
State of South Carolina
Department of Revenue
301 Gervais Street, P. O. Box 125, Columbia, South Carolina 29214

SC REVENUE RULING #97-10

SUBJECT: City and County Cable Franchise Fees
(Sales Tax)

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

REFERENCE: S.C. Code Ann. Section 12-36-910 (Supp. 1996)

AUTHORITY: S.C. Code Ann. Section 12-4-320 (Supp. 1996)
SC Revenue Procedure #94-1

SCOPE: A Revenue Ruling is the Department of Revenue's **official advisory opinion** of how laws administered by the Department are to be applied to a specific issue or a specific set of facts, and is provided as guidance for all persons or a particular group. It is valid and remains in effect until superseded or modified by a change in the statute or regulations or a subsequent court decision, Revenue Ruling or Revenue Procedure.

Question:

Is a city or county franchise fee imposed upon a cable television system and calculated as a percentage of the cable television system's gross receipts includable in "gross proceeds of sales" and subject to the sales tax, regardless of whether it is passed on to customers as a separately stated item on the bill or included as a part of the overall charge for cable services?

Conclusion:

A city or county franchise fee imposed upon a cable television system and calculated as a percentage of the cable television system's gross receipts is includable in "gross proceeds of sales" and subject to the sales tax, regardless of whether it is passed on to customers as a separately stated item on the bill or is included in the overall charge for cable services.

Facts:

Many cities and counties in South Carolina impose franchise fees upon cable television systems calculated as a percentage of the cable television system's gross receipts. When passing these fees on to their customers, some cable television systems will separately state the franchise fee in their bills to their customers. Others do not separately state the fee and include it in the customer's monthly charge.

For example, ABC Cable charges \$30.00 a month for services and is required to remit to the county a 3% franchise fee on this charge. The total charge to the customer would be \$30.90, not including the State sales tax. ABC Cable may separately state the ninety cent franchise fee on its bills to its customers (\$30.00 + \$0.90) or ABC Cable may show a charge of \$30.90.

Questions have arisen as to whether these fees are includable in "gross proceeds of sales", and therefore, subject to the State sales tax.

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." (Emphasis added.)

Code Section 12-36-910(B)(3) also imposes the sales tax on the "gross proceeds accruing or proceeding from the charges for the ways or means for the transmission of the voice or message, ..." (Emphasis added.)

Charges for cable television service have been held subject to the tax pursuant to Code Section 12-36-910(B)(3). See SC Information Letter #89-28.

Many fees imposed on the retailer by a county or city are includable in gross proceeds of sales and subject to the sales tax. See SC Revenue Ruling #96-8. However, the statute provides a specific exclusion from the tax that must be reviewed to determine its application, if any, to this issue.

Code Section 12-36-90(2)(f) excludes from the definition of gross proceeds of sales "that portion of a charge taxed under Code Sections 12-36-910(B)(3) or 12-36-1310(B)(3) attributable to the cost set by statute for a governmental license or permit."

Based on the above wording, we must determine whether or not a city or county franchise fee calculated as a percentage of the cable television system's gross receipts is set by statute.

"A statute is an act of the legislature as an organized body; it is the written will of the legislature, expressed according to the form necessary to constitute it a law of the state, and rendered authentic by certain prescribed forms and solemnities. Sometimes the term is more broadly defined to include administrative regulations or any enactment, from whatever source originating, to which the state gives the force of law." 73 Am. Jur. 2d Statutes, Section 1.

Code Sections 2-7-45 and 2-13-90 state in part that the Code of Laws of South Carolina, 1976, and any supplement of any volume of the Code of Laws are "the only general statutory law of the State." In addition, a review of the Code of Laws indicates that the General Assembly has consistently followed the general rule cited above. When referring to state laws the General Assembly uses the term "statute." When referring to the powers of a city or county to enact local laws, the General Assembly uses the term "ordinance."

As such, the term "statute" as used in Code Section 12-36-90(2)(f) means a fee set by state law, not local law. Therefore, cable television franchise fees established by a city or county ordinance are includable in gross proceeds and subject to the sales tax.

SOUTH CAROLINA DEPARTMENT OF REVENUE

s/Burnet R. Maybank III
Burnet R. Maybank, III, Director

July 29, 1997
Columbia, South Carolina