



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

SC PRIVATE LETTER RULING #94-4 (TAX)

TO: ABC

SUBJECT: Food Service for Educational Institutions
(Sales/Use Tax)

DATE: March 28, 1994

REFERENCE: S.C. Code Ann. Section 12-36-10 et seq (Supp. 1993)

AUTHORITY: S. C. Code Ann. Section 12-4-320 (Supp. 1993)
S. C. Revenue Procedure #93-6

SCOPE: A Private Letter Ruling is a document issued by the Department of Revenue to a specific person.

NOTE: A Private Letter Ruling may only be relied upon by the person to whom it is issued and only for the transaction or transactions to which it relates. A Private Letter Ruling has no precedential value.

Question:

How is the state sales tax applied with respect to sales of a meal plan sold by ABC, Inc. to the students of XYZ University - when such sales are made by ABC, Inc. as an agent for XYZ?

Conclusions:

Sales of unprepared food products to ABC, Inc., as agent of XYZ, for use in furnishing meals under a board plan at XYZ are retail sales subject to the sales or the use tax.

Sales of meals or other food items by ABC, Inc., as agent of XYZ, other than those furnished under the board plan are retail sales subject to the sales or use tax.

NOTE: Since ABC, Inc. is making both retail sales and withdrawing for use from the same stock of goods, ABC, Inc. must purchase at wholesale all of the goods so sold or used. ABC, Inc., as agent for XYZ, must then report retail sales based on gross proceeds of sales and withdrawals for use based on the property's fair market value.

For a more detailed discussion of this issue, see S. C. Revenue Ruling #93-9.

Facts:

ABC, Inc., a food service provider, will enter into a contract as "agent" with the XYZ University. Under the terms of the contract, ABC, Inc. would be responsible for:

- a. Purchasing all necessary foods and supplies for operation of the food service;
- b. Employing and paying all necessary personnel for operation of the food service;
- c. Obtaining and keeping in force public liability and products liability insurance in an amount designated by the educational institution;
- d. Obtaining and paying for all permits and licenses for operation of the food service;
- e. Providing workmen's compensation insurance for all personnel employed by agent;
- f. Paying all cost and expenses (including taxes) involved in the operation of the food service;
- g. Keeping and maintaining all food service equipment and facilities belonging to the educational institution clean and in proper condition; and,
- h. Collecting and remitting any applicable taxes.

ABC, Inc. will be reimbursed for all of the above expenses.

In addition to being reimbursed for costs and expenses incurred in connection with the food service operation, ABC, Inc. will receive a management fee for its services.

At the request of XYZ, ABC, Inc. will sell the "board plan" as an agent for XYZ directly to the students rather than the educational institution selling the board plan to the students and then ABC, Inc. invoicing the educational institution. ABC, Inc. may also sell some meals for cash. Under the board plan, ABC, Inc. will retain the funds received from the students and credit that amount against invoices submitted to XYZ.

Discussion:

In S. C. Revenue Ruling 93-9, the Commission considered the sales tax implications of a food service company selling a meal plan as an agent for an educational institution. With respect to meals provided under a board plan the Commission determined:

Sales to a food service company of unprepared food products for use in furnishing meals under a board plan, are retail sales subject to the sales tax or the use tax if the food service company is the agent of the educational institution.

With respect to cash or other food sales not under a board plan, the Commission determined:

Sales of meals and other foods by a food service company as the agent of an educational institution, other than those furnished under a board plan, are retail sales subject to the sales tax or the use tax.

Concerning food service companies making both retail sales and withdrawing for use from the same stock of goods, the Commission determined:

Food service companies which are making both 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. They will then report retail sales based on gross proceeds of sales and withdrawals for use based on the property's fair market value. In order for this provision to apply, the educational . . . institution must have a substantial number of retail sales. To comply with this provision, educational . . . institutions should present to their suppliers a Form ST-8A - Resale Certificate. This will allow the suppliers to sell these goods at wholesale to the educational . . . institution. See SC Regulation 117-174.82.

For questions concerning the application of sales tax and use tax on a food service company acting as an agent for an educational institution, contact John McCormack at (803) 737-4438 or Jean Croft at (803) 737-5007.