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

SC PRIVATE LETTER RULING #99-4

TO: XYZ, Inc.

SUBJECT: Discount Card Program
(Sales & Use Taxes)

DATE: November 22, 1999

REFERENCE: S. C. Code Ann. Section 12-36-910(A) (Supp. 1998)
S. C. Code Ann. Section 12-36-90 (Supp. 1998)
S. C. Code Ann. Section 12-36-130 (Supp. 1998)
S. C. Revenue Ruling #98-15

AUTHORITY: S. C. Code Ann. Section 12-4-320 (Supp. 1998)
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 allowances received by XYZ, Inc. (“Retailer”) from suppliers based on past purchases, negotiations or other factors which are not directly related to Retailer’s sales includible in Retailer’s gross proceeds of sales and therefore subject to the sales tax?

Conclusion:

In the opinion of the Department, the allowances received by Retailer from suppliers based on past purchases, negotiations or other factors which are not directly related to Retailer’s sales are **not** includible in Retailer’s gross proceeds of sales.

Facts:

Retailer owns and operates numerous stores in South Carolina and surrounding states. Through its stores, the taxpayer makes retail sales of a wide variety of products.

Retailer has developed a discount card program which is intended to improve sales by promoting customer loyalty. Under this program, Retailer issued encoded electronically-readable cards to all of its existing customers and currently issues cards to any customer who requests one. Each card carries unique information which enables Retailer to identify the customer to whom the card was issued and to collect data related to that customer's buying habits. The information gathered is used for marketing purposes by Retailer.

The goals of Retailer's card program are primarily accomplished by offering discounts on specific items to cardholders in the form of lower shelf prices which establish a new sales price for specific items during the sale period. When a cashier scans the customer's card, the customer is identified as being enrolled in the card program and is allowed discounts which are reflected on the sales receipt. The discounted items vary on a weekly basis and are identified by special shelf price cards which indicate that the discounts are given to customers participating in the program.

In order to provide discounts through its card program, Retailer negotiates with and receives purchase allowances from its suppliers. These allowances may be based on the volume of Retailer's purchases in the previous year, on negotiations between Retailer and the vendors, or based on a number of other factors such as market share, or a combination of these factors. These allowances are used to reduce the shelf prices of certain targeted products. The majority of the allowances are provided by checks issued by suppliers; however, in some cases, suppliers may issue credit memos which Retailer may apply against future purchases.

While the supplier allowances provide funds for Retailer to pass discounts to its cardholders, the use of the card does not affect the amount of allowances the suppliers give to Retailer. The allowances received are based on past purchases from the supplier, previous negotiations with the supplier, or such factors as past market share, etc. There is no direct connection between a customer using his or her card to buy a particular product and the amount of the allowances Retailer receives from the product's supplier.

Supplier allowances may be dispersed either immediately upon determination or periodically at many times throughout the year and are dispersed in many different ways. For example, Supplier A may establish a fixed dollar amount of allowances or product purchase discounts for Retailer during the year, but may take the entire year to disperse these allowances to Retailer. Conversely, Supplier B may determine and disperse their allowances at the beginning of the year. Although Retailer has decided to use most of the allowances it receives from its suppliers to achieve a lower cost of sales, the allowances may be used, at Retailer's discretion, for advertising and other promotional ventures.

Law/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 Code Section 12-3690, in part, as "the value proceeding or accruing from the sale...of tangible personal property."

SC Revenue Ruling #98-15, which addressed supplier allowances, manufacturer's coupons, and self-redeeming coupons¹, provides:

... `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 (`manufacturer's rebate') a retailer 15 cents for each sale by the retailer of the manufacturer's product 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.

....some [supplier] allowances, unlike manufacturers' rebates which are paid to the retailer as the result of a customer buying a particular product, are paid based on purchases made by the 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 the retailer, not on sales of those products by the retailer to the retailer's customers. Therefore, these allowances are not includible in the retailer's gross proceeds of sales and are not subject to sales tax.

¹ A "manufacturer's coupon" is issued by the manufacturer and distributed to retailers' customers via the mail or by other means. When a retailer's customer makes a purchase using this coupon, the customer receives a discount on the purchase price. The retailer, in turn, sends the coupon to the manufacturer for reimbursement of the discount the retailer gave to his customer.

A "self-redeeming coupon" is issued by the retailer, not the manufacturer. Therefore, the retailer does not receive reimbursement for the discount given his customers when they use this type of coupon.

It is the department's opinion that the supplier allowances in this case are substantially the same as those addressed in the above-quoted revenue ruling and should be treated the same. The allowances are not received based on Retailer's sales to its customers. Therefore, they should not be included in Retailer's gross proceeds of sales.