

Document No. 4731
DEPARTMENT OF REVENUE
CHAPTER 117
Statutory Authority: 1976 Code Section 12-4-320

117-305.5. Exemption Meals Sold to School Children.

Synopsis:

The South Carolina Department of Revenue is considering amending SC Regulation 117-305.5 to comply with Code Section 12-36-2120(10). Code Section 12-36-2120(10)(a) provides a sales tax exemption for sales of meals to school children and sales of foodstuffs to schools which are used in furnishing meals to school children, if the sales or use are within school buildings and are not for profit. SC Regulation 117-305.5 discusses sales of meals under Code Section 12-36-2120(10)(a), but it does not address sales of foodstuffs.

The Notice of Drafting was published in the *State Register* on September 23, 2016.

Instructions:

Amend SC Regulation 117-305.5 to comply with Code Section 12-36-2120(10). SC Regulation 117-305.5 discusses sales of meals under Code Section 12-36-2120(10)(a), but it does not address sales of foodstuffs.

Print regulation as shown below.

Text:

117-305.5. Exemption Meals Sold to School Children.

Meals sold within school buildings, not for profit, to school children are exempted from the sales tax by Section 12-36-2120(10). Further, foodstuffs sold to schools which are used in furnishing meals to school children are also exempted from the sales and use tax by Section 12-36-2120(10). This exemption is construed to include only sales of meals to pupils of kindergartens, grammar and high schools, either public or private, and sales of foodstuffs to schools which are used in furnishing meals for pupils of kindergartens, grammar and high schools, either public or private, where it can be shown that the sale or use of the meals or foodstuffs occurs within the school building and there is not a profit from such sale or use. Schools operating school lunch programs are required to obtain a retail license and remit the tax on all sales of meals to persons other than school children.

Meals sold by any public or private educational institution or their agent, other than those exempted by Section 12-36-2120(10), described above, are subject to the sales tax when a separate charge per meal is made to the consumer. This includes cash sales, sales at special events and meals sold by commissaries at such institutions. Tax on these sales must be remitted by the institution to the department based on gross proceeds.

Educational institutions operating boarding facilities where meals and beverages are furnished without a separate charge being made or where a lump sum charge is made by the month or by the term are deemed to be the users or consumers of the prepared meals if same are purchased or acquired, or the users or consumers of the unprepared food products if such educational institutions or their agents purchase such products and prepare the meal. The seller of such prepared meals shall be required to report and remit the

tax due on the gross proceeds of such prepared meals to the educational institution. The seller of unprepared food products to an educational institution or its agent purchasing such products and preparing the meals shall be required to report and remit the tax due on the gross proceeds of such raw foodstuffs.

Sales to consumers of prepared meals, foodstuffs or beverages on educational institution premises by an entity other than the educational institution or its agent, are sales at retail and the seller is required to obtain a retail license for each location, and report and remit the tax due on the gross proceeds of such sales.

Fiscal Impact Statement:

There will be no impact on state or local political subdivisions expenditures in complying with this proposed legislation.

Statement of Rationale:

The purpose of this amendment to SC Regulation 117-305.5 is to clarify that there is a sales tax exemption provided by Code Section 12-36-2120(10) for sales of foodstuffs to schools which are used in furnishing meals to school children, if the sales or use are within school buildings and are not for profit.