



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

SC REVENUE RULING #93-1

SUBJECT: Charges By Automobile Rental Operation
(Sales Tax)

TAX MANAGER: John P. McCormack

EFFECTIVE DATE: July 1, 1993

REFERENCE: S.C. Code Ann. Section 12-36-910 (Supp. 1991)
S.C. Code Ann. Section 12-36-90 (Supp. 1991)

AUTHORITY: S.C. Code Ann. Section 12-4-320 (Supp. 1991)

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 A Revenue Ruling is public information and remains a permanent document until superseded by a Regulation or is rescinded by a subsequent Revenue Ruling.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:

Are certain charges by an automobile rental company, as listed in the facts, includable in "gross proceeds of sales" and therefore subject to the sales tax?

Facts:

An automobile rental company ("company") is engaged, in South Carolina, in the business of renting automobiles on a short term basis. In addition to its basic rental charge, the company charges the customer a "fueling charge". Also, if the customer chooses certain other services, additional charges are made. The following is a brief description and/or example of the charges in question:

Fueling Charges - The fueling charge is a mandatory charge; however, the company determines the fueling charge under one of two methods.

Method #1 - The customer may elect to either:

(a) pay a separately stated non-refundable charge for the gas provided with the car, with no credit given for the return of any unused gas; or,

(b) not pay the fuel charge at the time of the initial rental and pay a separately stated fuel charge only for gas used, if the car is returned with less than a full tank. The customer has the option of returning the car with a full tank and avoiding the fueling charge.

Method #2 - The customer must pay (an election is not allowed) a separately stated non-refundable charge for the gas provided with the car, with no credit given for the return of any unused gas.

Collision Damage Waiver (Optional) - The customer pays a fee for a release of financial responsibility to the company for any damages occurring to the car during use. For example, if the customer is involved in an accident, the customer will not be responsible to the company for repair costs if he or she purchased the collision damage waiver. The fee is separately stated from the rental price.

Personal Accident Coverage (Optional) - The customer pays a fee in order to be provided up to \$50,000 in coverage for any automobile related death or dismemberment which may occur to the customer or any passenger in the rental car.

Extended Protection (Optional) - The customer pays an additional fee in order to be provided up to \$1,000,000 for claims that may be made against the customer or other authorized drivers of the car for automobile related bodily injury, death, and property damage. Uninsured motorist benefits up to \$1,000,000 are also included in this protection package. The uninsured motorist benefits are paid if the insured is injured and the uninsured motorist is at fault.

Personal Effects Coverage (Optional) - The customer pays a fee to be protected against the loss, theft, or damage to the customer's personal property which is in the car during the rental period.

Personal Accident and Effects Coverage (Optional) - The customer pays a fee for a combination of the Personal Accident Coverage and the Personal Effects Coverage discussed above.

As with the fueling charge, all the other charges discussed above, except the collision damage waiver fee, are separately stated on the bill to the customer.

Discussion:

Code Section 12-36-910 imposes "a 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."

Code Section 12-36-90 reads, in part:

Gross proceeds of sales, or any similar term, means 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 Meyers Arnold v. South Carolina Tax Commission, 285 S.C. 303, 328 S.E. 2d. 920 (1985), the Court of Appeals, in interpreting the definition of "gross proceeds of sales" with respect to lay away fees paid in conjunction with lay away sales, held:

Section 12-35-30 [now Section 12-36-90] defines gross proceeds of sales as "the value proceeding or accruing from the sale of tangible personal property ... without any deduction for service costs." But for the lay away sales, Meyers Arnold would not receive the lay away fees. The fees are obviously rendered in making lay away sales.

For these reasons, this court holds the lay away fees are part of the gross proceeds of sales and subject to the sales tax.

In addition, the Commission, in Decision S-D-174, held a property damage waiver fee charged by a person engaged in the business of renting tangible personal property was subject to the sales tax. The Commission, in citing Meyers Arnold v. South Carolina Tax Commission, supra, stated:

Just as in Meyers Arnold, supra, the service fee here is taxable. But for the lease of tangible personal property, the taxpayer would not have received the fee. The fee is obviously charged for the additional service of providing a lease of property free from liability for damage. In the absence of such service, the lessee, under the taxpayer's lease agreements, would be "liable for any loss, theft, damage or destruction of leased property." We find and conclude the fee for the property damage waiver is part of gross proceeds of sale subject to tax.

In summary, the sales tax is imposed upon every person engaged in South Carolina in the business of selling tangible personal property at retail. The tax is based upon the gross proceeds of sales of the business, which is the value proceeding from the sale without any deductions for service costs and other expenses. Therefore, "[b]ut for [the rental of the car], the taxpayer would not have received the [fees for the various charges connected with the rental car, as described in the facts.]" [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).]

Conclusion:

The charges by an automobile rental company, as described in the facts, are all includable in "gross proceeds of sales" and therefore subject to the sales tax. These charges are:

1. Fueling Charges.
2. Charges for Collision Damage Waiver.
3. Personal Accident Coverage.
4. Extended Protection.
5. Personal Effects Coverage.
6. Personal Accident and Effects Coverage.

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
January 14, 1993