

SC REVENUE RULING # 12-3

- SUBJECT:** Fundraising Events by Nonprofit Organizations
(Sales Tax, Admissions Tax, ABL)
- EFFECTIVE DATE:** Applies to all periods open under the statute.
- SUPERSEDES:** SC Revenue Ruling #10-1 and all previous documents and any oral directives in conflict herewith.
- REFERENCES:**
- S. C. Code Ann. Section 12-21-2410 (2000)
 - S. C. Code Ann. Section 12-21-2420 (2000; Supp. 2011)
 - S. C. Code Ann. Section 12-33-245(A) (Supp. 2011)
 - S. C. Code Ann. Section 12-36-70 (2000)
 - S. C. Code Ann. Section 12-36-90 (2000 and Supp. 2011)
 - S. C. Code Ann. Section 12-36-910 (2000 and Supp. 2011)
 - S. C. Code Ann. Section 12-36-1110 (Supp. 2011)
 - S. C. Code Ann. Section 12-36-2120 (Supp. 2011)
 - S. C. Code Ann. Section 12-37-220 (2000 and Supp. 2011)
 - S. C. Code Ann. Section 40-6-20 (2011)
 - S. C. Code Ann. Section 61-4-240 (Supp. 2011)
 - S. C. Code Ann. Section 61-4-550 (Supp. 2011)
 - S. C. Code Ann. Section 61-6-20(7) (Supp. 2011)
 - S. C. Code Ann. Section 61-6-500 (2009)
 - S. C. Code Ann. Section 61-6-1620(B) (2009)
 - S. C. Code Ann. Section 61-6-1636 (2009)
 - S. C. Code Ann. Section 61-6-2000 (Supp. 2011)
 - S. C. Code Ann. Section 61-6-4710 (2009)
 - 1 S.C. Code Regs. 7-403 (2011)
- AUTHORITY:**
- S. C. Code Ann. Section 12-4-320 (2000 and Supp. 2011)
 - S. C. Code Ann. Section 1-23-10(4) (2005)
 - SC Revenue Procedure #09-3
- SCOPE:** The purpose of a Revenue Ruling is to provide guidance to the public and to Department personnel. It is an advisory opinion issued to apply principles of tax law to a set of facts or a general category of taxpayers. It is the Department's position until superseded or modified by a change in statute, regulation, court decision, or another Departmental advisory opinion.

INTRODUCTION:

Questions have arisen concerning the application of the sales tax, admissions tax and the alcoholic beverage laws to fundraising events conducted by charities. This document will explain how the sales tax, the admissions tax and the laws governing alcoholic beverages apply to fundraising events and other events conducted by nonprofit organizations. A discussion of the law will be followed by examples in question and answer format.

Note: The discussion of sales of alcoholic liquor by the drink in this document is limited to sales by nonprofit organizations licensed under Code Section 61-6-2000. Such sales are not subject to the alcoholic liquor by the drink excise tax imposed under Code Section 12-33-245(A).

LAW AND DISCUSSION:

I. SALES TAX:

Code Section 12-36-910 imposes “a sales tax, equal to [six]¹ 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 tax is the gross proceeds of the sale. “Gross proceeds of sales” means the proceeds from the sale of tangible personal property without any deduction for the cost of materials, labor or service, or any other expenses. S.C. Code §12-36-90(1)(b).

In short, the total amount charged in conjunction with the sale or purchase of tangible personal property is subject to the tax.²

Organizations conducting fundraising events may format their fundraising offers in different ways. For example, an organization may invite anyone who contributes \$1,000 to an event involving a meal, or the organization may promote the event as a \$1,000 per plate fundraising dinner. Other organizations may sell food or other items at or near the market rate and use the amount netted over and above costs for the organization’s charitable purpose.

The so-called “true object” test is generally used to delineate sales of services from sales of tangible personal property. This test is one of determining the basic purpose of the buyer.³ Applying the principles of this test to fundraising offers whereby the donor receives tangible personal property, such as a meal, in connection with a donation, it must be determined whether the meal or the donation is the true object of these fundraising events.

¹ Code Section 12-36-1110 increased the general state sales and use tax rate from 5% to 6% effective June 1, 2007, with certain exceptions not applicable to this advisory opinion.

² See *Meyers Arnold, Inc. v. South Carolina Tax Commission*, 285 S.C. 303, 328 S.E.2d 920, 923 (Ct. App. 1985); and Commission Decisions #90-38 and #91-64 (engraving charges as part of the sale of trophies).

³ 9 *Vanderbilt Law Review* 231 (1956).

If the true object of the transaction is to make a donation to charity, the meal would be incidental to the donation and no portion of the amount donated would be subject to the sales tax. If the meal is the true object, the donation is incidental to the sale of the meal and the entire charge for the ticket would be subject to the sales tax—unless the vendor is an exempt nonprofit organization for sales tax purposes under Code Section 12-36-2120(41).

Note that, even when there is no retail sale for sales tax purposes, if alcoholic beverages are served at a fundraising event, the nonprofit organization may be considered to be engaging in sales of alcoholic beverages under the laws regulating alcoholic beverages. See the discussion under Section III. Alcoholic Beverage Laws, and Example 1 in the Conclusion Section below.

Exemption for Sales by Certain Nonprofit Organizations

Code Section 12-36-2120(41) exempts from the sales and use tax sales made by certain nonprofit organizations. The statute exempts:

items sold by organizations exempt under Section 12-37-220 A(3) and (4) and B(5), (6), (7), (8), (12), (16), (19), (22), and (24) if the net proceeds are used exclusively for exempt purposes and no benefit inures to any individual. An organization whose sales are exempted by this item is also exempt from the retail license tax provided in Article 5 of this chapter;

Nonprofit organizations coming within the exemption are:

- (1) Public libraries and churches;
- (2) Charitable trusts and foundations;
- (3) The American Legion, the Veterans of Foreign Wars, the Disabled American Veterans, Fleet Reserve Association, and the Marine Corps League or any similar Veterans Organization chartered by the Congress of the United States;
- (4) The Young Women's Christian Association, Young Men's Christian Association and the Salvation Army;
- (5) The Boy Scouts of America and The Girl Scouts of America;
- (6) The South Carolina Association of Future Farmers of America;
- (7) Any fraternal society, corporation or association;
- (8) Any religious, charitable, eleemosynary, educational, or literary society, corporation, or other association;
- (9) Volunteer fire departments and rescue squads;

- (10) All community owned recreation facilities opened to the general public and operated on a nonprofit basis; and
- (11) All nonprofit or eleemosynary community theater companies, symphony orchestras, county and community arts councils and commissions and other such companies.

Note: Under this exemption, sales—and purchases for resale—by the above nonprofit organizations are not subject to sales tax. However, purchases of property for the organization’s own use and not for resale (e.g., computers, furniture, supplies, etc.) do not come within the exemption.

Exemption Certificates

To simplify the administration of the exemption under Code Section 12-36-2120(41), organizations should complete and file Form ST-387– Application for Sales Tax Exemption under Code Section 12-36-2120(41), "Exempt Organizations."

The statute does not require an organization to obtain an exemption certificate in order to purchase items exempt under this exemption. However, the Department recommends that organizations apply for the exemption certificate. If an organization is issued a certificate, this will simplify for the organization the purchase from suppliers of items tax-free for resale. Otherwise, suppliers may be reluctant to sell items tax-free (for resale) to an organization that does not have a retail license or does not have some other documentation showing that it qualifies for the exemption. The exemption certificate assures the supplier that the SC Department of Revenue has reviewed the matter and determined, based on information supplied with the application, that the organization qualifies for the exemption and that the supplier may sell items tax-free for resale to the organization. However, it should be noted that if it is determined that an organization does not meet the requirements of the statute or is not otherwise operating in an exempt manner, then the certificate will not be issued or will be revoked if previously issued. See SC Revenue Procedure #03-6 for more information concerning the sales tax exemption under Code Section 12-36-2120(41).

Auctions and Auctioneers

Special attention should be paid when a nonprofit organization’s fundraising event includes an auction of tangible personal property. Even if the nonprofit organization qualifies for an exemption under Code Section 12-36-2120(41), the nonprofit organization should not assume that sales tax will not be owed.

Whether auction sales are subject to sales tax depends on which party is deemed to be the retailer, the nonprofit organization or the auctioneer. With respect to auctioneers, Code Section 12-36-70(1)(a) defines the term “retailer” to include every person “selling or auctioning tangible personal property whether owned by the person or others.”

For guidance as to whether sales tax must be remitted when a nonprofit organization’s fundraising event includes an auction of tangible personal property, please see Examples 7-9 in the “Conclusion” section below.

II. ADMISSIONS TAX:

Code Section 12-21-2410 states:

For the purpose of this article and unless otherwise required by the context:

- (1) The word "admission" means the right or privilege to enter into or use a place or location;
- (2) The word "place" means any definite enclosure or location; and
- (3) The word "person" means individual, partnership, corporation, association or organization of any kind whatsoever.

Code Section 12-21-2420 states: “There must be levied, assessed, collected and paid upon paid admissions to places of amusement within this State a license tax of five percent.” (Emphasis added.) Code Section 12-21-2420 further requires that the tax “be paid by the person or persons paying such admission price.”

In summary, the tax is upon "paid admissions" and the person paying the admission is the taxpayer with respect to the tax, whether that person is an individual, a partnership, or corporation. Furthermore, “paid admissions” constitute the amounts paid by patrons to enter into or use a place of amusement.

In the context of fundraising events, the admissions tax will apply if a person is paying to enter into or use a place of amusement—unless the organization conducting the fundraising event is an exempt organization for admissions tax purposes.

Code Section 12-21-2420(4) exempts from the admissions tax:

... admissions charged by any eleemosynary and nonprofit corporation or organization organized exclusively for religious, charitable, scientific, or educational purposes; or the presentation of performing artists by an accredited college or university; provided, that the license tax herein levied and assessed shall be collected and paid upon all paid admissions to all athletic events of any institution of learning above the high school level; provided, however, that carnivals, circuses, and community fairs operated by eleemosynary or nonprofit corporations or organizations organized exclusively for religious, charitable, scientific, or educational purposes shall not be exempt from the assessment and collection of admissions tax on charges for admission for the use of or entrance to rides, places of amusement, shows, exhibits, and other carnival facilities, but not to include charges for general gate admissions except when the proceeds of any such carnival, circus, or community fair are donated to a hospital; provided, further, that no admissions tax shall be charged or collected by reason of any charge made to any member of a nonprofit organization or corporation for the use of the facilities of the organization or corporation of which he is a member.

Code Section 12-21-2420(11) exempts from the admissions tax:

... admissions to events other than those events enumerated in item (4) of this section, sponsored and operated exclusively by eleemosynary, nonprofit corporations or organizations organized exclusively for religious, charitable, scientific, civic, fraternal, or educational purposes when the net proceeds derived from admissions to the events shall be immediately donated to an organization operated exclusively for charitable purposes. The term “net proceeds” shall mean the portion of the gross admissions proceeds remaining after necessary expenses of the event have been paid. This item shall not apply to an event in which the above organizations receive a percentage of gross proceeds or a stated fixed sum for the use of its name in promoting the event.

Nonprofit organizations qualifying for this exemption may apply for an exemption certificate using Form L-2068.

III. ALCOHOLIC BEVERAGE LAWS:

The following concerns two types of fundraising events involving nonprofit organizations: (A) events in which beer, wine or alcoholic liquor is sold, and (B) events in which beer, wine or alcoholic liquor is provided without charge. Matters concerning location are discussed in C. below.

A. Sales of Beer, Wine or Alcoholic Liquor at Fundraising and Other Events

For purposes of the laws regulating beer, wine and alcoholic liquor, a sale is considered to take place if:

- there is a per drink charge,
- an admissions fee is charged to enter a place or event where these beverages are provided,
- a donation is accepted with respect to the event where these beverages are provided,
- tickets are sold with respect to the event where these beverages are provided,
- such beverages are provided as part of a meal for which consideration, direct or indirect, is accepted or required, or
- any consideration is accepted or required with respect to the event where these beverages are provided.

1. Sale of Beer and Wine at Fairs and Special Functions: Under Code Section 61-4-550, the Department may issue temporary permits for the sale of beer and wine at fairs and special functions for a period not exceeding 15 days. Code Section 61-4-550 requires the applicant to submit a criminal records check conducted by the State Law Enforcement Division within 90 days prior to the application and to verify that the appropriate law enforcement official has been notified and given an opportunity to object.⁴

⁴ Code Section 61-4-550 provides:

(A) The department may issue permits running for a period not exceeding fifteen days for a fee of ten dollars per day. These special permits may be issued only for locations at fairs and special functions.

2. Sale of Alcoholic Liquor by the Drink at Special Functions: Code Section 61-6-2000 concerns the possession, sale, and consumption of alcoholic liquor by the drink. The holder of a temporary license to sell alcoholic liquor by the drink issued under Code Section 61-6-2000 is also authorized to sell beer and wine.⁵

Code Section 61-6-2000 states:

(A) In addition to the licenses authorized pursuant to the provisions of subarticle 1 of this article, the department also may issue a temporary license to a nonprofit organization, as defined in Section 61-6-20,⁶ which authorizes that nonprofit organization to purchase and to sell alcoholic liquors by the drink for a period not to exceed twenty-four hours at a single social occasion. The nonprofit organization may sell tickets for the social occasion to nonmembers. Notwithstanding another provision of this article, the issuance of this license authorizes the nonprofit organization to purchase alcoholic liquors from licensed retail dealers in the same manner that a person with a biennial license issued pursuant to subarticle 1 of this article [Article 5] purchases its alcoholic liquors.⁷ The department shall charge a nonrefundable

(B) The department shall require the applicant to obtain a criminal records check conducted by the State Law Enforcement Division within ninety days prior to an application. The department shall deny the application if the criminal records check is not submitted with the application and filing fee or if it was obtained more than ninety days before.

(C) The department shall require the applicant to complete the law enforcement notification provision contained in an application form and submit it with the application. The law enforcement notification provision shall be prepared by the department for inclusion in the application and, at a minimum, must contain sufficient information to inform the department that either the chief of police, if the event is located within the city limits, or the county sheriff has been notified of the temporary permit application and given an opportunity to object.

(D) The department may issue up to twenty-five temporary permits to sell beer and wine on one application for special functions in a twelve-month period to the same applicant, if that applicant is also applying for up to twenty-five temporary licenses to sell alcoholic liquors by the drink, pursuant to Section 61-6-2000(D). This does not prohibit the applicant from applying for additional special permits within the same twelve-month period.

⁵ Code Section 61-4-240 provides that temporary permits for the sale of beer and wine may also be issued for events issued a temporary permit for the sale of alcoholic liquor under Code Section 61-6-2000.

⁶ Code Section 61-6-20(7) defines a nonprofit organization to mean “an organization not open to the general public, but with a limited membership and established for social, benevolent, patriotic, recreational, or fraternal purposes.”

⁷ The manner of purchasing alcoholic liquor is set forth in Code Section 61-6-1636, which states:

(A) A person licensed by this article [Article 5] for sale and use for on-premises consumption shall purchase alcoholic liquor for sale by the drink from a licensed retail dealer with a wholesaler’s basic permit issued pursuant to the Federal Alcohol Administration Act in any size bottle, except 1.75 liter size bottles.

(B) A licensed retail dealer with a wholesaler’s basic permit issued pursuant to the Federal Alcohol Administration Act may deliver, in sealed containers, alcoholic liquor in any size bottle, except 1.75 liter size bottles, to a person licensed by this article to sell alcoholic liquors for on-premises consumption.

filing fee of thirty-five dollars for processing each event on the application. The temporary license application must include a statement by the applicant as to the nature and date of the special function at which the alcoholic liquors are to be sold. The department in its discretion may specify the terms and conditions of the license, pursuant to existing statutes and regulations governing these applications.

(B) The department shall require the applicant to obtain a criminal background check conducted by the State Law Enforcement Division within ninety days prior to an application. The department shall deny the application if the criminal records check is not submitted with the application and filing fee or if it was obtained more than ninety days before.

(C) The department shall require the applicant to complete the law enforcement notification contained in an application form and submit it with the application. The law enforcement notification provision shall be prepared by the department for inclusion in the application and, at a minimum, must contain sufficient information to inform the department that either the chief of police, if the event is located within the city limits, or the county sheriff has been notified of the temporary license application and given an opportunity to object.

(D) The department may issue up to twenty-five temporary licenses on one application for special functions in a twelve-month period to the same nonprofit organization. This does not prohibit the nonprofit organization from applying for additional temporary licenses within the same twelve-month period.

Matters concerning location are discussed in C. below.

B. Alcoholic Liquors, Beer or Wine Provided Without Charge

For purposes of the laws regulating beer, wine and alcoholic liquor, a sale is considered to take place if:

- there is a per drink charge,
- an admissions fee is charged to enter a place or event where these beverages are provided,
- a donation is accepted with respect to the event where these beverages are provided,
- tickets are sold with respect to the event where these beverages are provided,
- such beverages are provided as part of a meal for which consideration, direct or indirect, is accepted or required, or
- any consideration is accepted or required with respect to the event where these beverages are provided.

No license or permit is required if a nonprofit organization provides alcoholic liquor, beer or wine at the function free of charge and free of any consideration whatsoever. Matters concerning location are discussed in C. below.

C. Location of Possession and Consumption of Alcoholic Liquor, Beer or Wine

1. **In General:** With respect to location, Code Section 61-6-4710 states:

(A) A person who is twenty-one years of age or older may possess or consume lawfully acquired alcoholic liquors:

(1) in a private residence, hotel room, or motel room;

(2) or on other property not engaged in business or commercial activity, at private gatherings, receptions, or occasions of a single and isolated nature and not on a repetitive or continuous basis, with the express permission of the owner and any other person in possession of the property, and to which the general public is not invited. However, this must not be construed to authorize the possession or consumption of alcoholic liquors on premises open to the general public for which a license has been obtained pursuant to Sections 61-6-1600 or 61-6-1610.

(3) in separate and private areas of an establishment whether or not the establishment includes premises which are licensed pursuant to Sections 61-6-1600 or 61-6-1610, where specific individuals have leased these areas for a function not open to the general public.

(B) It is unlawful for a person to possess or consume alcoholic liquors upon any premises where the person has been forbidden to possess or consume alcoholic liquors by the owner, operator, or person in charge of the premises.

A person who violates this section is guilty of a misdemeanor and, upon conviction, must be fined not more than one hundred dollars or imprisoned for not more than thirty days.

2. **Business Establishments and Alcoholic Liquor:** With respect to the possession and consumption of alcoholic liquor at a business establishment, Code Section 61-6-1620(B) states:

Alcoholic liquors may be possessed or consumed in separate and private areas of an establishment whether or not the establishment includes premises which are licensed pursuant to Sections 61-6-1600 [biennial license for nonprofit organizations] or 61-6-1610 [biennial license for businesses engaged in serving of meals or furnishing of lodging], **where specific individuals have leased these areas for a function not open to the general public.** [Emphasis added.]

Further explanation is provided in Regulation 7-403, which states:

A. Lease must be written. When a separate and private area of an establishment is leased by a holder of a sale and consumption license to a specific individual or individuals for a function not open to the general public pursuant to Section 61-6-1620(B), the terms of the lease agreement shall be reduced to writing and a copy of that instrument shall be retained by the licensee upon the licensed premises.

B. Purchase, Delivery and Possession of Alcoholic Beverages. When a separate and private area of an establishment is leased by a specific individual or individuals for a function not open to the general public pursuant to Section 61-6-1620(B), the host or sponsor of said function, or the designated agent or representative of said host or sponsor must purchase and deliver to the leased area any alcoholic beverages to be possessed and consumed therein and must remain constantly in actual possession of these beverages until such time as the function is concluded, at which time all alcoholic beverages must be removed from the leased area and taken to a location where they may be legally stored. Nothing contained herein shall prohibit the host or sponsor or his designated agent or representative from having other persons, whether employed by the licensee or employed by the host or his agent or representative, from mixing and serving alcoholic beverages belonging to the host of the party.

C. Termination of Lease. In the event that the area leased pursuant to Section 61-6-1620(B), is located upon the premises of an establishment holding either a sale and consumption license or a retail beer and wine permit, the lease agreement shall automatically terminate at two o'clock in the morning. To permit or knowingly allow the possession and consumption of any alcoholic beverages upon the premises of the establishment after two o'clock in the morning shall constitute a violation against the license or permit. Such violation shall constitute sufficient cause for the South Carolina Department of Revenue to revoke or suspend said license or permit.

3. Publicly-Owned Auditorium, Coliseum, or Armory: Code Section 61-6-500 concerns the possession and consumption of alcoholic liquor at certain publicly-owned sites. Code Section 61-6-500 states:

(A) Notwithstanding any other provision of law, the authorities in charge of a publicly-owned auditorium, coliseum, or armory may allow the possession and consumption of beer, wine, and alcoholic liquors on their premises.

(B) It is unlawful for a person to possess or consume beer, wine, or alcoholic liquors on the premises of a publicly-owned auditorium, coliseum, or armory unless the authorities in charge specifically have approved the possession or consumption of those beverages. A person who violates the provisions of this section is guilty of a misdemeanor and, upon conviction, must be fined not more than one hundred dollars or imprisoned not more than thirty days.

CONCLUSION:

The following examples will explain the application of the sales tax, admissions tax, and alcoholic beverage laws to fundraising and other events conducted by a nonprofit organization.

Note: The discussion of sales of alcoholic liquor by the drink in these examples is limited to sales by nonprofit organizations licensed under Code Section 61-6-2000. Such sales are not subject to the alcoholic liquor by the drink excise tax imposed under Code Section 12-33-245(A).

Example 1:

Facts:

A nonprofit organization holds a \$1,000 a plate function to raise money for a specific purpose. This function will be open to the public. At this function, persons paying the \$1,000 will be served a meal and will listen to a speech by a famous person. A professional caterer will provide the meal and will be paid \$20 a plate by the nonprofit organization. Alcoholic liquor by the drink, beer, and wine will be provided by the nonprofit organization and will be available at no additional charge for any person of legal drinking age.

Answer:

Sales Tax: The taxable event is the sale to the nonprofit organization of all meals charged at \$20 a plate by the caterer. Therefore, the caterer, as a retailer, must have a retail license and is liable for the sales tax on the “gross proceeds of sales” of all the meals charged at \$20 a plate. No sales tax exemption applies because the nonprofit organization is not buying the meals for resale. The \$1,000 paid to the nonprofit organization by the persons attending the fundraising event is a charitable contribution not related to the sale of tangible personal property for sales tax purposes.

Admissions Tax: The \$1,000 paid to the nonprofit organization by the persons attending the fundraising event is a charitable contribution and is not a charge to enter into and use a place of amusement. Therefore, it is not subject to the admissions tax.

Alcoholic Beverage Laws: Under the laws regulating alcoholic beverages, the nonprofit organization is considered to be engaging in the sale of alcoholic liquor by the drink, beer and wine at the fundraising event—even though it is not engaging in a retail sale for sales tax purposes. Therefore, the nonprofit organization must obtain a temporary license authorized under Code Section 61-6-2000.

Example 2:

Facts:

A church seeks to raise money for its youth programs. Each week the church holds a fellowship dinner. Members and visitors pay \$5.50 per meal. Alcoholic liquors, beer, and wine will not be provided or available at this event. The cost per meal to the church is \$4.50. The net proceeds, \$1.00 per meal, are deposited into a special church fund to pay for the youth programs.

Answer:

Sales Tax: The taxable event is the sale to church members and visitors of each meal by the church. The church, as the retailer, is liable for the sales tax on the “gross proceeds of sales” of all the meals charged at \$5.50 a meal. The church may purchase prepared meals, or foodstuffs used to prepare the meals, tax free since such items will be resold to the members and visitors or constitute ingredients or component parts of the meal being sold by the church.

However, if the church qualifies for the exemption under Code Section 12-36-2120(41), the sale of the meals by the church to its members and visitors will not be subject to the sales tax. Churches that qualify for the exemption are not required to obtain a retail sales tax license. See SC Revenue Procedure #03-6 for more information concerning the sales tax exemption under Code Section 12-36-2120(41).

Admissions Tax: The admission tax is not applicable to this example.

Alcoholic Beverage Laws: The alcoholic beverage laws are not applicable to this example.

Example 3:

Facts:

A nonprofit organization is conducting a social. For \$50.00 a person, members and their guests will receive a meal and will be entertained by, and be able to dance to the music of, a local band. Alcoholic liquor by the drink, beer, and wine will be provided by the nonprofit organization to any member or guest of legal drinking age for an additional charge.

Answer:

Sales Tax and Admissions Tax: The total charge may be divided into two parts: the portion attributable to the sale of tangible personal property subject to sales tax and the portion attributable to the charge for admission to a place of amusement for admissions tax purposes. The nonprofit organization, as the retailer, must have a retail license and is liable for the sales tax on the “gross proceeds of sales” of the portion of the charge representing the meal and the drinks (alcoholic liquors, beer, wine, etc.) and is liable for the admissions tax on the portion of the charge representing the paid admissions (i.e., the charge to enter into and use a place of amusement). See SC Private Letter Ruling #92-5 for information and an example of a charge subject to both the sales tax and the admissions tax.

However, if the nonprofit organization qualifies for the sales tax exemption under Code Section 12-36-2120(41), the sale of the meals and drinks by the nonprofit organization to its members and visitors will not be subject to the sales tax. Nonprofit organizations that qualify for the exemption are not required to obtain a retail sales tax license. See SC Revenue Procedure #03-6 for more information concerning the sales tax exemption under Code Section 12-36-2120(41).

Also, if the organization and the transaction qualify for the admissions tax exemption under Code Section 12-21-2420, the charges representing paid admissions will not be subject to the admissions tax.⁸ A nonprofit organization may seek a determination as to whether it qualifies for the admission tax exemption under Code Section 12-21-2420 by completing the Application for Admissions Tax Exemption - Form L-2068.

⁸ In addition to exempting all charges by nonprofit organizations organized exclusively for religious, charitable, scientific and educational purposes, Code Section 12-21-2420(4) also exempts charges by a nonprofit organization, such as a nonprofit private country club, to its members for the use of its facilities. It should be noted that this exemption does not apply to charges to non-members (e.g., visitors).

Alcoholic Beverage Laws: Since the nonprofit organization will be engaging in the sale of alcoholic liquor by the drink, beer and wine at the social, the nonprofit organization must obtain a temporary license authorized under Code Section 61-6-2000.

Example 4:

Facts:

A church seeks to raise money for its youth programs. Each week the church holds a show (e.g., a puppet show, play) for pre-schoolers and others. Members and visitors pay \$1.00 to see the show. The money received is deposited into a special church fund to pay for the youth programs.

Answer:

Sales Tax: The sales tax is not applicable to this example.

Admissions Tax: The \$1.00 paid to the church by the persons attending the show is a charge to enter into and use a place of amusement. However, since the church qualifies for the exemption under Code Section 12-21-2420(4), the admissions price charged by the church will not be subject to the admissions tax.

Alcoholic Beverage Laws: The alcoholic beverage laws are not applicable to this example.

Example 5:

Facts:

A nonprofit organization is conducting a private event for invited guests only. No donation, entrance fee, or consideration of any kind will be required of the guests. The guests will receive a meal, and alcoholic liquor by the drink, beer, and wine will be provided. No donation or consideration of any kind will be accepted or required.

Answer:

Sales Tax: The taxable event is the sale to the nonprofit organization of the drinks and foodstuffs used to prepare the meal or the prepared meal if purchased from a caterer. Therefore, the retailer selling the drinks, foodstuffs or prepared meal to the nonprofit organization must have a retail license and is liable for the sales tax on the “gross proceeds of sales” from the sale of the drinks, foodstuffs, or prepared meals. No sales tax exemption applies because the nonprofit organization is not buying the meals for resale.

Admissions Tax: The admission tax is not applicable to this example.

Alcoholic Beverage Laws: Since the nonprofit organization will be providing alcoholic liquor, beer and wine without any consideration whatsoever, it will not be engaging in the sale of such beverages. Therefore, the nonprofit organization is not required to obtain a temporary license.

Example 6:

Facts:

A nonprofit organization will sell beer at a local festival in order to raise money.

Answer:

Sales Tax: The taxable event is the sale of beer to festival attendees by the nonprofit organization. The nonprofit organization, as the retailer, must have a retail license and is liable for the sales tax on the “gross proceeds of sales” of the beer.

However, if the nonprofit organization qualifies for the exemption under Code Section 12-36-2120(41), the sale of the beer by the nonprofit organization will not be subject to the sales tax. Nonprofit organizations that qualify for the exemption are not required to obtain a retail sales tax license. See SC Revenue Procedure #03-6 for more information concerning the sales tax exemption under Code Section 12-36-2120(41).

Admissions Tax: The admission tax is not applicable to this example.

Alcoholic Beverage Laws: The nonprofit organization must obtain the temporary permit authorized under Code Section 61-4-550 in order to allow the sale of the beer at the festival.

Note: *Examples 7-9 provide guidance as to whether sales tax must be remitted when a nonprofit organization’s fundraising event includes an auction of tangible personal property. For purposes of these examples, a “retail auction company” is an “auction firm” as defined in Code Section 40-6-20(3), or a “sole proprietorship” as defined in Code Section 40-6-20(10), that auctions tangible personal property at retail. In these examples the answers concern sales tax only. Admissions tax and alcoholic beverage laws are not applicable based on the facts stated.*

Example 7:

Facts:

To raise money, a nonprofit organization will sell items of tangible personal property at an auction. The nonprofit organization has secured the services of a retail auction company. The retail auction company may charge a fee for its services or it may donate its services to the nonprofit organization.

Answer:

Under the provisions of Code Section 12-36-910(A) (the imposition of the sales tax), Code Section 12-36-20 (the definition of “business”), and Code Section 12-36-70(1)(a) (the definition of “retailer”), the retail auction company is a retailer for purposes of the sales tax. As a retailer, the retail auction company must have a retail license and remit the sales tax on the “gross

proceeds of sales” of the items sold at the auction, even if the money collected at the auction is paid directly to the nonprofit organization. Since the nonprofit organization is not the retailer in this situation, the exemption under Code Section 12-36-2120(41) is not applicable.

Example 8:

Facts:

To raise money, a nonprofit organization sells items of tangible personal property at auctions on a regular basis. For some of these auctions, a local television personality has agreed to serve as auctioneer. A retail auction company is not involved in these auctions. The local television personality is merely serving as a celebrity auctioneer to assist a charity.

Answer:

Since a retail auction company is not involved in this auction, the local television personality is not the retailer. The nonprofit organization is the retailer. As a retailer, the nonprofit organization must have a retail license and remit the sales tax on the “gross proceeds of sales” of the items sold at the auction—unless the sales by the nonprofit organization qualify for the exemption from the sales and use tax under Code Section 12-36-2120(41).

A nonprofit organization that qualifies for the exemption under Code Section 12-36-2120(41) is not required to obtain a retail sales tax license or remit sales tax. It is recommended (but not required) that the qualified nonprofit organization obtain an exemption certificate from the Department. See SC Revenue Procedure #03-6 for more information concerning the sales tax exemption under Code Section 12-36-2120(41).

Example 9:

To raise money, a nonprofit organization sells items of tangible personal property at auctions held on a regular basis. A member of the nonprofit organization will conduct the auction. This member is employed by a retail auction company. However, neither the retail auction company that employs this member nor any other retail auction company is involved in this auction. The member is donating his time and expertise to assist the nonprofit organization to which he belongs.

Answer:

Since a retail auction company is not involved in this arrangement, the member is not the retailer. The nonprofit organization is the retailer. As a retailer, the nonprofit organization must have a retail license and remit the sales tax on the “gross proceeds of sales” of the items sold at the auction—unless the sales by the nonprofit organization qualify for the exemption from the sales and use tax under Code Section 12-36-2120(41).

A nonprofit organization that qualifies for the exemption under Code Section 12-36-2120(41) is not required to obtain a retail sales tax license or remit sales tax. It is recommended (but not required) that the qualified nonprofit organization obtain an exemption certificate from the Department. See SC Revenue Procedure #03-6 for more information concerning the sales tax exemption under Code Section 12-36-2120(41).

PLEASE NOTE THE FOLLOWING:

Longstanding Policy: Many of the conclusions reached in this advisory opinion also represent the longstanding policy of the department with respect to the application of the sales tax, admissions tax, and the alcoholic beverage laws to fundraising events.

Administrative interpretations of statutes by the agency charged with their administration and not expressly changed by the legislative body are entitled to great weight. *Marchant v. Hamilton*, 279 S.C. 497, 309 S.E. 2d 781(1983). When 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).

Other Facts and Circumstances: The application of the sales tax, admissions tax, and alcoholic beverage laws is determined by the facts and circumstances of a particular fundraising event. The intent of the parties, the market rate for the meal, entertainment, or other item being offered at the fundraising event, and other factors must be considered.

Applications: This advisory opinion refers to certain licenses and certificates issued by the Department of Revenue. The application forms for these licenses or certificates can be found on the Department's website at www.sctax.org by clicking on "Form and Instructions" in the "Quick Links" box.

Form SCTC-111 - Business Tax Application. This form is used to apply for retail sales tax license. (After clicking on "Forms and Instructions," this form can be found under the current year's forms by clicking on "Other Forms.")

Form L-514 - Application for a license to operate a place of amusement. (After clicking on "Forms and Instructions," this form can be found under the current year's forms by clicking on "Miscellaneous Taxes/Licenses.")

Form ST-387 - Application for nonprofit organizations seeking an exemption from the sales tax with respect to their sales of tangible personal property. (After clicking on "Forms and Instructions," this form can be found under the current year's forms by clicking on "Sales.")

Form L-2068 - Application for nonprofit organizations seeking an exemption from the admissions tax with respect to functions they sponsor. (After clicking on “Forms and Instructions,” this form can be found under the current year’s forms by clicking on “Miscellaneous Taxes/Licenses.”)

Form ABL 900 - Application for a temporary beer, wine, or alcoholic liquor license. (After clicking on “Alcoholic Beverage Licensing,” this form can be found under the current year’s forms by clicking on “Forms and Instructions.”)

In addition, South Carolina Business One Stop (SCBOS) offers a portal for electronic submission of the application for a retail sales tax license (Form SCTC-111) through its website at www.scbos.com. Using the drop-down menu under the “Start Your Business” tab, click on “General Business Licenses for New Business” and follow the instructions.

SOUTH CAROLINA DEPARTMENT OF REVENUE

s/James F. Etter
James F. Etter, Director

June 12, 2012
Columbia, South Carolina