



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

SC PRIVATE LETTER RULING #92-5

TO: ABC

TAX MANAGER: John P. McCormack

SUBJECT: Dinner Attraction
(Sales Tax and Admissions Tax)

REFERENCE: S.C. Code Ann. Section 12-36-910 (Supp. 1991)
S.C. Code Ann. Section 12-36-90 (Supp. 1991)
S.C. Code Ann. Section 12-21-2410 (1976)
S.C. Code Ann. Section 12-21-2420 (Supp.1991)

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

SCOPE: A Private Letter Ruling is a temporary document issued to a taxpayer, upon request, and it applies to the specific facts and circumstances related in the request.

Private Letter Rulings have no precedential value and are not intended for general distribution.

Question:

Is the charge by the ABC for a ticket, which entitles the patron to a meal and a show, subject to the sales tax and/or admissions tax?

Facts:

The ABC Dinner Attraction will be opening an entertainment facility in South Carolina in the near future. The operation will be similar to a dinner theater. For the one price ticket, the patron is admitted to the facility and receives a four course meal and a show.

The dining area surrounds an arena where the show takes place. The show can best be described as a rodeo and a trip back into the "wild 1800's".

Discussion:

The issue in question is whether the charge by ABC is subject to the sales tax, admissions tax, or both. Also, if the charge is subject to both the sales and admissions taxes, the measure or basis for calculating the taxes must be determined.

SALES TAX

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."

The measure of the sales tax, "gross proceeds of sales", is defined at Code Section 12-36-90, in part, as:

... 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 reviewing the above code sections, it appears that the entire charge may be subject to the sales tax. Such a conclusion appears to be consistent with previous court cases and Commission Decisions. (See Meyers Arnold v. South Carolina Tax Commission, 285 S.C. 303, 328 S.E. 2d 920 (1985 App.) (lay away fees for lay away sales); Regency Towers Association, Inc. v. South Carolina Tax Commission, Horry County Court of Common Pleas, Case No. 88-CP-2 6-1109 (1989) (maid service at a hotel); and Commission Decisions #90-38 and #91-64 (engraving charges as part of the sale of trophies).) These cases and decisions concerned whether or not

certain services incidental to, or associated with, the sale of tangible personal property should be included in "gross proceeds of sales".

The so-called "true object" test is generally used to delineate sales of services from sales of tangible personal property. Applying this test to the matter at hand, it must be determined whether the meal or the entertainment is the true object of the transaction.

If the meal is the true object, then the entertainment is incidental to the sale of the meal and the entire charge for the ticket would be subject to the sales tax. If the true object of the transaction is the show, then the meal would be incidental to the show and the charge for the ticket would not be subject to the sales tax.

The "true object" test is best described in 9 Vanderbilt Law Review 231 (1956), wherein it is stated:

The true test then is one of basic purpose of the buyer. When the product of the service is not of value to anyone other than the purchaser, either because of the confidential character of the product, or because it is prepared to fit the purchaser's special need - a contract or will prepared by a lawyer, or the accident investigation report prepared for an insurance company this fact is evidence tending to show that the service is the real purpose of the contract. When the purpose of a contract is to produce an article which is the true object of the agreement, the final transfer of the product should be a sale, regardless of the fact that special skills and knowledge go into its production. Under this analysis, printing work, done on special order, and of significant value only to the particular customer, is still a sale. The purchaser is interested in the product of the services of the printer, not in the services per se. Similarly, it would seem that contracts for custom-produced articles, be they intrinsically valuable or not, should be classified as sales when the product of the contract is transferred.

The Vanderbilt Law Review article, in quoting *Snite v Department of Revenue*, 398 Ill. 41, 74 N.E.2d. 877 (1947), also establishes the following general rule :

If the article sold has no value to the purchaser except as a result of services rendered by the vendor, and the transfer of the article to the purchaser is an actual and necessary part of the services rendered, then the vendor is engaged in the business of rendering service, and not in the business of selling at retail. If the article sold is the substance of the transaction and the service rendered is merely incidental to and an inseparable part of the transfer to the purchaser of the article sold, then the vendor is engaged in the business of selling at retail, and the tax which he pays ... [is measured by the total cost of article and services]. If the service rendered in connection with an article does not enhance its value and there is a fixed or ascertainable relation between the value of the article and the value of the service rendered in connection therewith, then the vendor is engaged in the business of selling at retail, and also engaged in the business of furnishing service, and is subject to tax as to the one business and tax exempt as to the other. While the above quotes do not establish rigid rules, they do provide general guidance in determining the purpose of a transaction, and are particularly helpful in addressing the issues of ABC.

Here, we have a situation whereby there is not one true object, but two - the sale of a meal and the sale of entertainment. They are sold together, and one is not incidental to the other. Therefore, ABC "is engaged in the business of selling [a meal] at retail, and also engaged in the business of furnishing [an entertainment] service, and is subject to [the sales] tax as to the one business and tax exempt [for sales tax purposes] as to the other".

In addition, ABC is distinguishable from the above cited cases and decisions of *Meyers Arnold v. South Carolina Tax Commission*, supra ; *Regency Towers Association, Inc. v. South Carolina Tax Commission*, supra ; and Commission Decisions #90-38 and #91-64. These cases and decisions fall into the class of transaction whereby "the article sold is the substance of the transaction and the service rendered is merely incidental to and an inseparable part of the transfer to the purchaser of the article sold" As such, "the vendor is engaged in the business of selling at retail, and the tax which he pays ... [is measured by the total cost of article and services]."

In considering the above discussion, ABC will only be required to remit the sales tax on that portion of the charge representing the price of the meal, provided it is reasonable and supported by the records of the taxpayer.

ADMISSIONS TAX

Code Section 12-21-2420 imposes a 5% admissions tax "upon all paid admissions to all places of amusement within this State ..." Code Section 12-21-2410 defines admissions as "the right or privilege to enter into or use a place or location."

ABC is clearly a place of amusement for which a fee is paid to enter into or use. Therefore, we must determine what is the paid admission.

While the admissions tax statute does define the words "admissions", it does not elaborate as to what constitutes a "paid admissions". It has been the longstanding policy of the Commission to only tax, for admissions tax purposes, that portion of a package deal that represents the price of the admissions. (A package deal is one that includes the purchase of tangible personal property and an admissions to a place of amusement.)

Administrative interpretation of statutes by the agency charged with their administration and not changed by the legislative body are entitled to great weight. *Marchant v. Hamilton*, 297 S.C. 497, 309 S.E. 2d. 781 (1983). When as in this case, the construction or administrative interpretation of a statute has been applied for a number of years and has not been changed by the legislature, there is created a strong presumption that such interpretation or construction is correct. *Ryder Truck Lines, Inc. v. South Carolina Tax Commission*. 248 S.C. 148, 149 S.E. 2d. 435 (1966); *Etiwan Fertilizer Company v. South Carolina Tax Commission*, 217 S.C. 354, 60 S.E. 2d. 682 (1950).

Conclusion:

The charge by the ABC Dinner Attraction for a ticket is subject to both the sales tax and the admissions tax.

However, ABC will only be required to remit the sales tax on that portion of the charge representing the price of the meal and the admissions tax on that portion of the charge representing the price of the admissions, provided the price breakdown is reasonable and supported by the records of the taxpayer.

If the price breakdown is not reasonable or not supported by the records of the taxpayer, then both the sales tax and the admissions tax will apply to the entire charge for the ticket. In other words, the entire ticket will be taxed at 10% (5% sales tax plus 5% admissions tax).