible personal property" shall be interchangeable with and apply with equal force and effect to services, accommodations and intangibles, including communications, as are specifically provided for in this chapter.

Code Section 12-35-100 defines the term "sale", in part, as:

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

Furthermore, the South Carolina Supreme Court, in Edisto Fleets, Inc v. South Carolina Tax Commission, 256 S.C. 350, 182 S.E.2d. 713 (1971), held that "[t]he terms 'sale' and 'purchase' are inextricably related and bound together and must be so construed..." Therefore, in reviewing the term "sale", we must also review the term "purchase", as defined in Code Section 12-35-70. That Section reads:

The term "purchase" means acquired for a consideration, whether (a) such acquisition was effected by a transfer of title or of possession, or of both, or a License to use or consume, (b) such transfer shall have been absolute or conditional and by whatever means it shall have been effected and (c) such consideration be a price or rental in money or by way of exchange or barter. In summary, "sale", under the sales tax code, is a transfer or exchange of tangible personal property for a consideration.

The term "consideration" is not defined in the sales and use tax law; however, the following quote from 68 Am. Jur. 2d Sales and Use Taxes, Section 67, provides some guidance.

The sales tax statutes normally define "sale" in terms of a transfer "for a consideration" or "for a valuable consideration," and thus a consideration is essential to render a sale

taxable under the statute. Accordingly, it is held that a mere transfer of possession of property is not within the Sales Tax Act definition of "sale" unless it is a transfer for a consideration.

The required consideration is not limited to a money consideration, and some statutes are specific about this, stating that the consideration may be a price or rental, in money or by exchange or barter, or by money or service, or other thing of value. Thus, when a sale is made of tangible personal property for cash and other property, or for other property alone, payment of the sales tax is required (emphasis added).

Here, the "consideration" is not the cost of the points in that, no transfer of tangible personal property or accommodations has taken place at the time the points are purchased.

The transfer (exchange, etc.) of tangible personal property or accommodations takes place when the travel points are redeemed. The original purchase price of the travel points is the value of the "consideration".

Conclusion:

The transactions that are subject to the sales and accommodation taxes are those in which travel points are redeemed for tangible personal property or accommodations.

The travel points, as consideration, should be valued according to the price paid for each point.

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 7, 1990