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

SC REVENUE ADVISORY BULLETIN #01-5

SUBJECT: Rental of Portable Toilets
 (Sales and Use Tax)

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

REFERENCES: S. C. Code Ann. Section 12-36-910 (2000)
 S. C. Code Ann. Section 12-36-1310 (2000)
 S. C. Code Ann. Section 12-36-60 (2000)
 S. C. Code Ann. Section 12-36-100 (2000)
 S. C. Code Ann. Section 12-36-90 (2000)
 S. C. Code Ann. Section 12-36-130 (2000)

AUTHORITY: S. C. Code Ann. Section 12-4-320 (2000)
 S. C. Code Ann. Section 1-23-10(4) (2000)
 SC Revenue Procedure #99-4

SCOPE: The purpose of a Revenue Advisory Bulletin is to provide guidance to the public and to Department personnel. It is a written statement issued to apply principles of tax law to a specific set of facts or a general category of taxpayers. **A Revenue Advisory Bulletin does not have the force or effect of law, and is not binding on the public.** It is, however, the Department's position and is binding on agency personnel until superseded or modified by a change in statute, regulation, court decision, or advisory opinion.

Question:

Is a charge by a business for temporarily providing portable toilets to another person a rental of tangible personal property subject to the sales and use tax or is it a service not subject to the sales and use tax?

Conclusion:

A charge by a business for temporarily providing portable toilets to another person constitutes a rental of tangible personal property subject to the sales and use tax since such is the transfer of tangible personal property for a consideration.

Any additional charges for servicing the toilets (whether optional or mandatory) that are made in conjunction with, or as part of the rental of, portable toilets are includable in "gross proceeds of sales" or "sales price", and, therefore, subject to the tax.

Facts:

From time to time, contractors, businesses and events need additional restroom facilities. As such, other businesses provide, under oral or written contracts, portable toilets to such contractors, businesses and events. The necessary servicing of the toilet will also be provided as part of the contract and this typically consists of regular and routine removal and disposal of the waste and the replacement of chemicals and toilet paper. At the customer's request, additional servicing of the toilet will also be provided for an additional fee.

Discussion:

The first issue concerns whether or not persons providing portable toilets for a limited period of time for a fee are renting of tangible personal property.

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."

Code Section 12-36-1310 imposes a "use tax ... 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."

The term "tangible personal property" is defined in Code Section 12-36-60, in part, to mean:

personal property which may be seen, weighed, measured, felt, touched, or which is in any other manner perceptible to the senses."

The term "sale" is defined in Code Section 12-36-100 to mean:

any transfer, exchange, or barter, conditional or otherwise, of tangible personal property for a consideration including:

- (1) a transaction in which possession of tangible personal property is transferred but the seller retains title as security for payment, including installment and credit sales;
- (2) a rental, lease, or other form of agreement;
- (3) a license to use or consume; and
- (4) a transfer of title or possession, or both. (Emphasis added.)

From time to time it is necessary to determine if the transaction is a sale or rental of tangible personal property or the furnishing of a service. The so-called "true object" test is generally used to delineate sales of services from sales of tangible personal property

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 at hand.

Based on the above, businesses temporarily providing portable toilets to others for a fee are renting tangible personal property since such constitutes the transfer of tangible personal property for a consideration. See Code Section 12-36-60. In addition, the "true object" of the transaction is the portable toilet and not the servicing of the toilet (regular and routine removal and disposal of the waste and the replacement of chemicals and toilet paper). Such servicing is incidental to the rental of the portable toilets.

Other states have reviewed this issue. North Carolina (Sales and Use Tax Bulletin 34-17) and Virginia (Ruling of the Tax Commissioner 91-275) both consider the business of providing portable toilets for a limited period of time for a fee a rental of tangible personal property subject to the sales and use tax.

The next issue concerns the application of the tax to any charges for servicing the toilets.

The sales tax is imposed upon a retailer's "gross proceeds of sales" which 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... without any deduction for... the cost of materials, labor, or service... [or] any other expenses....

The use tax is based upon the "sales price" of tangible personal property. The term "sales price" is defined at Code Section 12-36-130, in part, as:

... the total amount for which tangible personal property is sold, without any deduction for the cost of the property sold, the cost of the materials used, labor or service cost, interest paid, losses, or any other expenses.

(1) The term includes:

(a) any services or transportation costs that are a part of the sale, whether paid in money or otherwise;....

In Meyers Arnold, Inc. v. South Carolina Tax Commission, 285 S.C. 303, 328 S.E.2d 920, 923 (1985), the Court of Appeals of South Carolina held the element of service involved in a lay away sale was subject to tax as being part of the sale of tangible personal property. The test used by the court was as follows:

... But for the lay away sales, Meyers Arnold would not receive the lay away fees. The fees are obviously charged for the service rendered in making lay away sales. For these reasons, this court holds the lay away fees are part of the gross proceeds and subject to the sales tax.

Accordingly, the total amount charged in conjunction with the sale or purchase of tangible personal property is subject to the tax.

With respect to the issue at hand, but for the rentals of the portable toilets, the person providing the portable toilets would not receive fees for servicing the toilets.

In Commission Decision #90-38, the Commission held that charges for engraving services, even though optional, were a part of the sale of plaques and trophies by the retailer and includible in gross proceeds of sales. The decision states, in part:

...We find and conclude that here the "engraving charges" are part of the sale of tangible personal property since the customer is not seeking a professional service but is seeking an engraved trophy or plaque....

* * * *

...The Courts have held that although the amount of materials used may be inconsequential with respect to the labor involved where the customer seeks to purchase custom made or designed tangible personal property, the artistic skill of the craftsman is a part of the sales price of the product and is inextricably linked

In summary, charges for servicing the toilets (whether optional or mandatory) that are made in conjunction with, or as part of the rental of, portable toilets are includable in "gross proceeds of sales" or "sales price", and, therefore, subject to the tax.

SOUTH CAROLINA DEPARTMENT OF REVENUE

s/Elizabeth A. Carpentier
Elizabeth A. Carpentier, Director

June 25, 2001
Columbia, South Carolina

Note: This advisory opinion is a corrected version. The quote from the Meyers Arnold case was corrected.