

SC REVENUE RULING # 10-1

SUBJECT: Fundraising Events by Nonprofit Organizations
(Sales Tax, Admissions Tax, ABC, Liquor by the Drink Tax)

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

SUPERSEDES: SC Revenue Ruling #04-8 and all previous documents and any oral directives in conflict herewith.

REFERENCES: S. C. Code Ann. Section 12-36-90 (2000; Supp. 2008)
S. C. Code Ann. Section 12-36-910 (2000; Supp. 2008)
S. C. Code Ann. Section 12-36-2120(41) (Supp. 2008)
S. C. Code Ann. Section 12-36-70 (2000)
S. C. Code Ann. Section 40-6-370 (Supp. 2008)
S. C. Code Ann. Section 12-21-2410 (2000)
S. C. Code Ann. Section 12-21-2420 (2000; Supp. 2008)
S. C. Code Ann. Section 61-6-500 (2009)
S. C. Code Ann. Section 61-6-510 (2009)
S. C. Code Ann. Section 61-6-2000 (2009)
S. C. Code Ann. Section 61-4-550 (2009)
S. C. Code Ann. Section 61-4-240 (2009)
S. C. Code Ann. Section 61-6-1600 (2009)
S. C. Code Ann. Section 61-6-1620(B) (2009)
S. C. Code Ann. Section 12-33-245(A) (Supp. 2008)
SC Regulation 7-403 (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 a 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 It is the Department's position until superseded or modified by a change in statute, regulation, court decision, or another Departmental advisory opinion.

INTRODUCTION:

Questions have arisen concerning the application of the sales tax, admissions tax and the alcoholic beverage laws to fundraisers conducted by charities.

Such fundraisers may invite anyone who contributes \$1,000 or more or may be promoted as a \$1,000 per plate fundraising dinner. Other fundraisers may sell food or other items at or near the market rate and use the amount over and above costs for the organization's charitable purpose.

The following will discuss the law and, based on this discussion, provide examples in a question and answer format in order to explain the application of the sales tax, admissions tax, the alcoholic beverage laws, and the alcoholic liquor by the drink excise tax to fundraisers and other events conducted by nonprofit organizations.

LAW AND DISCUSSION:

I. SALES TAX:

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... without any deduction for... the cost of materials, labor, or service... [or] any other expenses....

In *Meyers Arnold, Inc. v. South Carolina Tax Commission*, 285 S.C. 303, 328 S.E.2d 920, 923 (1985), the Court of Appeals of South Carolina held the element of service involved in a lay away sale was subject to tax as being part of the sale of tangible personal property. The test used by the court was as follows:

...But for the lay away sales, Meyers Arnold would not receive the lay away fees. The fees are obviously charged for the service rendered in making lay away sales. For these reasons, this court holds the lay away fees are part of the gross proceeds and subject to the sales tax.

Accordingly, the total amount charged in conjunction with the sale or purchase of tangible personal property is subject to the tax.²

The so-called "true object" test is generally used to delineate sales of services from sales of tangible personal property. This test is one of determining the basic purpose of the buyer.³ Applying the principles of this test to the matter at hand, it must be determined whether the meal or the donation is the true object of these fundraisers.

¹ Code Section 12-36-1110 increased the general state sales and use tax rate from 5% to 6% effective June 1, 2007, with certain exceptions not applicable to this advisory opinion.

² See also *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).

³ 9 *Vanderbilt Law Review* 231 (1956).

If the meal is the true object, then the donation is incidental to the sale of the meal and the entire charge for the ticket would be subject to the sales tax. If the true object of the transaction is to make a donation to charity, then the meal would be incidental to the donation and the amount received would not be subject to the sales tax.

Exemption for Sales by Certain Nonprofit Organizations

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;

To simplify the administration of the exemption (Code Section 12-36-2120(41)), organizations should complete and file Form ST-387– Application for Sales Tax Exemption under Code Section 12-36-2120(41), "Exempt Organizations."

The statute does not require an organization to obtain an exemption certificate in order to purchase items exempt under this exemption. However, the Department recommends that organizations apply for the exemption certificate. If an organization is issued a certificate, this will simplify for the organization the purchase from suppliers of items tax-free for resale. Otherwise, suppliers may be reluctant to sell items tax-free (for resale) to an organization that does not have a retail license or does not have some other documentation showing that it qualifies for the exemption. The exemption certificate assures the supplier that the SC Department of Revenue has reviewed the matter and determined, based on information supplied with the application, that the organization qualifies for the exemption and that the supplier may sell items tax-free for resale to the organization. However, it should be noted that if it is determined that an organization does not meet the requirements of the statute or is not otherwise operating in an exempt manner, then the certificate will not be issued or will be revoked if previously issued.

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.

Auctions and Auctioneers

Finally, with respect to auctioneers, Code Section 12-36-70 defines the term “retailer” to include every person “selling or auctioning tangible personal property whether owned by the person or others.” In addition, Code Section 40-6-370 states that the provisions Chapter 6 of Title 40, which governs auctioneers, apply to auctions conducted by a licensed auctioneer on behalf of a charitable, civic, or religious organization. As such, a licensed auctioneer is liable for the sales tax on the “gross proceeds of sales” of the items sold at an auction he is conducting on behalf of a nonprofit organization, whether or not he is donating his time and expertise, if the licensed auctioneer is engaged in the business of selling tangible personal property at retail⁴ or is conducting the auction on behalf of his employer (*e.g.*, an auction house) who is engaged in the business of selling tangible personal property at retail. However, if a nonprofit organization does not use a licensed auctioneer, or uses a licensed auctioneer who is not engaged in the business of selling tangible personal property at retail, then the nonprofit organization is liable for the sales tax on such sales unless the nonprofit organization qualifies for the exemption from the tax under Code Section 12-36-2120(41).

II. ADMISSIONS TAX:

Code Section 12-21-2410 reads:

For the purpose of this article and unless otherwise required by the context:

- (1) The word "admission" means the right or privilege to enter into or use a place or location;

⁴A licensed auctioneer who only works as an employee for an auction house is not engaged in the business of selling at retail. The auction house is the retailer.

- (2) The word "place" means any definite enclosure or location; and
- (3) The word "person" means individual, partnership, corporation, association or organization of any kind whatsoever.

Code Section 12-21-2420 reads, in part:

There must be levied, assessed, collected and paid upon paid admissions to places of amusement within this State a license tax of five percent. ...

* * * *

The tax imposed by this section shall be paid by the person or persons paying such admission price . . .

In summary, the tax is upon "paid admissions" and the person paying the admission is the taxpayer with respect to the tax, whether that person is an individual, a partnership, or corporation. Furthermore, "paid admissions" constitute the amounts paid by patrons to enter into or use a place of amusement.

Over the years, the Department of Revenue has reviewed several times the issue of what charges are includable in "paid admissions." Essentially, the determination is based on what the patron must pay to enter into or use a place of amusement.

Therefore, we must determine whether or not a person is paying to enter into or use a place of amusement when considering the application of the admissions tax to fundraising events.

Code Section 12-21-2420(4) exempts from the admissions tax:

... admissions charged by any eleemosynary and nonprofit corporation or organization organized exclusively for religious, charitable, scientific, or educational purposes; or the presentation of performing artists by an accredited college or university; provided, that the license tax herein levied and assessed shall be collected and paid upon all paid admissions to all athletic events of any institution of learning above the high school level; provided, however, that carnivals, circuses, and community fairs operated by eleemosynary or nonprofit corporations or organizations organized exclusively for religious, charitable, scientific, or educational purposes shall not be exempt from the assessment and collection of admissions tax on charges for admission for the use of or entrance to rides, places of amusement, shows, exhibits, and other carnival facilities, but not to include charges for general gate admissions except when the proceeds of any such carnival, circus, or community fair are donated to a hospital; provided, further, that no admissions tax shall be charged or collected by reason of any charge made to any member of a nonprofit organization or corporation for the use of the facilities of the organization or corporation of which he is a member.

Code Section 12-21-2420(11) exempts from the admissions tax:

... admissions to events other than those events enumerated in item (4) of this section, sponsored and operated exclusively by eleemosynary, nonprofit corporations or organizations organized exclusively for religious, charitable, scientific, civic, fraternal, or educational purposes when the net proceeds derived from admissions to the events shall be immediately donated to an organization operated exclusively for charitable purposes. The term “net proceeds” shall mean the portion of the gross admissions proceeds remaining after necessary expenses of the event have been paid. This item shall not apply to an event in which the above organizations receive a percentage of gross proceeds or a stated fixed sum for the use of its name in promoting the event.

Nonprofit organizations qualifying for this exemption may apply for an exemption certificate using Form L-2068.

III. ALCOHOLIC BEVERAGE LAWS:

The following concerns two types of events involving nonprofit organizations: (a) fundraisers and other events in which alcoholic liquors, beer or wine are sold, and (b) events in which alcoholic liquors, beer or wine are provided without charge.

A. Sales of Alcoholic Liquors, Beer or Wine at Fundraisers and Other Events –

For purposes of the ABC laws, alcoholic liquor, beer, or wine is sold if there is a per drink charge, if an admissions fee is charged to enter a place or event where these beverages are provided, if a donation is accepted with respect to the event where these beverages are provided, if tickets are sold with respect to the event where these beverages are provided, if such beverages are provided as part of a meal for which consideration, direct or indirect, is accepted or required, or if any consideration is accepted or required with respect to the event where these beverages are provided. In addition, please note that the temporary permits discussed below that allow the **sale** of alcoholic liquors, beer, and wine may be issued for use in any designated area of a commercial establishment (including an area within a licensed location, such as a meeting room in a licensed restaurant or a ballroom in a licensed hotel) or in a private residence.

1. Sale of Beer and Wine at Fairs and Special Functions: Under Code Sections 61-4-240 and 61-4-550, the Department may issue temporary permits for the sale of beer and wine at fairs and special functions. Code Section 61-4-550 states:

The department may issue permits running for a period not exceeding fifteen days for a fee of ten dollars per day. Such special permits shall be issued only for locations at fairs and special functions.

2. Sale of Alcoholic Liquor by the Drink, Beer and Wine at Events for Members and their Guests Only: Code Section 61-6-2000 concerns the possession, sale, and consumption of alcoholic liquor by the drink. This section also applies to beer and wine pursuant to the provisions of Code

Section 61-4-240.⁵ Code Section 61-6-2000 states:

(A) In addition to the licenses authorized pursuant to the provisions of subarticle 1 of this article, the department also may issue a temporary license for a period not to exceed twenty-four hours to a nonprofit organization⁶ which authorizes an organization to purchase and sell at a single social occasion alcoholic liquors by the drink. Notwithstanding another provision of this article, the issuance of this permit authorizes the organization to purchase alcoholic liquors from licensed retail dealers in the same manner that a person with a biennial license is issued pursuant to the provisions of subarticle 1 of this article are authorized to make these purchases. The fee for the permit is thirty-five dollars payable at the time of application. The permit application must include a statement by the applicant as to the amount of alcoholic liquors to be purchased and the nature and date of the social occasion at which they are to be sold. The issuance or nonissuance of permits authorized pursuant to the provisions of this section is within the discretion of the department.

(B) The department may require the applicant to obtain a criminal background check conducted by the State Law Enforcement Division within thirty days prior to an initial application. Background checks for subsequent applications are not required unless the officers of the nonprofit organization change.

However, it is important to note that the provisions of Code Section 61-6-2000 are in Article 5 of Chapter 6 of Title 61. This article also contains Code Section 61-6-1600(A), which states:

(A) A nonprofit organization which is licensed by the department pursuant to the provisions of this article may sell alcoholic liquors by the drink. A member or guest of a member of a nonprofit organization may consume alcoholic liquors sold by the drink upon the premises between the hours of ten o'clock in the morning and two o'clock the following morning. [Emphasis added.]

Therefore, the provisions of the temporary license authorized under Code Section 61-6-2000 allow nonprofit organizations to sell, at a single social occasion, alcoholic liquor by the drink to their members and the authorized guests of their members as provided for in Code Section 61-6-1600(A). The provisions of this temporary license do not allow nonprofit organizations to sell alcoholic liquor by the drink to the general public.

3. Sale of Alcoholic Liquor, Beer and Wine at Events Open to the General Public: Code Section 61-6-510 concerns the possession, sale, and consumption of liquor. This section also applies to beer and wine pursuant to the provisions of Code Section 61-4-240.⁷ Code Section 61-6-510 states:

⁵ Code Section 61-4-240 provides that temporary permits for the sale of beer and wine may also be issued for events issued a temporary permit for the sale of alcoholic liquor under Code Section 61-6-2000.

⁶ Code Section 61-6-20(6) defines a nonprofit organization to mean “an organization not open to the general public, but with a limited membership and established for social, benevolent, patriotic, recreational, or fraternal purposes.”

⁷ Code Section 61-4-240 provides that temporary permits for the sale of beer and wine may also be issued for events issued a temporary permit for the sale of alcoholic liquor under Code Section 61-6-510.

(A) The department may issue a temporary permit to allow the possession, sale, and consumption of alcoholic liquors. This permit is valid for a period not to exceed twenty-four hours, and may be issued only to bona fide nonprofit organizations that have been in existence and operating for at least twelve months before the date of application, to nonprofit educational foundations, and to political parties and their affiliates duly certified by the Secretary of State. The department must charge a nonrefundable filing fee of thirty-five dollars for processing each application. The department in its discretion must specify the terms and conditions of the permit. For purposes of this section, “nonprofit organization” means an organization not open to the general public, but with a limited membership and established for social, benevolent, patriotic, recreational, or fraternal purposes.

(B) The department may require the applicant to obtain a criminal background check conducted by the State Law Enforcement Division within thirty days prior to an initial application. Background checks for subsequent applications are not required unless the officers of the nonprofit organization change.

Unlike the temporary license authorized in Code Section 61-6-2000, this temporary license is authorized by Code Section 61-6-510, which is in Article 3 and not Article 5 of Chapter 6 of Title 61. Therefore, it is not governed by the provisions of Code Section 61-6-1600. For this reason, a nonprofit organization that is granted a temporary license authorized by Code Section 61-6-510⁸ may sell alcoholic liquor to the general public at a fundraising event.

B. Alcoholic Liquors, Beer or Wine Provided Without Charge⁹

1. Beer or Wine Provided at an Event Without Charge: When a function is held in an unlicensed premises, a permit is not necessary if a nonprofit organization provides beer or wine at the function free of charge or free of any consideration whatsoever.

2. Alcoholic Liquors, Beer and Wine Provided at a Private Function Without Charge: Code Section 61-6-1620(B) concerns the possession and consumption of liquor and states:

Alcoholic liquors may be possessed or consumed in separate and private areas of an establishment whether or not the establishment includes premises which are licensed pursuant to Sections 61-6-1600 or 61-6-1610, where specific individuals have leased these areas for a function not open to the general public.

⁸ As stated in Code Section 61-6-510, these nonprofit organization must (a) ones in existence and operating for at least twelve months, (b) nonprofit educational foundations, or (c) political parties and their affiliates duly certified by the Secretary of State.

⁹ For purposes of the ABC laws, alcoholic liquor, beer, or wine is sold if there is a per drink charge, if an admissions fee is charged to enter a place or event where these beverages are provided, if a donation is accepted with respect to the event where these beverages are provided, if tickets are sold with respect to the event where these beverages are provided, if such beverages are provided as part of a meal for which consideration, direct or indirect, is accepted or required, or if any consideration is accepted or required with respect to the event where these beverages are provided.

With respect to Code Section 61-6-1620(B), Regulation 7-403, which concerns the possession and consumption of alcoholic liquors in a separate and private area of an establishment, states:

A. Lease must be written. When a separate and private area of an establishment is leased by a holder of a sale and consumption license to a specific individual or individuals for a function not open to the general public pursuant to Section 61-6-1620(B), the terms of the lease agreement shall be reduced to writing and a copy of that instrument shall be retained by the licensee upon the licensed premises.

B. Purchase, Delivery and Possession of Alcoholic Beverages. When a separate and private area of an establishment is leased by a specific individual or individuals for a function not open to the general public pursuant to Section 61-6-1620(B), the host or sponsor of said function, or the designated agent or representative of said host or sponsor must purchase and deliver to the leased area any alcoholic beverages to be possessed and consumed therein and must remain constantly in actual possession of these beverages until such time as the function is concluded, at which time all alcoholic beverages must be removed from the leased area and taken to a location where they may be legally stored. Nothing contained herein shall prohibit the host or sponsor or his designated agent or representative from having other persons, whether employed by the licensee or employed by the host or his agent or representative, from mixing and serving alcoholic beverages belonging to the host of the party.

C. Termination of Lease. In the event that the area leased pursuant to Section 61-6-1620(B), is located upon the premises of an establishment holding either a sale and consumption license or a retail beer and wine permit, the lease agreement shall automatically terminate at two o'clock in the morning. To permit or knowingly allow the possession and consumption of any alcoholic beverages upon the premises of the establishment after two o'clock in the morning shall constitute a violation against the license or permit. Such violation shall constitute sufficient cause for the South Carolina Department of Revenue to revoke or suspend said license or permit.

At any event where alcoholic liquor is possessed and consumed under the provisions of the above regulation, beer and wine may also be possessed and consumed.

3. Possession and Consumption of Alcoholic Liquor at a Publicly Owned Auditorium, Coliseum, or Armory: Code Sections 61-6-500 concerns the possession and consumption of liquor from big bottles. Code Section 61-6-500 states:

(A) Notwithstanding any other provision of law, the authorities in charge of a publicly-owned auditorium, coliseum, or armory may allow the possession and consumption of beer, wine, and alcoholic liquors on their premises.

(B) It is unlawful for a person to possess or consume beer, wine, or alcoholic liquors on the premises of a publicly-owned auditorium, coliseum, or armory unless the authorities in charge specifically have approved the possession or consumption of those beverages. A person who violates the provisions of this section is guilty of a misdemeanor and, upon conviction, must be fined not more than one hundred dollars or imprisoned not more than thirty days.

IV. ALCOHOLIC LIQUOR BY THE DRINK TAX:

Code Section 12-33-245(A) imposes an alcoholic liquor by the drink tax, and states:

In addition to taxes imposed pursuant to the provisions of Sections 12-33-230, 12-33-240, Article 5 of this chapter, and Chapter 36, Title 12, there is imposed an excise tax equal to five percent of the gross proceeds of the sales of alcoholic liquor by the drink for on-premises consumption in an establishment licensed for sales pursuant to Article 5, Chapter 6, Title 61 or at a location holding a temporary license or permit that authorizes the sale of liquor by the drink. All proceeds of this excise tax must be deposited to the credit of the general fund of the State. Except with respect to the distribution of the revenue of this tax, this excise tax is considered to be imposed pursuant to Chapter 36, Title 12. For purposes of this subsection, "gross proceeds of sales" has the meaning as provided in Section 12-36-90, except that the sales tax imposed under Chapter 36, Title 12 is not included in "gross proceeds of sales". The term "gross proceeds of sales" also includes, but is not limited to, the retail value of a complimentary or discounted beverage containing alcoholic liquor, an amount charged for ice for a drink containing alcoholic liquor, and an amount charged for a nonalcoholic beverage that is sold or used as a mixer for a drink containing alcoholic liquor. This section does not apply to nonprofit organizations that are issued a temporary permit to allow possession, sale, and consumption of alcoholic liquors pursuant to Section 61-6-510 or subarticle 5, Article 5, Chapter 6, Title 61.

Based on the above, there is imposed a 5% excise tax on the sales of alcoholic liquor by the drink. However, this excise tax does not apply to the sales of alcoholic liquor by the drink sold by a nonprofit organization at an event for which a temporary permit has been issued under either Code Section 61-6-510 or Code Section 61-6-2000.

CONCLUSIONS:

The following will explain, through examples, the application of the sales tax, admissions tax, and alcoholic beverage laws to fundraising and other events conducted by a nonprofit organization:

Example 1:

Facts:

A nonprofit organization holds a \$1,000 a plate function to raise money for a specific purpose. This function will be open to the public. At this function, persons paying the \$1,000 will be served a meal and will listen to a speech by a famous person. A professional caterer will provide the meal and will be paid \$20 a plate by the nonprofit organization. Alcoholic liquors (poured from big bottles), beer, and wine will be provided by the nonprofit organization and will be available at no additional charge for any person of legal drinking age.

Answer:

Sales Tax: The caterer, as a retailer, must have a retail license and is liable for the sales tax on the “gross proceeds of sales” of all the meals charged at \$20 a plate to the nonprofit organization. The \$1,000 paid to the nonprofit organization by the persons attending the fundraiser is a charitable contribution for sales tax purposes and is not consideration received from the sale of tangible personal property.

Admissions Tax: The \$1,000 paid to the nonprofit organization by the persons attending the fundraiser is a charitable contribution and is not a charge to enter into and use a place of amusement. As such, it is not subject to the admissions tax

Alcoholic Beverage Laws: The nonprofit organization must obtain the temporary permits authorized under Code Sections 61-6-510 (alcoholic liquors) and 61-4-240 (beer and wine) in order to allow the possession, sale, and consumption of alcoholic liquor, beer, and wine at the fundraiser. This temporary permit only applies to those nonprofit organizations falling within the definition of “nonprofit organization” as set forth in Code Section 61-6-510 (as well as nonprofit educational foundations and political parties and their affiliates).

Note: Since this event will be open to the general public, the nonprofit organization does not qualify for the temporary permit authorized under Code Sections 61-6-2000 for this fundraiser.

Alcoholic Liquor by the Drink Tax: The alcoholic liquor by the drink tax is not applicable since the nonprofit organization is selling the alcoholic liquor by the drink at an event for which a temporary permit has been issued under Code Section 61-6-510.

Example 2:

Facts:

A nonprofit organization is conducting a social. For \$50.00 a person, members and their guests will receive a meal and will be entertained by, and be able to dance to the music of, a local band. Alcoholic liquors, beer, and wine will be provided by the nonprofit organization and will be available at an additional charge for any member or guest of legal drinking age.

Answer:

Sales Tax and Admissions Tax: The nonprofit organization, as the retailer, must have a retail license and is liable for the sales tax on the “gross proceeds of sales” of the portion of the charge representing the meal and the drinks (alcoholic liquors, beer, wine, etc.) and is liable for the admissions tax on the portion of the charge representing the admissions charge. See SC Private Letter Ruling #92-5 for information and an example of a charge subject to both the sales tax and the admissions tax.

However, if the nonprofit organization qualifies for the exemption under Code Section 12-36-2120(41), the sale of the meals and drinks by the nonprofit organization to its members and visitors will not be subject to the sales tax provided the nonprofit organization has applied for and received an exemption certificate from the department. Nonprofit organizations that have

obtained the exemption certificate are not required to obtain a retail sales tax license. See SC Revenue Procedure #03-6 for more information concerning the sales tax exemption under Code Section 12-36-2120(41).

Also, if the organization and the transaction qualify for the exemption under Code Section 12-21-2420, the admissions charged by the nonprofit organization will not be subject to the admissions tax.¹⁰ A nonprofit organization may seek a determination as to whether it qualifies for the admission tax exemption under Code Section 12-21-2420 by completing the Application for Admissions Tax Exemption - Form L-2068.

Alcoholic Beverage Laws: Since the event is a social for members and their guests, the nonprofit organization must obtain the temporary permits authorized under Code Sections 61-6-2000 (alcoholic liquors) and 61-4-240 (beer and wine) in order to allow the possession, sale, and consumption of alcoholic liquors, beer, and wine at the event. This temporary permit only applies to those nonprofit organizations falling within the definition of “nonprofit organization” as set forth in Code Section 61-6-20(6).

If the nonprofit organization does not qualify for the temporary permit under Code Section 61-6-2000, then the nonprofit organization may obtain the temporary permits authorized under Code Sections 61-6-510 (alcoholic liquors) and 61-4-240 (beer and wine) in order to allow the possession, sale, and consumption of alcoholic liquors and beer and wine at the event, provided the organization must meet the requirements of Code Section 61-6-510 in order to obtain the temporary permit under Code Section 61-6-510 for the sale of alcoholic liquors.

Alcoholic Liquor by the Drink Tax: The alcoholic liquor by the drink tax is not applicable since the nonprofit organization is selling the alcoholic liquor by the drink at an event for which a temporary permit has been issued under either Code Section 61-6-510 or Code Section 61-6-2000.

Example 3:

Facts:

A nonprofit organization is conducting a social. For \$100.00 a person attending the event will receive a meal and will be entertained by, and be able to dance to the music of, a local band. While the \$100 is not for the purposes of raising money, but is being charged for the purposes of covering the costs of the social, the event is a community social that will be open to the general public as well as members of the nonprofit organization and their guests. Alcoholic liquors will be sold for an additional charge per drink. Beer and wine will also be sold for an additional charge per drink.

¹⁰ In addition to exempting nonprofit organizations organized exclusively for religious, charitable, scientific and educational purposes, Code Section 12-21-2420(4) also exempts charges made by a nonprofit organization, such as a nonprofit private country club, to its members for the use of its facilities. It should be noted that this exemption does not apply to charges to non-members (e.g., visitors).

Answer:

Sales Tax and Admissions Tax: The nonprofit organization, as the retailer, must have a retail license and is liable for the sales tax on the “gross proceeds of sales” of the portion of the \$100 charge representing the meal and is liable for the admissions tax on the portion of the \$100 charge representing the admissions charge. The separate charges for the drinks (alcoholic liquors, beer, and wine) are also subject to the sales tax. See SC Private Letter Ruling #92-5 for information and an example of a charge subject to both the sales tax and the admissions tax.

However, if the nonprofit organization qualifies for the exemption under Code Section 12-36-2120(41), the sale of the meals by the nonprofit organization to its members and visitors will not be subject to the sales tax provided the nonprofit organization has applied for and received an exemption certificate from the department. Nonprofit organizations that have obtained the exemption certificate are not required to obtain a retail sales tax license. See SC Revenue Procedure #03-6 for more information concerning the sales tax exemption under Code Section 12-36-2120(41).

Also, if the organization and the transaction qualify for the exemption under Code Section 12-21-2420, the admissions charged by the nonprofit organization will not be subject to the admissions tax¹¹. A nonprofit organization may seek a determination as to whether it qualifies for the admission tax exemption under Code Section 12-21-2420 by completing the Application for Admissions Tax Exemption - Form L-2068.

Alcoholic Beverage Laws: The nonprofit organization must obtain the temporary permits authorized under Code Sections 61-6-510 (alcoholic liquors) and 61-4-240 (beer and wine) in order to allow the possession, sale, and consumption of alcoholic liquor, beer and wine at the event.

Note: Since this event will be open to the general public, the nonprofit organization does not qualify for the temporary permits authorized under Code Sections 61-6-2000 for this event.

Alcoholic Liquor by the Drink Tax: The alcoholic liquor by the drink tax is not applicable since the nonprofit organization is selling the alcoholic liquor by the drink at an event for which a temporary permit has been issued under Code Section 61-6-510.

Example 4:

Facts:

A church seeks to raise money for its youth programs. Each week the church holds a fellowship dinner. Members and visitors pay \$5.50 per meal. Alcoholic liquors, beer, and wine will not be provided or available at this event. The cost per meal to the church is \$4.50. Therefore, \$1.00 of every meal is deposited into a special church fund to pay for the youth programs.

¹¹ See footnote #10.

Answer:

Sales Tax: The church, as the retailer, is liable for the sales tax on the “gross proceeds of sales” of all the meals charged at \$5.50 a meal to the members and visitors. The church may purchase prepared meals, or foodstuffs used to prepare the meals, tax free since such items will be resold to the members and visitors or constitute ingredients or component parts of the meal being sold by the church.

However, if the church qualifies for the exemption under Code Section 12-36-2120(41), the sale of the meals by the church to its members and visitors will not be subject to the sales tax provided the church has applied for and received an exemption certificate from the department. Churches that have obtained the exemption certificate are not required to obtain a retail sales tax license. See SC Revenue Procedure #03-6 for more information concerning the sales tax exemption under Code Section 12-36-2120(41).

Admissions Tax: The admission tax is not applicable to this example.

Alcoholic Beverage Laws: The alcoholic beverage laws are not applicable to this example.

Alcoholic Liquor by the Drink Tax: The alcoholic liquor by the drink tax is not applicable in this example.

Example 5:

Facts:

A church seeks to raise money for its youth programs. Each week the church holds a show (e.g., a puppet show, play) for pre-schoolers and others. Members and visitors pay \$1.00 to see the show. The money received is deposited into a special church fund to pay for the youth programs.

Answer:

Sales Tax: The sales tax is not applicable to this example.

Admissions Tax: The \$1.00 paid to the church by the persons attending the show is a charge to enter into and use a place of amusement. However, since the church qualifies for the exemption under Code Section 12-21-2420(4), the admissions price charged by the church will not be subject to the admissions tax.

Alcoholic Beverage Laws: The alcoholic beverage laws are not applicable to this example.

Example 6:

Facts:

A nonprofit organization is conducting a private event for invited guests only. No donation, entrance fee, or consideration of any kind will be required of the guests. The guests will receive

a meal and alcoholic liquors, beer, and wine will be provided. No donation or consideration of any kind will be accepted or required.

Answer:

Sales Tax: The nonprofit organization is not selling a meal or drinks and therefore is the user and consumer of the drinks and foodstuffs purchased to prepare the meal or the prepared meal if such a meal is purchased from a caterer. Therefore, the retailer selling the drinks, foodstuffs or prepared meal to the nonprofit organization must have a retail license and is liable for the sales tax on the “gross proceeds of sales” from the sale of the drinks, foodstuffs, or prepared meals. Please note that since the nonprofit organization is not selling the drinks or meal, the exemption under Code Section 12-36-2120(41) does not apply.

Admissions Tax: The admission tax is not applicable to this example.

Alcoholic Beverage Laws: The nonprofit organization may do one of the following:

(a) Alcoholic liquors, beer, and wine may be possessed or consumed in separate and private areas of an establishment whether or not the establishment includes premises which are licensed pursuant to Sections 61-6-1600 or 61-6-1610, where specific individuals have leased these areas for a function not open to the general public. Regulation 7-403 establishes the rules for conducting a private function at which alcoholic liquors will be served and at which no donations are accepted or consideration required. The nonprofit organization in this example may conduct this function without obtaining a permit for alcoholic liquors, beer, or wine provided the location and the host of the private function comply with the provisions of Regulation 7-403.

(b) Alcoholic liquors, beer, and wine may be possessed or consumed in a private residence.

(c) If the event will be held at a publicly owned auditorium, coliseum, or armory, the public authority in charge of the facility must specifically have approved the possession or consumption of those beverages on its premises. See Code Section 61-6-500 (alcoholic liquors). Since beer and wine will not be sold, a temporary permit is not necessary in order to possess and consume beer and wine at this function. In this case, the nonprofit organization is not required to obtain any temporary permits for the possession and consumption of alcoholic liquors, beer, and wine.

Alcoholic Liquor by the Drink Tax: The alcoholic liquor by the drink tax is not applicable in this example.

Example 7:

Facts:

A nonprofit organization will sell beer at a local festival in order to raise money.

Answer:

Sales Tax: The nonprofit organization, as the retailer, must have a retail license and is liable for the sales tax on the “gross proceeds of sales” of the beer.

However, if the nonprofit organization qualifies for the exemption under Code Section 12-36-2120(41), the sale of the beer by the nonprofit organization will not be subject to the sales tax provided the nonprofit organization has applied for and received an exemption certificate from the department. Nonprofit organizations that have obtained the exemption certificate are not required to obtain a retail sales tax license. See SC Revenue Procedure #03-6 for more information concerning the sales tax exemption under Code Section 12-36-2120(41).

Admissions Tax: The admission tax is not applicable to this example.

Alcoholic Beverage Laws: The nonprofit organization must obtain the temporary permit authorized under Code Sections 61-4-550 (beer and wine) in order to allow the sale of the beer at the festival.

Alcoholic Liquor by the Drink Tax: The alcoholic liquor by the drink tax is not applicable in this example.

Example 8:

Facts:

A nonprofit organization will sell donated items at an auction to raise money. The nonprofit organization has secured the services of a licensed auctioneer who is engaged in the business of selling tangible personal property at retail. The licensed auctioneer may or may not be paid to conduct the auction.

Answer:

Sales Tax: Under the provisions of Code Section 12-36-70(1)(a), the licensed auctioneer is the retailer and must have a retail license. As such, the auctioneer is liable for the sales tax on the “gross proceeds of sales” of the items sold at the auction, even if the money collected at the auction is paid directly to the nonprofit organization.

Admissions Tax: The admission tax is not applicable to this example.

Alcoholic Beverage Laws: The alcoholic beverage laws are not applicable to this example. If alcoholic beverages are served at the auction, see the other examples for information on the type of permit, if any, that may be required under the ABC laws.

Alcoholic Liquor by the Drink Tax: The alcoholic liquor by the drink tax is not applicable in this example. If alcoholic beverages are served at the auction, see the other examples for information on the type of permit, if any, that may be required under the ABC laws.

Example 9:

Facts:

A nonprofit organization will sell donated items at an auction to raise money. The nonprofit organization has secured the services of a licensed auctioneer who is not engaged in the business

of selling tangible personal property at retail but who is employed by an auction house. The licensed auctioneer may or may not be paid to conduct the auction.

Answer:

Sales Tax:

(a) Under the provisions of Code Section 12-36-70(1)(a), the auction house is the retailer and must have a retail license if the licensed auctioneer is conducting the auction for the nonprofit organization on behalf of the auction house (a retailer). As such, the auction house is liable for the sales tax on the “gross proceeds of sales” of the items sold at the auction, even if the money collected at the auction is paid directly to the nonprofit organization.

(b) If the licensed auctioneer is not conducting the auction on behalf of the auction house, then the nonprofit organization, as the retailer, must have a retail license and is liable for the sales tax on the “gross proceeds of sales” of the donated items. Since the licensed auctioneer is not engaged in the business of selling tangible personal property at retail outside of his work for his employer (the auction house), he is not the retailer. The nonprofit organization is the retailer.

However, if the nonprofit organization qualifies for the exemption under Code Section 12-36-2120(41), the sale of the donated items by the nonprofit organization will not be subject to the sales tax provided the nonprofit organization has applied for and received an exemption certificate from the department. Nonprofit organizations that have obtained the exemption certificate are not required to obtain a retail sales tax license. See SC Revenue Procedure #03-6 for more information concerning the sales tax exemption under Code Section 12-36-2120(41).

Note: If the licensed auctioneer is engaged in the business of selling tangible personal property at retail outside of his work for his employer (the auction house), then he is a retailer who must have a retail license. As such, if he is conducting an auction for a nonprofit organization, then he is liable for the sales tax on the “gross proceeds of sales” of the items sold at the auction (whether or not he is paid to conduct the auction), even if the money collected at the auction is paid directly to the nonprofit organization.

Admissions Tax: The admission tax is not applicable to this example

Alcoholic Beverage Laws: The alcoholic beverage laws are not applicable to this example. If alcoholic beverages are served at the auction, see the other examples for information on the type of permit, if any, that may be required under the ABC laws.

Alcoholic Liquor by the Drink Tax: The alcoholic liquor by the drink tax is not applicable in this example. If alcoholic beverages are served at the auction, see the other examples for information on the type of permit, if any, that may be required under the ABC laws.

Example 10:

Facts:

A nonprofit organization will sell donated items at an auction to raise money. The nonprofit organization will not secure the services of a licensed auctioneer. A local television personality, who is not a licensed auctioneer, has agreed to conduct the auction.

Answer:

Sales Tax: The nonprofit organization, as the retailer, must have a retail license and is liable for the sales tax on the “gross proceeds of sales” of the donated items. Since a television personality conducting the auction is not a licensed auctioneer, the nonprofit organization is the retailer.

However, if the nonprofit organization qualifies for the exemption under Code Section 12-36-2120(41), the sale of the donated items by the nonprofit organization will not be subject to the sales tax provided the nonprofit organization has applied for and received an exemption certificate from the department. Nonprofit organizations that have obtained the exemption certificate are not required to obtain a retail sales tax license. See SC Revenue Procedure #03-6 for more information concerning the sales tax exemption under Code Section 12-36-2120(41).

Admissions Tax: The admission tax is not applicable to this example.

Alcoholic Beverage Laws: The alcoholic beverage laws are not applicable to this example. If alcoholic beverages are served at the auction, see the other examples for information on the type of permit, if any, that may be required under the ABC laws.

Alcoholic Liquor by the Drink Tax: The alcoholic liquor by the drink tax is not applicable in this example. . If alcoholic beverages are served at the auction, see the other examples for information on the type of permit, if any, that may be required under the ABC laws.

Please note the following:

Longstanding Policy: Many of the conclusions reached in this advisory opinion also represent the longstanding policy of the department with respect to the application of the sales tax, admissions tax, and the alcoholic beverage laws to such fundraisers.

Administrative interpretations of statutes by the agency charged with their administration and not expressly changed by the legislative body are entitled to great weight. *Marchant v. Hamilton*, 279 S.C. 497, 309 S.E. 2d 781(1983). When as in this case, the construction or administrative interpretation of a statute has been applied for a number of years and has not been changed by the legislature, there is created a strong presumption that such interpretation or construction is correct. *Ryder Truck Lines, Inc. v. South Carolina Tax Commission*, 248 S.C. 148, 149 S.E. 2d 435 (1966); *Etiwan Fertilizer Company v. South Carolina Tax Commission*, 217 S.C. 354, 60 S.E. 2d 682 (1950).

Other Facts and Circumstances: The application of the sales tax, admissions tax, and alcoholic beverage laws is determined by the facts and circumstances of a particular fundraiser. The intent of the parties, the market rate for the meal, entertainment, or other item being offered at the fundraiser, and other factors must be considered. In addition, all factors must be considered in determining whether or not an alcoholic beverage permit is required and the type of alcoholic beverage permit that may be required.

Applications: This advisory opinion references the following Departments of Revenue application forms. These application forms can be found on the Department’s website at www.sctax.org by clicking on “Form and Instructions” in the “Quick Links” box.

Form SCTC-111 - Business Tax Application. This application is used to apply for retail sales tax license. (After clicking on “Forms and Instructions, this form can be found under the current year’s forms by clicking on “Other Forms.”)

Form L-514 - Application for a license to operate a place of amusement. (After clicking on “Forms and Instructions, this form can be found under the current year’s forms by clicking on “Miscellaneous Taxes/Licenses.”)

Form ST-387 - Exemption application for nonprofit organizations that may be exempt from the sales tax with respect to their sales of tangible personal property. (After clicking on “Forms and Instructions, this form can be found under the current year’s forms by clicking on “Sales.”)

Form L-2068 - Exemption application for nonprofit organizations that may be exempt from the admissions tax with respect to functions they sponsor. (After clicking on “Forms and Instructions, this form can be found under the current year’s forms by clicking on “Miscellaneous Taxes/Licenses.”)

Form ABL 900 - Application for a temporary beer, wine, or alcoholic liquor license. (After clicking on “Forms and Instructions, this form can be found under the current year’s forms by clicking on “Alcoholic Beverage Licensing.”)

SOUTH CAROLINA DEPARTMENT OF REVENUE

s/Ray N. Stevens

Ray N. Stevens

January 12 _____, 2010
Columbia, South Carolina