



SC PRIVATE LETTER RULING #92-11

TO: ABC

TAX MANAGER: John P. McCormack

SUBJECT: Membership Fees
(Sales Tax)

DATE: December 29, 1992

REFERENCE: S.C. Code Ann. Section 12-36-910 (Supp. 1991)
S.C. Code Ann. Section 12-36-90 (Supp. 1991)
S.C. Code Ann. Section 12-36-100 (Supp. 1991)

AUTHORITY: S.C. Code Ann. Section 12-4-320 (Supp. 1991)
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.

Question:

Are the membership fees charged by ABC for its "Advantage Card Membership" and "Business Card Membership" subject to the sales tax?

Facts:

ABC, a division of XYZ, is a membership-only warehouse offering a selection of brand-name merchandise to business owners and managers at wholesale prices. It is a national division of XYZ Stores principally designed to serve the needs of the business community. However, ABC does offer memberships to members of a limited number of groups. Effective January 1, 1992, ABC changed its membership policies, and its membership fee structure, as described below.

ABC offers two types of memberships to fit the needs of its customers - the Advantage Card Membership and the Business Card Membership.

The Advantage Card Membership may be purchased by qualifying individuals at a cost of \$25.00 annually. The member may purchase one additional card for \$10.00 annually. These members pay the posted wholesale price for merchandise and are required to pay the applicable sales tax on all purchases. The following persons are eligible for an Advantage Card Membership:

1. A civilian or military employee of the federal, state, county or city government.
2. An employee of a public or private academic school, college or university.
3. An employee of a regulated utility company, telephone company, financial institution, insurance company, scheduled airline or railroad, or hospital.
4. A retired employee of any of the employment groups listed above and current members of AARP or members of approved credit unions.
5. XYZ shareholders.

The Business Card Membership is available to any business with a valid retail license or a valid business license. The fee for this membership is \$25.00 annually. If the application is accepted, then one personalized membership card is issued to the primary cardholder for the business. In addition, the business may name up to four additional cardholders who are issued personalized membership cards for an annual fee of \$10.00 each. After two years, the business may name two additional cardholders who will also be issued personalized membership cards for an annual fee of \$10.00 each. These additional cards expire at the same time as the main membership card, regardless of when they were issued. These members pay the posted wholesale price for merchandise and are required to declare at the time of purchase whether or not the transaction is subject to sales tax. If sales tax is due, then the member must pay the tax. Failure to pay the tax when due subjects the business' membership to ABC to immediate forfeiture.

With respect to both types of membership, a membership card that is lost or stolen may be replaced for a charge of \$2.00.

Finally, as a marketing tool to encourage certain businesses and individuals to join, 90 day free memberships are available. These free memberships are offered to those persons who would otherwise qualify for either the Advantage Card Membership or the Business Card Membership. Any person using the 90 day free pass must pay the posted wholesale price for merchandise plus a 5% surcharge. They are also required to pay the sales tax, if applicable.

Discussion:

The issue is whether membership fees are includable in "gross proceeds of sales", which is the measure of the sales tax.

Code Section 12-36-910(A) states that "[a] sales tax, equal to five 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".

Code Section 12-36-90 defines "gross proceeds of sales", in part, as:

[T]he 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;...

In *State v. Byrnes*, 219 SC 485, 66 S.E. 2d 33, (1951), the Supreme Court of South Carolina stated:

In general, the sales tax is an imposition upon the privilege of the business of selling at retail and measured by the amount of business done, which is a clear case of an excise tax ... (emphasis added).

In summary, the measure of the sales tax is the total proceeds of a sale; i.e., it is the sum total of all consideration received (without any deductions whatsoever) for the sale, lease, or rental of tangible personal property, regardless of what the payment may be called.

The term "sale" is defined at Code Section 12-36-100, in part, as [a]ny transfer . . . of tangible personal property for a consideration". Therefore, it must be determined if membership fees are part of the "consideration" for the purchase of tangible personal property at ABC.

With respect to membership fees, the Virginia Department of Revenue determined that if "a membership entitles one to rent tapes at lower rates than nonmembers, the club membership fee would be subject to the tax" (Ruling of the Commissioner, P.D. 87-50, February 26, 1987). In reaching its decision, the Virginia Department of Revenue reasoned:

. . . the [Virginia] statutes . . . contemplate the imposition of tax upon virtually any type of transaction under which tangible personal property is or can be . . . rented for a consideration. [Therefore,] one must first determine whether either type of video club membership fee entails the right to rent or receive tapes or other tangible personal property...

If membership in . . . [a] club is a membership which entitles one to rent tapes at lower rates than nonmembers, the club membership fee would be subject to the tax. However, club membership fees would not be taxable if membership merely entitles one to rent tapes without placing a security deposit.

Also, the Commission in SC Revenue Ruling #90-6, which also concerns membership fees to video clubs, cited this determination by the Virginia Department of Revenue and held:

Membership fees paid to a video rental "club" are subject to the sales tax as part of the consideration paid for the rental of tangible personal property, pursuant to Code Section 12-36-910, only if the payment of such fee entitles the purchaser to "free" or discount movie rentals.

However, if such fee is in lieu of a security deposit or constitutes only a nominal processing fee and does not include "free" or discount movie rentals, the fee is not subject to the tax.

Based on the above, membership fees at ABC, like the membership fees discussed in SC Revenue Ruling #90-6, are a part of the consideration paid by the member for tangible personal property. Both the "Advantage Card Membership" and "Business Card Membership" receive a benefit that the other type of membership, the "90 day free membership", does not receive. They pay only the posted wholesale price, while this third type of membership, although temporary, pays the posted wholesale price plus a 5% surcharge. All three memberships pay the sales tax when applicable.

Conclusion:

The membership fees charged by ABC for its "Advantage Card Membership" and "Business Card Membership" are subject to the sales tax.

Note: This ruling only addresses ABC membership policies that became effective on January 1, 1992 and is not applicable to ABC previous membership policies.