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

SC REVENUE RULING #97-20 (TAX)

SUBJECT: Local Fees and Taxes
(Sales Tax)

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

SUPERSEDES: SC Revenue Ruling #96-8

REFERENCE: S.C. Code Ann. Section 12-36-910 (Supp. 1996)
S.C. Code Ann. Section 12-36-920 (Supp. 1996)
S.C. Code Ann. Section 12-36-90 (Supp. 1996)

AUTHORITY: S.C. Code Ann. Section 12-4-320 (Supp. 1996)
SC Revenue Procedure #97-8

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 It is valid and remains in effect until superseded or modified by a change in the statute or regulations or a subsequent court decision, Revenue Ruling or Revenue Procedure.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:

Are the following local fees and taxes includable in "gross proceeds of sales" and subject to the state sales tax?

- (1) local accommodations taxes authorized under Code Section 6-1-500 et. seq. These are taxes derived from the rental or charges for accommodations furnished to transients and are collected by the local governments (municipalities or counties) imposing the tax.
- (2) local hospitality taxes authorized under Code Section 6-1-700 et. seq. These are taxes on the sales of prepared meals and beverages and are collected by the local governments (municipalities or counties) imposing the tax.
- (3) local option sales taxes authorized under Code Section 4-10-10 et. seq. These taxes are general sales taxes on all sales at retail (with a few exceptions) taxable under the state sales tax. These taxes are imposed specifically to reduce the property tax burden on persons in the counties that impose this type of local tax and are collected by the Department of Revenue on behalf of these counties.

- (4) local capital projects sales taxes authorized under Code Section 4-10-300 et. seq. These taxes are general sales taxes on all sales at retail (with a few exceptions) taxable under the state sales tax. These taxes are imposed specifically to defray the debt service on bonds issued for various capital projects in the counties that impose this type of local tax and are collected by the Department of Revenue on behalf of these counties.
- (5) local transportation projects sales taxes authorized under Code Section 4-37-30 et. seq. These taxes are general sales taxes on all sales at retail (with a few exceptions) taxable under the state sales tax. These taxes are imposed specifically to defray the debt service on bonds issued for various transportation projects in the counties that impose this type of local tax and are collected by the Department of Revenue on behalf of these counties.
- (6) local accommodations fees imposed by ordinance prior to March 15, 1997 and authorized under Section 10 of Act 138 of 1997. These are fees derived from the rental or charges for accommodations furnished to transients and are collected by the local government imposing the fee.

Conclusions:

The following local fees and taxes are includable in "gross proceeds of sales" and subject to the state sales tax **if the fee or tax is imposed upon the retailer:**

- (1) local hospitality taxes authorized under code section 6-1-700 et. seq.; and,
- (2) local accommodations fees imposed by ordinance prior to March 15, 1997 and authorized under Section 10 of Act 138 of 1997.

The following local fees and taxes are **not** includable in "gross proceeds of sales" and **not** subject to the state sales tax **if the fee or tax is imposed upon the customer and the retailer is merely a collection agent for the city or county:**

- (1) local hospitality taxes authorized under code section 6-1-700 et. seq.; and,
- (2) local accommodations fees imposed by ordinance prior to March 15, 1997 and authorized under Section 10 of Act 138 of 1997.

The following local fees and taxes are **not** includable in "gross proceeds of sales" and **not** subject to the state sales tax, whether the fee or tax is imposed on the retailer or the customer:

- (1) local accommodations taxes authorized under Code Section 6-1-500 et. seq.;
- (2) local option sales taxes authorized under Code Section 4-10-10 et. seq.;
- (3) local capital projects sales taxes authorized under Code Section 4-10-300 et. seq.; and,

- (4) local transportation projects sales taxes authorized under Code Section 4-37-30 et. seq.
Facts:

Cities and counties are now imposing fees and taxes upon businesses that sell food and beverages or furnish sleeping accommodations for a fee. These fees and taxes are generally calculated as a percentage of the gross proceeds of sales of the foods and beverages or gross proceeds derived from accommodations. Such businesses are usually required to collect these fees or taxes from their customers, but are still required to remit the fees or taxes to the city or county if they fail to collect it from their customers.

Counties are also imposing various types of local general sales and use taxes. These taxes are collected by the Department of Revenue on behalf of the counties imposing these taxes.

Questions have arisen as to whether these fees or taxes are includable in the 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 12-36-920(A) imposes "a sales tax equal to seven percent on the gross proceeds derived from rental or charges for any rooms, campground spaces, lodgings, or sleeping accommodations furnished to transients by any hotel, inn, tourist court, tourist camp, motel, campground, residence, or any place in which rooms, lodgings, or sleeping accommodations are furnished to transients for a consideration." (Emphasis added.)

Code Section 12-36-90 defines "gross proceeds" and 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.

The Commissioners, 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 Decision S-D-127, the Commissioners held that "the amount in a lease contract equal to ad valorem taxes which is paid annually by the lessee to the lessor is includable in gross proceeds of sales."

Finally, the following additional issues must be considered when determining if local fees and taxes are includable in "gross proceeds of sales" for purposes of the state sales tax:

- (1) Is the local government fee or tax imposed on the retailer or the consumer?
- (2) Is the fee or tax, by state law, administered in the same manner as the state sales and use tax?

With respect to the first issue, a distinction must be made between local fees or taxes that are imposed upon the retailer and local fees or taxes that are imposed upon the customer. With respect to fees and taxes imposed upon the customer, the retailer is merely a collection agent for the local government that has enacted the fee or tax by ordinance. As such, the fee or tax the retailer is required to collect and hold in trust for the local government is not a receipt of the retailer. It is a receipt of the local government for whom the retailer is the collection agent.

Therefore, local fees and taxes imposed upon the retailer's customers are not includable in "gross proceeds of sales."

A fee or tax imposed upon the retailer is a receipt of the retailer. The retailer has the discretion to collect the fee or tax from his customer, but he is not required to do so. As such, the fee or tax when collected is a receipt of the retailer. When paid to the local government, the fee or tax is an expense of the retailer. Therefore, local fees and taxes imposed upon the retailer are includable in "gross proceeds of sales."

Therefore, city and county fees and taxes, when imposed on the retailer, are part of gross proceeds of sales and therefore subject to the sales tax. City and county fees and taxes, when imposed on the consumer, are not a part of gross proceeds of sales and therefore not subject to the sales tax.

With respect to the second issue, local option sales and use taxes administered and collected by the Department of Revenue are not included in the basis for calculating the state sales and use tax. By statute, these local option sales and use taxes must be administered and collected in the same manner as the state sales and use tax. As such, these local option sales and use taxes must have, among other things, the same exemptions and exclusions, the same definitions, and the same "gross proceeds of sales" and "sales price" as the state sales and use tax.

In addition, the local accommodations taxes authorized under Code Section 6-1-500 et. seq. is not included in the basis for calculating the state sales and use tax. This tax, while collected by the local government, must be "derived from the rental or charges for accommodations furnished to transients as provided in Section 12-36-920(A)." As stated earlier, Code Section 12-36-920(A) imposes a state sales tax equal to seven percent on the gross proceeds derived from rental or charges for any rooms, campground spaces, lodgings, or sleeping accommodations furnished to transients by any hotel, inn, tourist court, tourist camp, motel, campground, residence, or any place in which rooms, lodgings, or sleeping accommodations are furnished to transients for a consideration." By statute, this local accommodations tax must be administered and collected in the same manner as the state sales tax on accommodations. As such, the local accommodations tax authorized under Code Section 6-1-500 et. seq. must have the same "gross proceeds of sales" as the state sales tax on accommodations.

Therefore, local option sales and use tax administered and collected by the Department of Revenue and the local accommodations taxes authorized under Code Section 6-1-500 et. seq. are not includable in "gross proceeds of sales" and "sales price" for purposes of the state sales and use tax and the state sales and use tax is not includable in "gross proceeds of sales" and "sales price" for purposes of these local sales and use taxes.

SOUTH CAROLINA DEPARTMENT OF REVENUE

S/Burnett R. Maybank III
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Columbia, South Carolina
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