
State of South Carolina
Department of Revenue
301 Gervais Street, P. O. Box 125, Columbia, South Carolina 29214
Website Address: <http://www.sctax.org>

SC REVENUE RULING #09-8

SUBJECT: Sales by Nonprofit Organization – Loss of Exemption Because Benefit Inures to an Individual
(Sales & Use Tax)

EFFECTIVE DATE: Applies to all periods open under the statute.

REFERENCES: S. C. Code Ann. Section 12-36-910 (2000, Supp. 2008)
S. C. Code Ann. Section 12-36-1110 (Supp. 2008)
S. C. Code Ann. Section 12-36-90 (2000, Supp. 2008)
S. C. Code Ann. Section 12-36-2120 (2000, Supp. 2008)

AUTHORITY: S. C. Code Ann. Section 12-4-320 (2000)
S. C. Code Ann. Section 1-23-10(4) (Supp. 2008)
SC Revenue Procedure #09-3

SCOPE: The purpose of a Revenue Ruling is to provide guidance to the public and to Department personnel. It is an advisory opinion issued to apply principles of tax law to a set of facts or general category of taxpayers. It is the Department's position until superseded or modified by a change in statute, regulation, court decision, or another Departmental advisory opinion.

Questions:

What are the sales tax implications of the following sales by nonprofit organizations?

Scenario #1: A nonprofit organization is selling artwork of local and national artists to raise money for its charitable purposes. The nonprofit organization is of a type that qualifies for the exemption from the sales tax under Code Section 12-36-2120(41) for its sales of tangible personal property (e.g., artwork). The nonprofit organization will obtain the artwork from the artists in the following manner

- (a) The artist will donate the artwork to the nonprofit organization.
- (b) The artist will sell the artwork to the nonprofit organization.
- (c) The nonprofit organization agrees to pay the artist a percentage of the sale price the nonprofit organization receives from its sale of the artwork.

Scenario #2: A nonprofit organization is selling tangible personal property at a gift shop to raise money for its charitable purposes. The nonprofit organization is of a type that qualifies for the exemption from the sales tax under Code Section 12-36-2120(41) for its sales of tangible personal property. The nonprofit organization will operate the gift shop in one of the following ways:

- (a) Volunteers will manage and operate the gift shop.
- (b) The nonprofit organization will hire a manager and employees to operate the gift shop and pay such persons a salary or hourly wage.
- (c) The nonprofit organization will hire a person to manage and operate the gift shop in return for a percentage of the sale proceeds.

Scenario #3: A nonprofit organization is selling tangible personal property at a special event to raise money for its charitable purposes. The nonprofit organization is of a type that qualifies for the exemption from the sales tax under Code Section 12-36-2120(41) for its sales of tangible personal property. The nonprofit organization will conduct the special event in one of the following ways:

- (a) Volunteers will organize the special event and make the sales at the special event.
- (b) The nonprofit organization will hire a promoter to organize and conduct the event and the promoter will be paid a percentage of the gross proceeds the nonprofit organization receives from the sales of tangible personal property at the special event.

Conclusions:

Sales of tangible personal property by nonprofit organizations listed in Code Section 12-36-2120(41) are exempt from the sales tax, provided “the net proceeds [from the sales] are used exclusively for exempt purposes and no benefit inures to any individual.

Therefore,

In Scenario #1, since the nonprofit organization is of a type that qualifies for the exemption from the sales tax under Code Section 12-36-2120(41) for its sales of tangible personal property (e.g., artwork),

- (a) sales of artwork by the nonprofit organization that were donated by the artist are exempt from the sales tax under Code Section 12-36-2120(41), provided the net proceeds from the sale are used exclusively for the nonprofit organization’s exempt purpose.

(b) sales of artwork by the nonprofit organization that were purchased from an artist are exempt from the sales tax under Code Section 12-36-2120(41), provided the net proceeds from the sale are used exclusively for the nonprofit organization's exempt purpose. In addition, the purchase of the artwork from the artist is a sale for resale (wholesale sale) not subject to the sales tax.

(c) sales of artwork by the nonprofit organization in which the artist will receive a percentage of the sales price received by the nonprofit organization are subject to the sales tax. These sales do not qualify for the exemption in Code Section 12-36-2120(41) since a benefit from the sales inure to the artist.

In Scenario #2, since the nonprofit organization is of a type that qualifies for the exemption from the sales tax under Code Section 12-36-2120(41) for its sales of tangible personal property,

(a) sales of tangible personal property at a gift shop that is managed and operated by volunteers are exempt from the sales tax under Code Section 12-36-2120(41), provided the net proceeds from the sales are used exclusively for the nonprofit organization's exempt purpose.

(b) sales of tangible personal property at a gift shop where a nonprofit organization hires a manager and employees to operate the gift shop and pay such persons a salary or hourly wage are exempt from the sales tax under Code Section 12-36-2120(41), provided the net proceeds from the sale are used exclusively for the nonprofit organization's exempt purpose and the salary and wages of the manager and employees are reasonable and are not based on the sales proceeds at the gift shop.

(c) sales of tangible personal property at a gift shop where a nonprofit organization hires a person to manage and operate the gift shop in return for a percentage of the sale proceeds are subject to the sales tax. These sales do not qualify for the exemption in Code Section 12-36-2120(41) since a benefit from the sales inure to the person managing and operating the gift shop in return for a percentage of the sale proceeds.

In Scenario #3, since the nonprofit organization is of a type that qualifies for the exemption from the sales tax under Code Section 12-36-2120(41) for its sales of tangible personal property,

(a) sales of tangible personal property at a special event that volunteers organized and at which volunteers made the sales are exempt from the sales tax under Code Section 12-36-2120(41), provided the net proceeds from the sale are used exclusively for the nonprofit organization's exempt purpose.

(b) sales of tangible personal property at a special event for which the nonprofit organization hired a promoter to organize and conduct and for which

the promoter will be paid a percentage of the gross proceeds the nonprofit organization receives from the sales of tangible personal property at the special event are subject to the sales tax. These sales do not qualify for the exemption in Code Section 12-36-2120(41) since a benefit from the sales inure to the promoter managing and conducting the special event in return for a percentage of the sale proceeds.

Discussion:

Code Section 12-36-910 imposes “a sales tax, equal to [six]¹ 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, “gross 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;

¹ Code Section 12-36-1110, which increased the state sales and use tax rate from 5% to 6% on June 1, 2007, states:

Beginning June 1, 2007, an additional sales, use, and casual excise tax equal to one percent is imposed on amounts taxable pursuant to this chapter, except that this additional one percent tax does not apply to amounts taxed pursuant to Section 12-36-920(A), the tax on accommodations for transients, nor does this additional tax apply to items subject to a maximum sales and use tax pursuant to Section 12-36-2110 nor to the sale of unprepared food which may be lawfully purchased with United States Department of Agriculture food coupons. (Emphasis added.)

(vi) manufacturers or importers excise taxes imposed by the United States; or

(vii) any other expenses.

Code Section 12-36-2120(41) 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.

Based on the above, sales of tangible personal property by nonprofit organizations listed in Code Section 12-36-2120(41) are exempt from the sales tax, provided

(1) “the net proceeds [from the sales] are used exclusively for exempt purposes”

and

(2) “no benefit inures to any individual.”

Therefore, in considering the three scenarios set forth in the “Questions” section of this advisory opinion, a nonprofit organization of a type that qualifies for the exemption from the sales tax under Code Section 12-36-2120(41) for its sales of tangible personal property will lose that exemption and owe the sales tax with respect to:

(1) sales of artwork by the nonprofit organization in which the artist will receive a percentage of the sales price received by the nonprofit organization;

(2) sales of tangible personal property at a gift shop where a nonprofit organization hires a person to manage and operate the gift shop in return for a percentage of the sale proceeds; and

(3) sales of tangible personal property at a special event for which the nonprofit organization hired a promoter to organize and conduct and for which the promoter will be paid a percentage of the gross proceeds the nonprofit organization receives from the sales of tangible personal property at the special event.

For more detailed information concerning the three scenarios, see the “Conclusion” section of this advisory opinion.

Note: For additional information on this exemption (including examples of auctioneers selling tangible personal property for a nonprofit organization), see SC Revenue Ruling #04-8. The exemption discussed in this advisory opinion, as well as SC Revenue Ruling #04-8, only applies to purchases by nonprofit organizations for resale and sales by nonprofit organizations. Purchases of property used by such nonprofit organizations (i.e., computers, furniture, supplies, etc.) do not come within the exemption in Code Section 12-36-2120(41).

SOUTH CAROLINA DEPARTMENT OF REVENUE

s/Ray N. Stevens

Ray N. Stevens, Director

June 16 _____, 2009
Columbia, South Carolina