



SC PRIVATE LETTER RULING #94-6 (TAX)

TO: ABC

SUBJECT: Meals Sold to School Children
(Sales Tax)

DATE: June 2, 1994

REFERENCE: S. C. Code Ann. Section 12-36-910 (Supp. 1993)
S. C. Code Ann. Section 12-36-2120(10)(a)

AUTHORITY: S. C. Code Ann. Section 12-4-320 (Supp. 1993)
SC Revenue Procedure #94-1

SCOPE: A Private Letter Ruling is an official advisory opinion 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:

Are sales of meals to students at ABC, as described in the facts, exempt from sales tax under Code Section 12-36-2120(10)?

Conclusion:

Sales of meals to students at ABC, as described in the facts, are exempt from sales tax under Code Section 12-36-2120(10).

Facts:

ABC, is a nonprofit South Carolina corporation organized exclusively for educational purposes. The school is exempt from federal income taxes under Internal Revenue Code Section 501(a).

ABC is a day school that educates students from kindergarten through twelfth grade. The school has a cafeteria on school grounds. Unprepared food products are purchased from a wholesaler to serve to students. Students' mothers are employed and compensated by the school to prepare and serve the food. On occasion, prepared food, such as pizza, is purchased from a local business and brought to the school to serve to the students.

Students may either purchase the school meal on a daily basis or may bring their own lunch. The meal program at ABC does not make a profit. It is designed to be self supporting in that a mark up is computed and applied to food cost to cover the cost plus staff salaries, but does not include the cost of utilities, building expenses, etc.

Discussion:

Code Section 12-36-910(A) imposes the sales tax and reads, in part:

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.

A sales tax exemption, however, is provided in Code Section 12-36-2120(10)(a) for sales of certain meals or food items. This exemption exempts from the sales tax the sales price of:

meals or foodstuffs used in furnishing meals to school children, if the sales or use are within school buildings and are not for profit;

Further, Regulation 117-174.116 addresses meals sold to school children and reads, in part:

Meals sold within school buildings, not for profit, to school children are exempted from the sales tax by [code section 12-36-2120(10)]. This exemption is construed to include only sales of meals to pupils of kindergartens, grammar and high schools, either public or private, where it can be shown that there is no profit therefrom and where the sales are made within the school building. Schools operating school lunch programs are required to obtain a retail license and remit the tax on all sales of meals to persons other than school children.

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Based on the facts presented, sales of meals to students at ABC are exempt from sales tax under Code Section 12-36-2120(10).

For questions concerning meals furnished to educational institutions, contact John McCormack at 803-737-4438 or Deana West at 803-737-4439 in the Department's Tax Policy and Special Procedures Division.