



301 Gervais Street, P.O. Box 125, Columbia, South Carolina 29214

SC REVENUE RULING #92-5

SUBJECT: Vending Machine Sales
(Sales & Use)

TAX MANAGER: Jerry Knight

EFFECTIVE DATE: All periods open under the statute.

REFERENCE: S.C. Code Ann. Section 12-36-910 (Supp. 1990)
S.C. Code Ann. Section 12-36-1310 (Supp. 1990)
S.C. Code Ann. Section 12-36-110 (Supp. 1990)
S.C. Code Ann. Section 12-36-120 (Supp. 1990)
S.C. Code Ann. Section 12-36-950 (Supp. 1990)
S.C. Regulation 117-174.82
S.C. Regulation 117-174.225

AUTHORITY: S.C. Code Ann. 12-4-320 (Enacted June, 1991)
SC Revenue Procedure #87-3

SCOPE: A Revenue Ruling is the Commission's official interpretation of how tax law is to be applied to a specific set of facts. A Revenue Ruling is public information and remains a permanent document until superseded by a Regulation or is rescinded by a subsequent Revenue Ruling.

Question:

What guidelines can the Tax Commission provide concerning application of the sales and use taxes to sales of tangible personal property made through vending machines?

Facts:

Certain questions have arisen concerning businesses that sell such items as sandwiches, candy, chips, crackers, cigarettes and soft drinks from vending machines. Some sell only from vending machines and others sell from vending machines as well as "over-the-counter". The purpose of this document is to address those questions.

Discussion:

Code Section 12-36-910 imposes the sales tax on retail sales of tangible personal property that occur in South Carolina; and Code Section 12-36-1310 imposes the use tax on the storage, use or consumption of tangible personal property that has been purchased at retail from outside the State.

Therefore, in order for the sales or use tax to be imposed, there must be a retail sale or retail purchase of tangible personal property.

The terms "sale at retail" and "retail sale" are defined at Code Section 12-36-110, in part, as:

all sales of tangible personal property except those defined as wholesale sales....

(1) The terms include:

* * * *

- (c) the withdrawal, use, or consumption of tangible personal property by anyone who purchases it at wholesale,....

* * * *

- (g) sales of tangible personal property, other than cigarettes and soft drinks in closed containers, to vendors who sell the property through vending machines. The vendors are deemed to be the users or consumers of the property;. (Emphasis added.)

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Code Section 12-36-120 defines "wholesale sale" and "sale at wholesale", in part, as "a sale of tangible personal property to licensed retail merchants for resale....and do not include sales to users or consumers". (Emphasis added.)

Therefore, as Code Section 12-36-110(1)(g) provides vending machine vendors are users or consumers of certain property they purchase for sale through vending machines, such purchases are retail purchases subject to the sales or use tax. Vending machine vendors are not deemed to be the users or consumers of cigarettes and soft drinks in closed containers. Cigarettes and soft drinks in closed containers are to be purchased at wholesale, with the tax due upon the items being sold - whether from vending machines or otherwise.

Having established that purchases of property for sale from vending machines are retail purchases subject to the sales or use tax (except for cigarettes and soft drinks in closed containers), we must now address those situations where retailers purchase items which they both sell from vending machines and "over the counter".

For guidance in this matter, we refer to Regulation 117-174.82, entitled "Dual Businesses", which reads, in part:

Operators of businesses who are both making retail sales and withdrawing for use from the same stock of goods are to purchase at wholesale all of the goods so sold or used and report both retail sales and withdrawals for use under the Sales Tax Law.

This ruling applies only to those who actually carry on a retail business having a substantial number of retail sales....

With regards to "withdrawals for use", Regulation 117-174.225 provides, in part:

* * * *

The value to be placed upon such goods is the price at which these goods are offered for sale by the person withdrawing them. All cash or other customary discounts which he would allow to his customers may be deducted; however, in no event can the amount used as gross proceeds of sales [the sales tax measure] be less than the amount paid for the goods by the person making the withdrawal. (emphasis added)

In other words, those engaged in the business of making "over-the-counter" retail sales and, also, sales from vending machines of the same products (e.g. crackers, chips, etc.) may purchase such products tax-free. Withdrawals from inventory of such products for the purpose of being sold from vending machines are retail sales subject to the tax when withdrawn, with the measure of the tax being no less than the property's cost. Sales of products "over-the-counter" are taxable when sold, with the measure of the tax being the products' selling price.

So-called "dual businesses" may purchase products tax-free (at wholesale) by giving a resale certificate to their suppliers, pursuant to Code Section 12-36-950. That section provides that the retailer (supplier) is liable for the sales tax and has the burden of proof that a sale was not at retail. However, if the purchaser gives the retailer (supplier) a resale certificate which meets the requirements of Code Section 12-36-950, the retailer (supplier) is relieved of the burden of proof and the liability for the tax shifts to the purchaser.

Conclusions:

Based on the foregoing discussion, the following guidelines are provided for businesses making sales through vending machines and/or "over-the-counter":

Vending Machine Sales, Only
(No Sales of Cigarettes Or Soft Drinks in Closed Containers)

Businesses that only make sales through vending machines are the users or consumers of tangible personal property they purchase for sale from the machines. Therefore, the tax is due on such purchases.

NOTE: Businesses only making sales of items from vending machines do not need a retail license, unless they also sell cigarettes or soft drinks in closed containers from vending machines.

Vending Machine Sales & "Over-the-Counter" Sales
(No Sales of Cigarettes Or Soft Drinks in Closed Containers)

Businesses making sales from vending machines and "over-the-counter" of the same items (e.g. candy, chips, crackers) may purchase such items tax-free by providing their suppliers with resale certificates that meet the requirements of Code Section 12-36-950.

Such businesses owe the tax to the Commission on the withdrawals from inventory of items to be sold from vending machines. The amount upon which the tax is due is the price at which the goods are offered for sale, but not less than the cost of the property so withdrawn.

The tax is due on "over-the-counter" sales when made, with the measure of the tax being the products' selling price.

NOTE: Businesses making "over-the-counter" sales on a regular basis are required to obtain a retail license.

Sales Of Cigarettes & Soft Drinks in Closed Containers
From Vending Machines And/Or "Over-the-Counter"

Cigarettes and soft drinks in closed containers purchased for resale from vending machines or "over-the-counter" may be purchased tax-free by the seller thereof using resale certificates, per Code Section 12-36-950.

The tax is due upon the sales of such items - whether from a vending machine or "over-the-counter" - and the measure of the tax is the products' selling price.

NOTE: Businesses making sales of cigarettes and soft drinks in closed containers on a regular basis are required to obtain a retail license. They must obtain a retail license no matter how such products are sold - from vending machines or otherwise.

SOUTH CAROLINA TAX COMMISSION

s/A. Crawford Clarkson Jr. _____
A. Crawford Clarkson, Jr., Chairman

s/T. R. McConnell _____
T. R. McConnell, Commissioner

s/James M. Waddell Jr. _____
James M. Waddell, Jr., Commissioner

Columbia, South Carolina
June 30 _____, 1992