
State of South Carolina
Department of Revenue
301 Gervais Street, P.O. Box 125, Columbia, South Carolina 29214

SC PRIVATE LETTER RULING #98-3

TO: ABC, Inc.

SUBJECT: ABC Card Program
(Sales & Use Tax)

DATE: April 30, 1998

REFERENCE: S. C. Code Ann. Section 12-36-910(A) (Supp. 1997)
S. C. Code Ann. Section 12-36-90 (Supp. 1997)
S. C. Code Ann. Section 12-36-130 (Supp. 1997)

AUTHORITY: S. C. Code Ann. Section 12-4-320 (Supp. 1997)
SC Revenue Procedure #97-8

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 the allowances (described in the Facts) received by ABC, Inc. (“Retailer”) from suppliers includible in Retailer’s gross proceeds of sales and therefore subject to the sales tax?

Conclusion:

The allowances described in the Facts are **not** includible in Retailer’s gross proceeds of sales.

Facts:

Retailer owns and operates numerous supermarkets in South Carolina and surrounding states. Through its supermarkets, the taxpayer sells at retail a wide variety of food and other grocery items, as well as other products.

Retailer negotiates with and receives promotional and purchase allowances from its suppliers. Some suppliers award allowances based on past purchases and others award allowances based on negotiated amounts.

Retailer can use these allowances to reduce the selling prices of a supplier's products and/or to advertise or otherwise promote the supplier's products. In some cases, the taxpayer may retain the allowance and not reduce the retail price. All allowances are paid directly to Retailer by the suppliers.

One method used by Retailer to promote certain products is the Card Program. This program was developed by Retailer to direct discounts to a select group of customers and to promote customer loyalty. Under this program, Retailer issues an encoded electronically-readable card ("Card") to its customers. The Card is similar in appearance to and functions like a bank automatic teller card. Each Card carries unique information about each customer and enables Retailer to collect data related to the customer's buying habits.

When a customer makes a purchase, he or she presents the Card to the cashier. Retailer then discounts the price of selected products purchased by the Card holder.

While the supplier allowances provide funds for Retailer to pass additional discounts to its Card holders, the use of the Card does not affect the amount of allowances the suppliers pay to Retailer. The allowances received are based on past purchases from, or previous negotiations with, a supplier. There is no direct connection between a customer using his or her Card to buy a particular product and the amount Retailer receives from the product's supplier.

Discussion:

Code Section 12-36-910(A) imposes the South Carolina sales tax on a retailer's "gross proceeds of sales." The term "gross proceeds of sales" is defined in Section 12-36-90, in part, as "the value proceeding or accruing from the sale...of tangible personal property."

In other words, "gross proceeds of sales" is the total amount received or earned by a retailer as a result of selling his products. The source of the amount received or earned is irrelevant. What matters is whether the amount is received or earned as the result of a retail sale. For example, if a manufacturer were to pay a retailer 15 cents for each sale by the retailer of the manufacturer's product ("manufacturer's rebate") and the retailer received 85 cents from the customer, the amount subject to the sales tax would be \$1.00 - the 15 cents received from the manufacturer and the 85 cents received from the customer.

The allowances in question, unlike manufacturer's rebates which are paid to the retailer as the result of a customer buying a particular product, are paid based on purchases made by Retailer during the previous year or as a result of previous negotiations with the supplier. They are received based on purchases of the manufacturer's products by Retailer, not on sales of those products by Retailer to Retailer's customers. Therefore, the allowances are not includible in Retailer's gross proceeds of sales and are not subject to sales tax. In contrast to the above "manufacturer's rebate" example, if Retailer were to give each customer a 15 cent discount on a product that normally sells for \$1.00 when a customer uses his or her Card to buy the product, the measure of the sales tax on the sale would be 85 cents.