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

SC PRIVATE REVENUE OPINION #01-5

SUBJECT: Events Conducted by a Nonprofit Religious Foundation
(Sales and Use Tax)

REFERENCES: S. C. Code Ann. Section 12-36-910 (Supp. 2000)
S. C. Code Ann. Section 12-36-90 (Supp. 2000)
S. C. Code Ann. Section 12-36-2120(41) (Supp. 2000)

AUTHORITY: S. C. Code Ann. Section 12-4-320 (Supp. 2000)
S. C. Code Ann. Section 1-23-10(4) (Supp. 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set forth, and is binding on agency personnel only with respect to the person to whom it was issued and only until superseded or modified by a change in statute, regulation, court decision, or advisory opinion, providing the representations made in the request reflect an accurate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:

May the Foundation, a nonprofit organization, purchase the following items tax-free when such items are provided to attendees at, or used in connection with, the events held at the ABC Place and similar events held by the Foundation?

1. Meal Provided to Attendees and Speakers
2. Lodging purchased for Speakers and Others
3. Bookmarks and Other Items Provided to Attendees
4. Flowers and Other Decorations
5. Rooms Rented for the Events
6. Silver Rings Provided to Attendees
7. Tables, Chairs, Audio/Visual Equipment, and Other Equipment Purchased or Rented for Use at Events
8. Brochures and Other Material Purchased to Promote the Events or for Use at the Events

Conclusion:

It is the opinion of the department that the “true object” of each event held at the ABC Place is the presentation by a specified speaker. The attendees are paying (when applicable) to hear the specified speaker. The meals and other items are incidental to that presentation. Therefore, the Foundation, a nonprofit organization, may not purchase the above referenced items tax-free when such items are provided to attendees at, or used in connection with, the events held at the ABC Place and similar events held by the Foundation.

Note: If the Foundation sells items separate from the charge for these events, such sales would be exempt from the tax under Code Section 12-36-2120(41). For example, if the Foundation had set up a table at the ABC Place and sold tangible personal property as a fundraiser, such as specific publications and articles and books written by the speaker, then sales of these items would be exempt since the Foundation qualifies for the exemption under Code Section 12-36-2120(41) and the “true object” to such transaction would be the sale of tangible personal property. In other words, the Foundation may purchase these items tax-free and sell them tax-free pursuant to Code Section 12-36-2120(41).

Facts:

The Foundation is a nonprofit organization exempt from federal income taxes. The organization’s purpose is to bring non-Christians to Christ by supplementing the efforts of churches. The organization qualifies for the exemption found in Code Section 12-36-2120(41) and has applied for and received the exemption certificate issued by the Department of Revenue with respect to that exemption.

In furtherance of this purpose, the Foundation recently conducted a series of events, broken down by groups with similar backgrounds, called the ABC Place. The main speaker at each event was a man who has traveled the world to communicate the Gospel of Jesus Christ. At these seminars, this speaker addressed different topics of interest. A nominal charge was made for most of the events and this charge was less than the cost of the event. With the help of charitable contributions of approximately \$50,000, the Foundation was able to cover the total cost of all of the events.

The following is a list of the 12 events conducted at the ABC Place and the cost, if any, of each:

<u>Event</u>	<u>Cost</u>
Woman’s Luncheon	\$15/person
Real Estate and Builders’ Dinner	\$25/person
Business and Professional Luncheon	\$15/person
Couple’s Dinner	\$25/person
Single’s Dinner	\$18/person
Youth Meeting	No Cost
Evening Worship	Donation
Silver Ring Thing ¹	No Cost

¹ The “Silver Ring Thing” is a program that promotes sexual abstinence.

God and Golf Outing	\$80; additional Person for Dinner \$20
Men's Breakfast	\$12/person
Senior's Luncheon	\$15/person
Celebration Final	No Cost

The events were up to 3 hours long with the specific talks by the speaker lasting anywhere from 45 to 90 minutes. According to the Foundation, the purpose of each event was the same as the purpose of the Foundation – to bring non-Christians to Christ.

The Foundation also notes that more than 250 people stepped up and accepted Christ as their Lord and Savior during the events. The Foundation continues to support churches and men's groups in bringing new souls to Christ and is now planning a second event for the fall. The event will again bring a noted speaker "with the goal of bringing more unchurched people to the church and to Christ."

Discussion:

Code Section 12-36-910 imposes Aa sales tax, equal to five percent of gross proceeds of sales, upon every person engaged . . . within this State in the business of selling tangible personal property at retail.@

The measure of the sales tax, Agross proceeds of sales,@ is defined at Code Section 12-36-90, in part, as:

... the value proceeding or accruing from the sale, lease, or rental of tangible personal property.

(1) The term includes:

* * * *

(b) the proceeds from the sale of tangible personal property without any deduction for:

- (i) the cost of goods sold;
- (ii) the cost of materials, labor, or service;
- (iii) interest paid;
- (iv) losses;
- (v) transportation costs;
- (vi) manufacturers or importers excise taxes imposed by the United States; or
- (vii) any other expenses.

In reviewing the above code sections, it appears that the entire charge may be subject to the sales tax. Such a conclusion appears to be consistent with previous court cases and Commission Decisions. [See Meyers Arnold v. South Carolina Tax Commission, 285 S.C. 303, 328 S.E. 2d 920 (1985 App.) (lay away fees for lay away sales); Regency Towers Association, Inc. v. South Carolina Tax Commission, Horry County Court of Common Pleas, Case No. 88-CP-26-1109 (1989) (maid service at a hotel); and Commission Decisions #90-38 and #91-64 (engraving charges as part of the sale of trophies).] These cases and decisions concerned whether or not certain services incidental to, or associated with, the sale of tangible personal property should be included in Agross proceeds of sales. @

The so-called Atrue object@ test is generally used to delineate sales of services from sales of tangible personal property. Applying this test to the matter at hand, it must be determined whether the meal or the presentation by the speaker is the true object of these events.

If the meal is the true object, then the presentation is incidental to the sale of the meal and the entire charge for the event would be subject to the sales tax. If the true object of the transaction is the presentation, then the meal would be incidental to the presentation and the amount received for the event would not be subject to the sales tax, but purchases of tangible personal property by the foundation would be subject to the tax.

The Atrue object@ test is best described in 9 Vanderbilt Law Review 231 (1956), wherein it is stated: The true test then is one of basic purpose of the buyer. When the product of the service is not of value to anyone other than the purchaser, either because of the confidential character of the product, or because it is prepared to fit the purchaser=s special need - a contract or will prepared by a lawyer, or the accident investigation report prepared for an insurance company - this fact is evidence tending to show that the service is the real purpose of the contract. When the purpose of the contract is to produce an article which is the true object of the agreement, the final transfer of the product should be a sale, regardless of the fact that special skills and knowledge go into its production. Under this analysis, printing work, done on special order, and of significant value only to the particular customer, is still a sale. The purchaser is interested in the product of the services of the printer, not in the services per se. Similarly, it would seem that contracts for custom-produced articles, be they intrinsically valuable or not, should be classified as sales when the product of the contract is transferred.

The Vanderbilt Law Review article, in quoting Snite v. Department of Revenue, 398 Ill. 41, 74 N.E. 2d. 877 (1947), also establishes the following general rule:

If the article sold has no value to the purchaser except as a result of services rendered by the vendor, and the transfer of the article to the purchaser is an actual and necessary part of the services rendered, then the vendor is engaged in the business of rendering service, and not in the business of selling at retail. If the article sold is the substance of the transaction and the service rendered is merely incidental to and an inseparable part of the transfer to the purchaser of the article sold, then the vendor is engaged in the business of selling at retail, and the tax which he pays . . . [is measured by the total cost of the article and services]. If the service rendered in connection with an article does not enhance its value and there is a fixed or ascertainable relation between the value of the article and the value of the service rendered in connection therewith, then the vendor is

engaged in the business of selling at retail and also engaged in the business of furnishing service, and is subject to tax as to the one business and tax exempt as to the other.

While the above quotes do not establish rigid rules, they do provide general guidance in determining the purpose of a transaction, and are particularly helpful in addressing the issues at hand.

Finally, if the meal is the “true object” of the transaction, we must consider Code Section 12-36-2120(41.), which exempts from the sales and use tax sales made by certain nonprofit organizations. The statute exempts:

items sold by organizations exempt under Section 12-37-220 A(3) and (4) and B(5), (6), (7), (8), (12), (16), (19), (22), and (24) if the net proceeds are used exclusively for exempt purposes and no benefit inures to any individual. An organization whose sales are exempted by this item is also exempt from the retail license tax provided in Article 5 of this chapter;

Nonprofit organizations coming within the exemption are:

- (1) public libraries and churches;
- (2) charitable trusts and Foundations used exclusively for charitable and public purposes;
- (3) The American Legion, the Veterans of Foreign Wars, the Spanish American War Veterans, the Disabled American Veterans, and Fleet Reserve Association or any similar Veterans Organization chartered by the Congress of the United States;
- (4) The Young Women's Christian Association, Young Men's Christian Association and the Salvation Army;
- (5) The Boy's and Girl's Scouts of America;
- (6) The Palmetto Junior Homemakers Association, the New Homemakers of South Carolina, the South Carolina Association of Future Farmers of America and the New Farmers of South Carolina;
- (7) Any religious, charitable, eleemosynary, educational, or literary society, corporation, or other association;
- (8) Volunteer Fire Departments and Rescue Squads;
- (9) All community owned recreation facilities opened to the general public and operated on a nonprofit basis; and,
- (10) nonprofit or eleemosynary community theater companies, symphony orchestras, county and community arts councils and commissions and other such companies, which is used exclusively for the promotion of the arts.

Note, this exemption only applies to sales or purchases for resale by the above nonprofit organizations. Purchases of property used by such nonprofit organizations (i.e., computers, furniture, supplies, etc.) do not come within the exemption.

Based on the above and the facts as stated, it is the opinion of the department that the “true object” of each of these events is the presentation by the speaker. The attendees are paying (when a payment is required) to hear the speaker preach the Gospel. The meals and other items are incidental to that presentation.

Therefore, purchases by the Foundations of food for the events and other handouts (e.g. silver rings, Bibles, bookmarks, etc.) provided to the attendees are retail sales to the Foundation and subject to the tax. The Foundation is using and consuming (and not reselling) these items in sponsoring these presentations by the speaker. In addition, other items such as gifts for speakers, flowers and other decorations, brochures printed to promote the events, lodging purchased, and the rental of meeting rooms at hotels and similar facilities are being purchased by the Foundation in promoting, sponsoring, and conducting these events and are therefore subject to the tax.

Note, however, if the Foundation sells items separate from the charge for these events, such sales would be exempt from the tax under Code Section 12-36-2120(41). For example, if the Foundation had set up a table at the ABC Place and sold tangible personal property as a fundraiser, such as publications and articles and books written by the guest speaker, then sales of these items would be exempt since the Foundation qualifies for the exemption under Code Section 12-36-2120(41). In other words, the Foundation may purchase these items tax-free and sell them tax-free.

SOUTH CAROLINA DEPARTMENT OF REVENUE

s/Elizabeth Carpentier
Elizabeth Carpentier, Director

December 7, 2001
Columbia, South Carolina

CAVEAT: This advisory opinion is issued to the taxpayer requesting it on the assumption that the taxpayer’s facts and circumstances, as stated, are correct. If the facts and circumstances given are not correct, or if they change, then the taxpayer requesting the advisory opinion may not rely on it. If the taxpayer relies on this advisory opinion, and the Department discovers, upon examination, that the facts and circumstances are different in any material respect from the facts and circumstances given in this advisory opinion, then the advisory opinion will not afford the taxpayer any protection. It should be noted that subsequent to the publication of this advisory opinion, changes in a statute, a regulation, or case law could void the advisory opinion.