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

SC PRIVATE REVENUE OPINION #01-3

SUBJECT: Hotel Restaurant Tour Program
(Sales Tax)

REFERENCES: S. C. Code Ann. Section 12-36-910 (2000)
S. C. Code Ann. Section 12-36-60 (2000)
S. C. Code Ann. Section 12-36-120 (2000)
S. C. Code Ann. Section 12-36-110 (2000)
S. C. Code Ann. Section 12-36-100 (2000)
S. C. Code Ann. Section 12-36-920 (2000)

AUTHORITY: S. C. Code Ann. Section 12-4-320 (2000)
S. C. Code Ann. Section 1-23-10(4) (2000)
SC Revenue Procedure #99-4

SCOPE: A Private Revenue Opinion is a written statement issued to a specific taxpayer by the Department to apply principles of law to a specific set of facts or a particular tax situation. **A Private Revenue Opinion does not have the force and effect of law, and is not binding on the person who requested it or the public.** It is, however, the Department's opinion limited to the specific facts set forth, and is binding on agency personnel only with respect to the person to whom it was issued and only until superseded or modified by a change in statute, regulation, court decision, or advisory opinion, providing the representations made in the request reflect an accurate statement of the material facts and the transaction was carried out as proposed.

Question:

Are the restaurants operated by ABC Company and providing meals (as described in the examples below) to hotel guests as part of an arrangement with XYZ selling meals at wholesale or at retail for sales tax purposes?

Example #1: A guest pays a package rate of \$400 to XYZ. For this \$400, the guest receives a room and a personalized voucher for a meal or meals at an outside restaurant. The voucher only applies to food and is limited to \$120.00. Of the \$400, a portion is for the room, a portion is for the room tax (12%), and a portion is for the outside restaurant. At the restaurant, the guests order their meals and the restaurant bills the hotel for the total amount of the food, gratuity and tax. Any charges for

alcoholic beverages or for food costs in excess of \$120.00 are paid by the guest directly to the restaurant.

Example #2: A corporate group organizes a “dine around.” The hotel makes 25 reservations at a restaurant and the corporate guests have a typical restaurant meal. The restaurant sends the bills to the hotel for payment. The hotel totals all the bills and adds a markup and bills the corporation, and not the individual guests. Note, the corporation may or may not be renting sleeping accommodations from the hotel for some of the corporate guests.

Conclusion:

The restaurants operated by ABC Company and providing meals (as described in the “Question” and the “Facts”) to hotel guests as part of an arrangement with XYZ are selling meals at retail and are liable for the sales tax on such sales.

Example #1: If the total charge by the restaurant for the meals is \$100.00 (meal and gratuity), then the restaurant is liable for the state and local sales tax of \$6.00 (5% state sales tax and 1% local option sales tax) regardless of whether the meal is paid for by the guest or by both the guest and the hotel.

Example #2: If the total charge for the 25 guests is \$1,200.00, then the restaurant is liable for the state and local sales tax of \$72.00 (5% state sales tax and 1% local option sales tax)

Facts:

XYZ has an arrangement with local restaurants in the area to provide meals for its guests. The arrangement can be handled in a number of ways; however, the transaction typically is handled in one of two ways:

Example #1: A guest pays a package rate of \$400 to the XYZ. For this \$400, the guest receives a room and a personalized voucher for a meal or meals at an outside restaurant. The voucher only applies to food and is limited to \$120.00. Of the \$400, a portion is for the room, a portion is for the room tax (12%), and a portion is for the outside restaurant. At the restaurant, the guests order their meals and the restaurant bills the hotel for the total amount of the food, gratuity and tax. Any charges for alcoholic beverages or for food costs in excess of \$120.00 are paid by the guest directly to the restaurant.

Example #2: A corporate group organizes a “dine around.” The hotel makes 25 reservations at a restaurant and the corporate guests have a typical restaurant meal. The restaurant sends the bills to the hotel for payment. The hotel totals all the bills and adds a markup and bills the corporation, and not the individual guests. Note, the corporation may or may not be renting sleeping accommodations from the hotel for some of the corporate guests.

The issue at hand is whether the restaurant is selling the meal at wholesale or at retail.

Discussion:

Code Section 12-36-910 reads, in part:

(A) 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.

As for the meaning of the term “tangible personal property,” Code Section 12-36-60 provides, in part:

‘Tangible personal property’ means personal property which may be seen, weighed, measured, felt, touched, or which is in any other manner perceptible to the senses...

The term “retail sale” is defined in Code Section 12-36-110 to include “all sales of tangible personal property except those defined as wholesale sales.” Code Section 12-36-120 defines “wholesale sale” in part to mean a sale of “tangible personal property to licensed retail merchants, jobbers, dealers, or wholesalers for resale, and do not include sales to users or consumers not for resale.”

In other words, a retail sale of tangible personal property is a sale to the user or consumer of the property. The term does not include a sale of tangible personal property for resale.

As for the meaning of the term “sale,” Code Section 12-36-100 provides:

‘Sale’ and ‘purchase’ mean any transfer, exchange, or barter, conditional or otherwise, of tangible personal property for a consideration including:

- (1) a transaction in which possession of tangible personal property is transferred but the seller retains title as security for payment, including installment and credit sales;
- (2) a rental, lease, or other form of agreement;
- (3) a license to use or consume; and
- (4) a transfer of title or possession, or both.

Based on the above, it is the opinion of the department that the restaurant is transferring tangible personal property for a consideration to the user or consumer - the guest. The statute does not require that the user or consumer pay the consideration. In this case, the retail sale is between the restaurant and the guest with the consideration being paid by the hotel or the guest and the hotel.

In the case of these meals, the hotel is not transferring tangible personal property for a consideration to the guest.

SOUTH CAROLINA DEPARTMENT OF REVENUE

S/ Elizabeth Carpentier
Elizabeth Carpentier, Director

August 27, 2001
Columbia, South Carolina