



SC REVENUE RULING #93-9

SUBJECT: Sales of Meals
Educational and Medical Institutions
(Sales and Use Tax)

TAX MANAGER: John P. McCormack

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

REFERENCE: S.C. Code Ann. Section 12-36-910 (Supp. 1992)
S.C. Code Ann. Section 12-36-1310 (Supp. 1992)
S.C. Code Ann. Section 12-36-110 (Supp. 1992)
S.C. Code Ann. Section 12-36-90 (Supp. 1992)
S.C. Code Ann. Section 12-36-130 (Supp. 1992)

AUTHORITY: S.C. Code Ann. Section 12-4-320 (Supp. 1992)

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 A Revenue Ruling is public information and remains a permanent document until superseded by a Regulation or is rescinded by a subsequent Revenue Ruling.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

How is the State sales and use tax applied with respect to meals sold or furnished by certain educational and medical institutions?

Facts:

EDUCATIONAL INSTITUTIONS:

Colleges and universities sell or provide meals and other foods in a variety of ways.

Meals are provided to students in a cafeteria under a board plan. Under such plans, students will purchase all their meals (breakfast, lunch and dinner) for an entire semester or year at the beginning of the school year. This is usually done at the same time students pay their tuition and other fees. Typically, the student who signs up for one of the board plans is given a card that is used by the student to obtain the meals.

In addition, students who participate in a limited board plan may purchase individual meals sold by the college or university in the cafeteria. For example, one board plan may furnish meals to students Monday through Friday. A student under this limited plan may from time to time choose to purchase an individual meal in the cafeteria on Saturday or Sunday.

Employees, visitors and students who do not participate in a board plan may also purchase meals sold by the college or university in the cafeteria. Generally, these meals are purchased on an individual basis; however, some colleges and universities sell tickets that entitles the purchaser to several meals.

Also, colleges and universities may sell meals and food to students and others at canteens, snack bars, and other places around the campus. In addition, food may be sold at concession stands at sporting and theatrical events.

Finally, colleges and universities may contract with food service companies to sell or furnish meals on campus. Under such contracts, the food service company will either be an agent of the institution or will sell the meals to the institution, who has sold the meals to the students via a board plan.

MEDICAL INSTITUTIONS:

Medical institutions, such as hospitals, infirmaries, and nursing homes, also sell or provide meals and other foods in a variety of ways.

As part of the professional medical services provided, patients are furnished meals during their stay at the institution.

Meals and other foods are also sold to employees, visitors and others in cafeterias, canteens, and snack bars.

As with colleges and universities, medical institutions may contract with food service companies to sell or furnish meals at the hospital, infirmary, etc., either as agents or on some other basis.

Discussion:

Code Section 12-36-910(A) imposes a sales tax and reads, in part:

A sales tax, equal to five percent of the gross proceeds of sales is imposed upon every person engaged or continuing within this State in the business of selling tangible personal property at retail.

Code Section 12-36-1310(A) imposes a use tax and reads, in part:

A use tax is imposed on the storage, use, or other consumption in this State of tangible personal property purchased at retail for storage, use, or other consumption in this State, at the rate of five percent of the sales price of the property, regardless of whether the

retailer is or is not engaged in business in this State.

Therefore, for the 5% sales or use taxes to apply, there must be a retail sale or purchase of tangible personal property. The liability for the sales tax is upon the seller, while the liability for the use tax falls upon the purchaser.

Code Section 12-36-110 defines the terms "sale at retail" and "retail sale", in part, as follows:

Sale at retail and retail sale mean all sales of tangible personal property except those defined as wholesale sales. The quantity or sales price of goods sold is immaterial in determining if a sale is at retail.

(1) The terms include:

* * * *

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

* * * *

(h) sales of prepared meals, or unprepared food products used to prepare meals, to hospitals, infirmaries, sanitariums, nursing homes, and similar institutions, educational institutions, boarding houses, and transportation companies, if furnished as part of the service rendered. These institutions and companies are deemed to be the users or consumers of the property;

Therefore, sales to, purchases by or withdrawals for use by, educational and medical institutions of meals or unprepared food products used to prepare meals are retail sales subject to the tax when such meals are furnished to or purchased by students as part of a board plan or to patients as part of the medical services. Sales by an educational or medical institution, that are not to students as part of a board plan or to patients as part of the medical services, are retail sales subject to the tax.

Now that we have determined when the retail sale occurs, we must determine the basis for the tax.

With respect to sales by South Carolina suppliers to these institutions, the basis for the sales tax is "gross proceeds of sales". That term is defined in Code Section 12-36-90 to mean, in part, "... the value proceeding or accruing from the sale, lease, or rental of tangible personal property." No deductions are allowed for the costs of goods sold, labor or service costs, losses or any other expenses.

The term "gross proceeds of sales" also includes "the fair market value of tangible personal property previously purchased at wholesale which is withdrawn from the business or stock and used or consumed in connection with the business or used or consumed by any person withdrawing it ..."

In addressing withdrawals for use, SC Regulation 117-174.82 states that "[o]perators of businesses who are making both 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." In order for this regulation to apply, the business must have a substantial number of retail sales. To comply with this regulation, educational and medical institutions should present to their suppliers a Form ST-8A - Resale Certificate. This will allow the suppliers to sell these goods at wholesale to the educational or medical institution.

With respect to purchases from out of state suppliers by these institutions, the basis for the use tax is "sales price". That term is defined in Code Section 12-36-130 to mean, in part, "... the total amount for which tangible personal property is sold, without any deductions for the cost of the property sold, the cost of the materials used, labor or service cost, interest paid, losses, or any other expenses."

Finally, as stated in the facts, some educational and medical institutions contract with food service companies. Under some of these contracts, the food service company is the agent of the educational or medical institution. The following quote from 68 Am. Jur. 2d., Sales and Use Tax, Section 83, provides some guidance in this area:

Where an agent buys goods for his principal, the sale is not made to the agent for the purposes of resale, but is in effect a transfer from the seller to the principal.

Conclusions:

A. EDUCATIONAL INSTITUTIONS:

Meals Served Under Board Plan

1. Sales to an educational institution of unprepared food products, for use in furnishing meals under a board plan, are retail sales subject to the sales tax or the use tax.
2. Sales to a food service company of unprepared food products, for use in furnishing meals under a board plan, are retail sales subject to the sales tax or the use tax if the food service company is the agent of the educational institution.
3. Sales by food service companies of meals to an educational institution or directly to the students, as part of a board plan, are retail sales subject to the sales or the use tax if the food service company is merely under contract with the educational institution and is not the agent of the educational institution.

FOR ADDITIONAL INFORMATION CONCERNING SALES BY, AND PURCHASES FROM, SUPPLIERS (INCLUDING INFORMATION ON RESALE CERTIFICATES), SEE SECTIONS C AND D BELOW.

Cash or Other Food Sales, Not Under a Board Plan

1. Sales by an educational institutions of meals and other foods (including the purchase of tickets that entitles the purchaser to several meals), other than those furnished under a board plan, are retail sales subject to the sales tax or the use tax.
2. Sales of meals and other foods by a food service company as the agent of an educational institution, other than those furnished under a board plan, are retail sales subject to the sales tax or the use tax.
3. Sales of meals and other foods by a food service company, other than those furnished under a board plan, are retail sales of the food service company subject to the sales or the use tax.

FOR ADDITIONAL INFORMATION CONCERNING SALES BY, AND PURCHASES FROM, SUPPLIERS (INCLUDING INFORMATION ON RESALE CERTIFICATES), SEE SECTIONS C AND D BELOW.

B. MEDICAL INSTITUTIONS:

Meals and Other Food Served to Patients as part of Medical Care

1. Sales to a medical institution of unprepared food products, for use in furnishing meals and other food to patients as part of their medical care, are retail sales subject to the sales tax or the use tax.
2. Sales to a food service company of unprepared food products, for use in furnishing meals and other food to patients as part of their medical care, are retail sales subject to the sales tax or the use tax if the food service company is the agent of the medical institution.
3. Sales by food service companies of meals to a medical institution, for use in furnishing meals and other food to patients as part of their medical care, are retail sales subject to the sales or the use tax if the food service company is merely under contract with the medical institution and is not the agent of the medical institution.

FOR ADDITIONAL INFORMATION CONCERNING SALES BY, AND PURCHASES FROM, SUPPLIERS (INCLUDING INFORMATION ON RESALE CERTIFICATES), SEE SECTIONS C AND D BELOW.

Meals and Other Food Served or Sold to Employees, Visitors and Others (Cafeterias, Canteens, Snack Bars, Etc.)

1. Sales by a medical institution of meals and other foods, other than those furnished to patients as part of their medical care, are retail sales subject to the sales or the use tax.
2. Sales of meals and other foods by a food service company as the agent of a medical institution, other than those furnished to patients as part of their medical care, are retail sales of the educational institution subject to the sales tax or the use tax.
3. Sales of meals and other foods by a food service company, other than those furnished to patients as part of their medical care, are retail sales of the food service company subject to the sales or the use tax.

FOR ADDITIONAL INFORMATION CONCERNING SALES BY, AND PURCHASES FROM, SUPPLIERS (INCLUDING INFORMATION ON RESALE CERTIFICATES), SEE SECTIONS C AND D BELOW.

C. EDUCATIONAL AND MEDICAL INSTITUTIONS AND FOOD SERVICE COMPANIES MAKING BOTH RETAIL SALES AND WITHDRAWING FOR USE FROM THE SAME STOCK OF GOODS:

As stated in the discussion, educational and medical institutions and food service companies, as described in the facts, that are making both 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. They will then report retail sales based on gross proceeds of sales and withdrawals for use based on the property's fair market value. In order for this provision to apply, the educational or medical institution must have a substantial number of retail sales. To comply with this provision, educational and medical institutions should present to their suppliers a Form ST-8A - Resale Certificate. This will allow the suppliers to sell these goods at wholesale to the educational or medical institution. See SC Regulation 117-174.82.

D. SUPPLIERS SELLING UNPREPARED FOOD PRODUCTS TO EDUCATIONAL AND MEDICAL INSTITUTIONS AND TO FOOD SERVICE COMPANIES:

Educational and medical institutions and food service companies, as described in the facts, are purchasing unprepared food products at retail for use in preparing meals under a board plan. Therefore, businesses selling unprepared food products to these institutions and companies should sell such products at retail, unless the purchaser provides them a Form ST-8A - Resale Certificate. Receipt of the resale certificate will allow suppliers to sell these goods at wholesale to these educational and medical institutions and food service companies.

Educational and medical institutions and food service companies, as described in the facts, should not provide their suppliers a resale certificate, Form ST-8A, unless they will be re-selling the product or are doing so to comply with the provisions of SC Regulation 117-174.82, as described in the Section C above.

SC Revenue Ruling #93-9

SOUTH CAROLINA DEPARTMENT OF REVENUE

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
August 4 . 1993

SUMMARY OF SC REVENUE RULING #93-9
EDUCATIONAL INSTITUTIONS

| SITUATIONS | MEALS SERVED UNDER BOARD PLAN | CASH AND OTHER SALES | REMARKS |
|---|--|--|--|
| Educational institution (college) operates its own dining facilities. A food service company is <u>not</u> involved. | Sales to, or withdrawals for use by, the college of the unprepared food products are retail sales subject to the tax. | The college is the retailer and tax is due on the gross proceeds from the sales. The unprepared food products may be purchased tax free. | The college must obtain a retail license for each location on campus where "cash or other sales" are made. |
| Educational institution (college) has an "agency" contract with a food service company that will furnish food service to the entire institution. | Sales to, or withdrawals for use by, the food service company of the unprepared food products are retail sales subject to the tax. | Sales by the food service company, as agent for the college, are retail sales subject to the tax. | The food service company, as agent, must obtain a retail license for each location on campus where "cash or other sales" are made. |
| Educational institution (college) has a contract with a food service company to furnish food service to the entire institution. The food service company is <u>not</u> an agent of the college under this contract. | Sales by the food service company, either to the college or to the students, are retail sales subject to the tax. | Sales by the food service company, either to the college, the students or others, are retail sales subject to the tax. | The food service company must obtain a retail license for each location on campus. |

FOR ADDITIONAL INFORMATION CONCERNING SALES BY, AND PURCHASES FROM, SUPPLIERS (INCLUDING INFORMATION ON REALES CERTIFICATES), SEE SECTIONS C AND D OF THE REVENUE RULING - #93-9.

HOSPITALS, INFIRMARIES, NURSING HOMES AND SIMILAR INSTITUTIONS

| SITUATIONS | MEALS AND OTHER FOOD SERVED TO PATIENTS AS PART OF MEDICAL CARE | MEALS AND OTHER FOOD SERVED OR SOLD TO EMPLOYEES, VISITORS AND OTHERS | SALES IN CANTEENS, SNACK BARS, ETC. |
|--|--|--|--|
| The hospital, etc. (medical institution) operates its own dining facilities. A food service company is <u>not</u> involved. | Sales to, or withdrawals for use by, the medical institution of the unprepared food products are retail sales subject to the tax. | The medical institution is the retailer and tax is due on the gross proceeds from the sales. The unprepared food products may be purchased tax free. | The medical institution is the retailer and tax is due on the gross proceeds from the sales. The unprepared food products may be purchased tax free. |
| The hospital, etc. (medical institution) has an "agency" contract with a food service company that will furnish food service to the entire institution. | Sales to, or withdrawals for use by, the food service company of the unprepared food products are retail sales subject to the tax. | Sales by the food service company, as agent for the medical institution, are retail sales subject to the tax. | Sales by the food service company, as agent for the medical institution, are retail sales subject to the tax. |
| The hospital, etc. (medical institution) has a contract with a food service company to furnish food service to the entire institution. The food service company is <u>not</u> an agent of the college under this contract. | Sales by the food service company, either to the medical institution or to others, are retail sales subject to the tax. | Sales by the food service company, either to the medical institution or others, are retail sales subject to the tax. | Sales by the food service company are retail sales subject to the tax. |

FOR ADDITIONAL INFORMATION CONCERNING SALES BY, AND PURCHASES FROM, SUPPLIERS (INCLUDING INFORMATION ON REALES CERTIFICATES), SEE SECTIONS C AND D OF THE REVENUE RULING - #93-9.