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SC TECHNICAL ADVICE MEMORANDUM #89-26

TO: Mr. Marvin N. Davant, Director
Field Services Division

FROM: Jerry B. Knight, Manager
Tax Policy and Procedures Department

DATE: December 12, 1989

SUBJECT: ABC Auditorium/Promoters
(Admissions Tax)

REFERENCE: S.C. Code Ann. Section 12-21-2410 (1976)
S.C. Code Ann. Section 12-21-2420 (1976 and Supp. 1988)
S.C. Code Ann. Section 12-21-3010 (1976)

AUTHORITY: S.C. Code Ann. Section 12-3-170 (1976)
SC Revenue Procedure #87-3

SCOPE: A Technical Advice Memorandum is a temporary document issued to an individual within the Commission, upon request, and it applies only to the specific facts or circumstances related in the request. Technical Advice Memoranda have no precedential value and are not intended for general distribution.

Questions:

1. Is the ABC Auditorium & Hall ("ABC Auditorium") responsible for remitting the admissions tax for events held at the auditorium, when such events are conducted/sponsored by an independent promoter?
2. If the promoter is responsible for remitting the tax on such events, then is the "seat charge", levied by ABC Auditorium upon promoters, a deductible expense, not subject to the admissions tax?

Facts:

From time to time, independent promoters will conduct events at ABC Auditorium in South Carolina. Tickets for such events are sold by one of the following methods.

1. All tickets are sold and distributed by the promoter.
2. All tickets are sold by the auditorium.
3. Tickets are sold and distributed by both the auditorium and the promoter.

For the purposes of this document, it is assumed the promoters are not licensed with the Tax Commission, with respect to the admissions tax. ABC Auditorium, however, does have an admissions tax license.

The auditorium also levies a "seat charge" of twenty-five cents per ticket on the promoters. Turnstiles determine the number of tickets sold, for purposes of calculating the "seat charge".

Discussions:

1. The first issue is whether the responsibility for collecting and remitting the tax rests with the auditorium, or the promoter.

Code Section 12-21-2410 reads:

For the purpose of this article [admissions tax] 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 imposes the admissions tax and reads, in part:

There is levied, assessed, collected and paid upon all paid admissions to all places of amusement within this State a license tax of...four percent....

* * * *

The tax imposed by this section shall be paid by the person or persons paying such admissions price and shall be collected and remitted to the South Carolina Tax Commission by the person or persons collecting such admissions price.

Furthermore, Code Section 12-21-3010 reads, in part:

The taxes and penalties imposed by this chapter shall be deemed a debt owing to the State by the person against whom they shall be charged...(emphasis added).

The word "charged" is not defined in the statute; however, it is an accepted practice in South Carolina to resort to the dictionary to determine the literal meaning of words used in statutes. For cases where this has been done, see Hay v. South Carolina Tax Commission, 273 SC 269, 255 S.E.2d 837 (1979); Fennell v. South Carolina Tax Commission, 233 S.C. 43, 103 S.E.2d 424 (1958); Etiwan Fertilizer Co. v. South Carolina Tax Commission, 217 SC 484, 60 S.E.2d 682 (1950). The Second College Edition of the American Heritage Dictionary defines "charge" as: "To entrust with a duty, responsibility or obligation..."

In summary, the admissions tax is paid by the person paying for the right or privilege to enter or use a place of amusement. However, the person collecting the admissions charge has an obligation, or a duty, to collect and remit the tax and, therefore, has a debt to the State for the taxes required to be collected.

Also, it is necessary to review the standard contract between the promoters and ABC Auditorium. The contract reads, in part:

The undersigned hereby makes application for a permit to rent and use the following space in the ABC Auditorium, upon the following terms and conditions:

Lessee:
Contract:

* * * *

Rental rate: _____ includes: Exhibition Hall - four walls, clean room, overhead illumination, temperature control, sound system, microphone, chairs and risers; auditorium - all lighting equipment, sound equipment, follow spots, risers, dressing rooms, temperature control, all hanging borders, legs and curtains on state (sic). (Complete rate schedule available at auditorium office).

Terms: 50% _____ with permit and balance at least 48 hours before event.

Extra services (which are to be paid the date of the event): 25 cent seat charge per ticket, \$50.00 per spotlight, \$25.00 per day or 2% of advance sales for Box Office.

* * * *

The rental charges in the resolution heretofore referred to shall cover only the use of the auditorium, exhibition hall and meeting rooms, and are not as and for, or in lieu of charges for special facilities and extra services hereinafter provided for or mentioned in

this section. Regardless of the classification of use, where such special facilities or extra services are used or rendered, an additional charge to be determined by the director shall be made. These charges shall be kept on file with the director. The list of charges will be kept current by the director. The following are the special facilities or extra services for which an additional charge shall be made:

* * * *

Service furnished by city - Rental of the ABC Auditorium at the rates herein provided shall not entitle the permittee to any personnel service in connection with the staging of the event or attraction for which the permit is issued, provided, however, that the director may, at his discretion, furnish, at no extra cost to permittee, the services of those employees of the city who are regularly employed as a part of the ABC Auditorium staff, but such services shall not include extra services as set forth in the schedule of rentals. Permittee shall hire and pay the salaries of all other employees required in connection with the event or attraction, including the salaries of all stage employees, ticket takers, ushers, cashiers, doormen and security guards, etc.

* * * *

Ticket and account control of permittee - In connection with any use of the ABC Auditorium, the director shall have the right to prescribe the form of ticket, accounts, records, and reports that shall be used by the permittee in staging the event or attraction and in accounting for the gross receipts thereof...

* * * *

(L) Payment of all federal, state, county and city taxes in connection with any attraction shall always be the liability and responsibility of the permittee; however, if the director deems it advisable for the protection of himself and the protection of the city, he may have the authority to collect all such taxes and pay them over to the proper representatives of the state, federal, or other units of government.

In summary, the promoter is renting the auditorium and conducting the event. The auditorium is not holding the event; however, the auditorium may be collecting the admissions price from some of the patrons. Furthermore, where the auditorium is collecting the admissions price, it is considered to be holding the associated admissions taxes in trust.

Furthermore, Code Section 12-21-2440 reads, in part:

Before engaging in business every person operating a place of amusement within the State subject to the tax imposed by this article shall file with the Commission an application for a permanent license permitting him to engage in the business.

In summary, any person operating a place of amusement, whether as the owner or lessee of such place, must obtain an admissions tax license.

2. The second issue is whether the "seat charge" in question is a deductible expense from "paid admissions".

The "seat charge" is paid by the promoter to ABC Auditorium based on tickets sold and distributed. Code Section 12-21-2420, which provides the only exclusion from the measure of the tax, reads, in part:

The tax imposed by this section shall not apply to any amount separately stated on the ticket of admission for the repayment of money borrowed for the purpose of constructing an athletic stadium or field by an accredited college or university.

The "seat charge" in question is not for repayment of money used to build an athletic field, by a college, and, therefore, does not qualify for this exclusion.

Conclusions:

1. The ABC Auditorium is not responsible for remitting the admissions tax for events conducted by independent licensed promoters, who are renting the auditorium under the contract provided herein. The licensed promoter is responsible for collecting and remitting the tax.

However, if ABC Auditorium invokes its authority under subsection "L" of the contract to collect the tax; or turns over admissions taxes it has collected to an unlicensed promoter, then the auditorium will be held accountable to the State for such taxes, as such monies are being held in trust for the State.

2. The twenty-five cent "seat charge", levied upon promoters by ABC Auditorium, is not a deductible expense. Therefore the "seat charge" in question is part of "paid admissions" and subject to the admissions tax, pursuant to Code Section 12-21-2420.