

# Sales & Use Tax Laws & Regulations For Restaurants and Bars

## SC Code of Laws

### Section 12-36-90. "Gross Proceeds of Sales".

Gross proceeds of sales, or any similar term, means the value proceeding or accruing from the sale, lease, or rental of tangible personal property.

- (1) The term includes:
  - (a) the proceeds from the sale of property sold on consignment by the taxpayer;
  - (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.
  - (c) the fair market value of tangible personal property previously purchased at wholesale which is withdrawn from the business or stock and used or consumed in connection with the business or used or consumed by any person withdrawing it, except for:
    - (i) withdrawal of tangible personal property previously withdrawn and taxed by such business or person;
    - (ii) tangible personal property which becomes an ingredient or component part of tangible personal property manufactured or compounded for sale;
    - (iii) tangible personal property replacing defective parts under written warranty contracts if:
      - (a) the warranty contract is given without charge, at the time of original purchase of the defective property,
      - (b) the tax was paid on the sale of the defective part or on the sale of the property of which the defective part was a component, and

- (c) the warrantee is not charged for any labor or materials;
  - (iv) an automobile furnished without charge to a high school for use solely in student driver training programs;
  - (v) a new motor vehicle used by a dealer as a demonstrator.
- (2) the term does not include:
  - (a) a cash discount allowed and taken on sales;
  - (b) the sales price of property returned by customers when the full sales price is refunded in cash or by credit;
  - (c) the value allowed for secondhand property transferred to the vendor as a trade-in;
  - (d) the amount of any tax imposed by the united states with respect to retail sales, whether imposed upon the retailer or the consumer, except for manufacturers or importers excise taxes.
  - (e) a motor vehicle operated with a dealer, transporter, or manufacturer, or education license plate and used in accordance with the provisions of section 56-3-2320 or 56-3-2330;
  - (f) that portion of a charge taxed under section 12-36-910(b) (3) or 12-36-1310(b) (3) attributable to the cost set by statute for a governmental license or permit.
  - (g) fees imposed on the sale of motor oil, new tires, lead-acid batteries, and white goods pursuant to article 1, chapter 96 of title 44, including the refundable deposit when a lead-acid battery core is not returned to a retailer.
  - (h) the sales price, not including sales tax, of property on sales which are actually charged off as bad debts or uncollectible accounts for state income tax purposes. A taxpayer who pays the tax on the unpaid balance of an account which has been found to be worthless and is actually charged off for state income tax purposes may take a deduction for the sales price charged off as a bad debt or uncollectible account on a return filed pursuant to this chapter, except that if an amount charged off is later paid in whole or in part to the taxpayer, the amount paid must be included in the first return filed after the collection and the tax paid. The deduction allowed by this provision must be taken within one year of the month the amount was determined to be a bad debt or uncollectible account.
  - (i) interest, fees, or charges however described, imposed on a customer for late payment of a bill for electricity or natural

gas, or both, whether or not sales tax is required to be paid on the underlying electricity or natural gas bill.

**Section 12-36-110. Sale at Retail; Retail Sale.**

Sale at retail and retail sale mean all sales of tangible personal property except those defined as wholesale sales. The quantity or sales price of goods sold is immaterial in determining if a sale is at retail.

- (1) the terms include:
  - (a) sales of building materials to construction contractors, builders, or landowners for resale or use in the form of real estate;
  - (b) sales of tangible personal property to manufacturers, processors, compounders, quarry operators, or mine operators, which are used or consumed by them, and do not become an ingredient or component part of the tangible personal property manufactured, processed, or compounded for sale;
  - (c) the withdrawal, use, or consumption of tangible personal property by anyone who purchases it at wholesale, except:
    - (i) withdrawal of tangible personal property previously withdrawn and taxed by such business or person,
    - (ii) tangible personal property which becomes an ingredient or component part of tangible personal property manufactured or compounded for sale,
    - (iii) tangible personal property used directly in manufacturing, compounding, or processing tangible personal property for sale,
    - (iv) materials, containers, cores, labels, sacks, or bags used incident to the sale and delivery of tangible personal property;
    - (v) a motor vehicle operated with a dealer, transporter, or manufacturer, or education license plate and used in accordance with the provisions of section 56-3-2320 or 56-3-2330;
  - (d) the use within this state of tangible personal property by its manufacturer as building materials in the performance of a construction contract. The manufacturer must pay the sales tax based on the fair market value at the time and place where used or consumed;
  - (e) sales to contractors for use in the performance of construction contracts;

- (f) [reserved];
  - (g) sales of tangible personal property, other than cigarettes and soft drinks in closed containers, to vendors who sell the property through vending machines. The vendors are deemed to be the users or consumers of the property;
  - (h) sales of prepared meals, or unprepared food products used to prepare meals, to hospitals, infirmaries, sanitariums, nursing homes, and similar institutions, educational institutions, boarding houses, and transportation companies, if furnished as part of the service rendered. These institutions and companies are deemed to be the users or consumers of the property;
  - (i) sales of drugs, prosthetic devices, and other supplies to hospitals, infirmaries, sanitariums, nursing homes, and similar institutions, medical doctors, dentists, optometrists, and veterinarians, if furnished to their patients as a part of the service rendered. These institutions, companies, and professionals are deemed to be the users or consumers of the property;
  - (j) sales, not otherwise exempted, when reimbursed or paid in whole or in part by Medicare or Medicaid. However, only the net amount reimbursed by Medicare and Medicaid is subject to the tax, if the vendor is prohibited by law from charging the purchaser the difference between the retail sale and the amount reimbursed.
  - (k) sales of all local telecommunications services by local exchange companies (lecs) to customer owned coin-operated telephone (cocot) providers, as those terms are defined by the South Carolina Public Service department. The cocot providers that purchase these services in order to provide payphone services to their customers are considered to be the users and consumers of the services, and are not subject to sales tax for their subsequent sale of local telecommunications services to their cocot customers.
  - (l) sales of tangible personal property to veterinarians. The veterinarians are deemed to be the users or consumers of the property whether used in the rendering of professional services or sold outright as part of the veterinarian practice and not furnished as a part of professional services rendered.
- (2) the terms do not include sales of tangible personal property to a manufacturer or construction contractor when the tangible personal property is subsequently processed, partially or

completely fabricated, or manufactured in this state by the manufacturer or contractor, for use in the performance of a construction contract if the property is transported to, assembled, installed, or erected at a job site outside the state and thereafter used solely outside the state.

# Revenue Rulings

## S.C. Revenue Ruling 95-6 (Tax)

Subject: Purchases by Restaurants (sales and use tax)

Effective date: Applies to all periods open under statute.

Supersedes: S.C. Revenue Ruling #92-3

Reference: S.C. Code ann. Section 12-36-110 (supp. 1993)  
S.C. Code ann. Section 12-36-120 (supp. 1993)  
S.C. Code ann. Section 12-36-910(a) (supp. 1993)  
S.C. Code ann. Section 12-36-1310(a) (supp. 1993)  
S.C. Code ann. Section 12-36-2120(14) (supp. 1993)  
Regulation 117-174.79

Authority: S.C. Code ann. Section 12-4-320 (supp. 1993)  
S.C. revenue procedure #94-1

Scope: A Revenue Ruling is the department of revenue's official advisory opinion of how laws administered by the department are to be applied to a specific issue or a specific set of facts, and is provided as guidance for all persons or a particular group. It is valid and remains in effect until superseded or modified by a change in the statute or regulations or a subsequent court decision, Revenue Ruling or revenue procedure.

### Question:

What guidelines can the department provide that will assist restaurants in determining their sales and use tax liability on purchases of tangible personal property?

### Conclusion:

The department provides the following guidelines with respect to the sales and use taxes on purchases by restaurants ("nt" - not Taxable, "t" - taxable):

Aluminum foil	*	Bibs.	t
Beverage ingredients	nt	Cleaning supplies	t

Coasters	t	Paper buckets or pails	*
Coffee stirrers	t	Paper or plastic bags	*
Cooking equipment	t	Place mats	t
Cooking oil	+	Plates (disposable or reusable)	nt
Cooking utensils	t	Serving utensils	t
Condiments	nt	Shortening	+
Cups & lids	nt	Skewers	t
Drinking glasses	nt	Steak markers	t
Food containers & wraps.	*	Table covers	t
Food products & ingredients	nt	Tissue paper	*
Forks, knives & spoons	t	Toothpicks	t
Furniture & fixtures.	t	Towels (paper or cloth)	t
Guest checks	t	Tray liners	t
Napkins.	t	Trays	t
Office supplies	t	Uniforms	t
Waxed paper	*		

\* - Materials and containers used incident to the sale and delivery of food and drink products are not taxable; however, materials and containers used for other purposes are taxable (e.g. storage containers).

+ - these items are not taxable only when used as an ingredient in the food products being sold.

*Note:* other items are to be considered on a case-by-case basis.

**Facts:**

Advice has been requested by restaurants with regard to their sales and use tax liability on purchases of tangible personal property. In addition to selling food and beverage products, many restaurants provide their customers with napkins, straws, utensils, condiments (salt, pepper, ketchup, etc.) and other ancillary items, which facilitate the consumption of the food or beverage products. Most restaurants make these items readily accessible to their customers for self service (e.g. placing individual serving size packages of condiments or plastic utensils on counters for use with the food products at the customer's discretion) and others attempt to regulate or limit The quantity of such items available to customers by providing them only upon request or including them in the food or beverage package transferred to the customer. Also, restaurants use a variety of containers, packaging

materials, and supplies in their business of selling food and beverage products.

**Discussion:**

Pursuant to Code section 12-36-910(a):

a **sales tax**, equal to five percent of the gross proceeds of sales, is imposed upon every person engaged or continuing within this state in the business of selling tangible personal property at retail. (emphasis added.)

In accordance with Code section 12-36-1310(a):

a **use tax** is imposed 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. (emphasis added.)

The terms "sale at retail" and "retail sale" are defined at Code Section 12-36-110, in part, as "all sales of tangible personal property except those defined as wholesale sales". Further, the terms are defined to include (with certain exceptions) the withdrawal, use, or consumption of tangible personal property by anyone who purchases it at wholesale.

Code section 12-36-120 provides, in pertinent part:

"wholesale sale" and "sale at wholesale" mean a sale of:

- (1) tangible personal property to licensed retail merchants, jobbers, dealers, or wholesalers for resale, and do not include sales to users or consumers;

\* \* \* \*

- (4) materials, containers, cores, labels, sacks, or bags, used incident to the sale and delivery of tangible personal property.

Code section 12-36-2120(14) exempts from the sales and use taxes Sales or purchases of:

wrapping paper, wrapping twine, paper bags, and containers, used incident to the sale and delivery of tangible personal property.

In summary, in order for either the sales or use tax to apply, there must be a retail sale of tangible personal property. Sales of tangible personal property to users or consumers are retail sales subject to tax. Sales of tangible personal property to licensed retailers for resale and sales of materials, containers, sacks or bags used incident to the sale and delivery of tangible personal property are not taxable.

In considering this issue, it must be determined whether tangible personal property is used or consumed by restaurants, purchased for resale, or used incident to the sale and delivery of the restaurants' food and beverage products.

Regulation 117-174.79, provides guidance and reads:

licensed retailers purchase free of sales or use taxes wrapping paper, wrapping twine, paper bags and containers for use incident to the delivery of tangible personal property sold by them. They also purchase tax-free materials used in packaging personal property sold by them. they also purchase tax-free materials used in packaging tangible personal property for shipment or sale.

The list below while illustrative of items falling within the rule announced above is not exhaustive:

Soufflé cups, butter chips, paper cups, paper plates, boxes and crates and glazed tissue used to package articles of food.

It will be seen that items such as straws, napkins, wooden or paper spoons and forks do not meet the requirements outlined above and, hence, must bear the tax. Such items are rather in the nature of supplies used or consumed by the retailer in the operation of his or its business.

Hence, purchases of tangible personal property for resale and purchases of materials, containers, cores, labels, sacks, or bags used incident to the sale and delivery of tangible personal property are not subject to the sales or use taxes. Purchases of straws, napkins, and utensils are made at retail and are, therefore, subject to tax.

Commission Decision #95-11 upheld the taxation of utensils, napkins, straws, and tray liners purchased by a restaurant but also addressed the taxation of cooking oil and shortening. In this case the cooking oil and shortening were used for frying food products for sale; however, the shortening was also used as an ingredient to make biscuits. When used for frying, in excess of 70% of the cooking oil and shortening was used or consumed in the process. Thus, the Commission held that the cooking oil and shortening were not subject to tax. The Commission stated that:

the cooking oil and shortening are absorbed by the food. The cooking oil is used as a part of the food being sold. Just as flour, salt or spices become a part of the food item during preparation, the cooking oil and shortening become a part of the food during the cooking portion of the preparation. The department's established view is that restaurants are making purchases at wholesale when they purchase ingredients of food products sold to customers. We find and conclude the cooking oil and shortening are ingredients of the food products sold, and thus such purchases are made at wholesale and are nontaxable.

For questions concerning the taxation of products purchased by Restaurants, contact Steve Hallman at (803) 737-4433 or John McCormack at (803) 737-4438.

Columbia, South Carolina  
June 5, 1995

## **S.C. Revenue Ruling #96-8 (tax)**

Subject: City and County tourism and Restaurant Fees  
(sales tax)

Effective date: Applies to all periods open under the statute.

Reference: S.C. Code ann. Section 12-36-910 (supp. 1995)  
S.C. Code ann. Section 12-36-920 (supp. 1995)  
S.C. Code ann. Section 12-36-90 (supp. 1995)

Authority: S.C. Code ann. Section 12-4-320 (supp. 1995)  
S.C. Revenue Procedure #94-1

Scope: A Revenue Ruling is the Department of Revenue's **official advisory opinion** of how laws administered by the department are to be applied to a specific issue or a specific set of facts, and is provided as guidance for all persons or a particular group. It is valid and remains in effect until superseded or modified by a change in the statute or regulations or a subsequent court decision, Revenue Ruling or Revenue Procedure.

### **Question:**

Is a city or county tourism and restaurant fee, as described in the facts, charged by a restaurant or hotel to a customer includable in "gross proceeds of sales" and subject to the sales tax?

### **Conclusions:**

A city or county tourism and restaurant fee charged by a restaurant or hotel to a customer is includable in "gross proceeds of sales" and subject to the sales tax **if the fee is imposed upon the retailer.**

A city or county tourism and restaurant fee charged by a restaurant or hotel to a customer is **not** includable in "gross proceeds of sales" and **not** subject to the sales tax **if the fee is imposed upon the customer and the retailer is merely a collection agent for the city or county.**

**Facts:**

Cities and counties are now imposing fees upon businesses that sell food and beverages or furnish sleeping accommodations for a fee. These fees are generally calculated as a percentage of the gross proceeds of sales of the foods and beverages or gross proceeds derived from accommodations. Such businesses are usually required to collect these fees from their customers, but are still required to remit the fees to the city or county if they fail to collect it from their customers.

Questions have arisen as to whether these fees are includable in the gross proceeds of sales of the meals and accommodations, and therefore, are they subject to the state sales tax?

**Discussion:**

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." (emphasis added.)

Code section 12-36-920(a) imposes "a sales tax equal to seven percent on the **gross proceeds** derived from rental or charges for any rooms, campground spaces, lodgings, or sleeping accommodations furnished to transients by any hotel, inn, tourist court, tourist camp, motel, campground, residence, or any place in which rooms, lodgings, or sleeping accommodations are furnished to transients for a consideration." (emphasis added.)

Code section 12-36-90 defines "gross proceeds" and reads, in part:

gross proceeds of sales, or any similar term, means 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 *Meyers Arnold v. South Carolina Tax Commission*, 285 S.C. 303, 328 s.e. 2d. 920 (1985), the Court of Appeals, in interpreting the definition of "gross proceeds of sales" with respect to lay away fees paid in conjunction with lay away sales, held:

Section 12-35-30 [now section 12-36-90] defines gross proceeds of sales as "the value proceeding or accruing from the sale of tangible personal property ... Without any deduction for service costs." but for the lay away sales, Meyers Arnold would not receive the lay away fees. The fees are obviously rendered in making lay away sales. For these reasons, this court holds the lay away fees are part of the gross proceeds of sales and subject to the sales tax.

The commissioners, in decision S-D-174, held a property damage waiver fee charged by a person engaged in the business of renting tangible personal property was subject to the sales tax. The commission, in citing *Meyers Arnold v. South Carolina Tax Commission*, supra, stated:

Just as in Meyers Arnold, supra, the service fee here is taxable. but for the lease of tangible personal property, the taxpayer would not have received the fee. The fee is obviously charged for the additional service of providing a lease of property free from liability for damage. In the absence of such service, the lessee, under the taxpayer's lease agreements, would be "liable for any loss, theft, damage or destruction of leased property." We find and conclude the fee for the property damage waiver is part of gross proceeds of sale subject to tax.

In decision S-D-127 the commissioners held that "the amount in a lease contract equal to ad valorem taxes which is paid annually by the lessee to the lessor is includable in gross proceeds of sales."

Finally, a distinction must be made between local fees that are imposed upon the retailer and local fees that are imposed upon the customer.

With respect to fees imposed upon the customer, the retailer is merely a collection agent for the local government that has enacted the fee by ordinance. As such, the fee the retailer is required to collect and hold in trust for the local government is not a receipt of the retailer. It is a receipt of the local government for whom the retailer is the collection agent. Therefore, local fees imposed upon the retailer's customers are not includable in "gross proceeds of sales."

A fee imposed upon the retailer is a receipt of the retailer. The retailer has the discretion to collect the fee from his customer, but he is not required to do so. As such, the fee when collected is a receipt of the retailer. When paid to the local government the fee is an expense of the retailer. Therefore, local fees imposed upon the retailer are includable in "gross proceeds of sales."

Therefore, the city and county fees in question, **when imposed on the retailer**, are part of gross proceeds of sales and therefore subject to the sales tax. [see also *regency towers association, inc. V. South Carolina Tax Commission*, Horry County Court Of Common Pleas, case no. 88-cp-26-1109 (1989) (maid service at a hotel); commission decisions #90-38 and #91-64 (engraving charges as part of the sale of trophies); S.C. Revenue Ruling #93-1 (fueling and insurance charges as part of the rental of an automobile); S.C. Revenue Ruling #93-4 (computer software maintenance agreements as part of the sale of computer software); and S.C. Revenue Ruling #93-6 (extended warranties as part of the sale of tangible personal property).]

For questions concerning the city and county tourism and restaurant fees and the sales tax, please contact John P. McCormack at (803) 737-4438.

# Regulations

## **117-318.6. Gratuities.**

An amount or percentage, regardless of its designation, added to the price of meals pursuant to a requirement of the retailer furnishing such meals is a part of the sales price of such meals and must be included in the measure of the tax even though all or a part thereof may be paid by the retailer to his employees. Conversely, when a customer voluntarily provides a tip for an employee of a retailer, such a tip is not subject to the sales tax whether given directly to the employee in cash or added by the customer to his bill and charged by the retailer to the customer's account; provided, however, that in the latter instance the full amount of such tip is turned over to the employee by the retailer.

## **117-305. Meals.**

Depending on the institution, meals to students, patients, guests, visitors, passengers, and other customers may be handled in a variety of ways. The following will address the application of the sales and use tax to these various transactions and institutions.

### **117-305.1. Educational institutions.**

Colleges and universities sell or provide meals and other foods in a variety of ways. Meals are provided to students in a cafeteria under a board plan. Under such plans, students will purchase all their meals (breakfast, lunch and dinner) for an entire semester or year at the beginning of the school year. This is usually done at the same time students pay their tuition and other fees. Typically, the student who signs up for one of the board plans is given a card that is used by the student to obtain the meals.

In addition, students who participate in a limited board plan may purchase individual meals sold by the college or university in the cafeteria. For example, one board plan may furnish meals to students Monday through Friday. A student under this limited plan may from time to time choose to purchase an individual meal in the cafeteria on Saturday or Sunday.

Employees, visitors and students who do not participate in a board plan may also purchase meals sold by the college or university in the cafeteria. Generally, these meals are purchased on an individual basis; however, some colleges and universities sell tickets that entitle the purchaser to several meals.

Also, colleges and universities may sell meals and food to students and others at canteens, snack bars, and other places around the campus. In addition, food may be sold at concession stands at sporting and theatrical events.

Finally, colleges and universities may contract with food service companies to sell or furnish meals on campus. Under such contracts, the food service company will either be an agent of the institution or will sell the meals to the institution, who has sold the meals to the students via a board plan.

#### Meals served under board plan

1. Sales to an educational institution of unprepared food products, for use in furnishing meals under a board plan, are retail sales subject to the sales tax or the use tax.
2. Sales to a food service company of unprepared food products, for use in furnishing meals under a board plan, are retail sales subject to the sales tax or the use tax if the food service company is the agent of the educational institution.
3. Sales by food service companies of meals to an educational institution or directly to the students, as part of a board plan, are retail sales subject to the sales or the use tax if the food service company is merely under contract with the educational institution and is not the agent of the educational institution.

For additional information concerning sales by, and purchases from, suppliers (including information on resale certificates), see sections 117-305.3 and 117-305.4 below.

#### Cash or other food sales, not under a board plan

1. Sales by an educational institutions of meals and other foods (including the purchase of tickets that entitles the purchaser to several meals), other than those furnished under a board plan, are retail sales subject to the sales tax or the use tax.
2. Sales of meals and other foods by a food service company as the agent of an educational institution, other than those furnished under a board plan, are retail sales subject to the sales tax or the use tax.
3. Sales of meals and other foods by a food service company, other than those furnished under a board plan, are retail sales of the food service company subject to the sales or the use tax.

For additional information concerning sales by, and purchases from, suppliers (including information on resale certificates), see sections 117-305.3 and 117-305.4 below.

## **117-305.2. Medical institutions.**

Medical institutions, such as hospitals, infirmaries, and nursing homes, may sell or provide meals and other foods in a variety of ways. As part of the professional medical services provided, patients are furnished meals during their stay at the institution. Meals and other foods are also sold to employees, visitors and others in cafeterias, canteens, and snack bars.

As with colleges and universities, medical institutions may contract with food service companies to sell or furnish meals at the hospital, infirmary, etc., either as agents or on some other basis.

Meals and other food served to patients as part of medical care

1. Sales to a medical institution of unprepared food products, for use in furnishing meals and other food to patients as part of their medical care, are retail sales subject to the sales tax or the use tax.
2. Sales to a food service company of unprepared food products, for use in furnishing meals and other food to patients as part of their medical care, are retail sales subject to the sales tax or the use tax if the food service company is the agent of the medical institution.
3. Sales by food service companies of meals to a medical institution, for use in furnishing meals and other food to patients as part of their medical care, are retail sales subject to the sales or the use tax if the food service company is merely under contract with the medical institution and is not the agent of the medical institution.

For additional information concerning sales by, and purchases from, suppliers (including information on resale certificates), see 117-305.3 and 117-305.4 below.

Meals and other food served or sold to employees, visitors and others (cafeterias, canteens, snack bars, etc.)

1. Sales by a medical institution of meals and other foods, other than those furnished to patients as part of their medical care, are retail sales subject to the sales or the use tax.
2. Sales of meals and other foods by a food service company as the agent of a medical institution, other than those furnished to patients as part of their medical care, are retail sales of the medical institution subject to the sales tax or the use tax.
3. Sales of meals and other foods by a food service company, other than those furnished to patients as part of their medical care,

are retail sales of the food service company subject to the sales or the use tax.

For additional information concerning sales by, and purchases from, suppliers (including information on resale certificates), see 117-305.3 and 117-305.4 below.

**117-305.3. Educational and medical institutions and food service companies making both retail sales and withdrawing for use from the same stock of goods.**

Educational and medical institutions and food service companies that are making both retail sales and withdrawing for use from the same stock of goods are to purchase at wholesale all of the goods so sold or used. They will then report retail sales based on gross proceeds of sales and withdrawals for use based on the property's fair market value. In order for this provision to apply, the educational or medical institution must have a substantial number of retail sales. To comply with this provision, educational and medical institutions should present to their suppliers a Form ST-8a-Resale Certificate. This will allow the suppliers to sell these goods at wholesale to the educational or medical institution.

**117-305.4. Suppliers selling unprepared food products to educational and medical institutions and to food service companies.**

Educational and medical institutions and food service companies are purchasing unprepared food products at retail for use in preparing meals under a board plan. Therefore, businesses selling unprepared food products to these institutions and companies should sell such products at retail, unless the purchaser provides them a form ST-8a--resale certificate. Receipt of the resale certificate will allow suppliers to sell these goods at wholesale, free of the tax, to these educational and medical institutions and food service companies.

Educational and medical institutions and food service companies should not provide their suppliers a resale certificate, form ST-8a, unless they will be re-selling the product or are doing so to comply with the provisions of S.C. regulation 117-324.

**117-305.5. Exemption meals sold 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). This exemption is construed to include only sales of meals to pupils of kindergartens, grammar and high Schools, either public or private, where it can be shown that there is no profit there from and where the sales are made within the school building. 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.

Note: see Code section 12-36-110 for the application of the tax to vending machine sales.

**117-305.6. Meals furnished employees, restaurants.**

Meals served by employers to their employees as part of the latter's compensation are not taxable sales. Where, however, a separate charge is made for the same by the employer and either paid for by the employee or deducted from his wages, the transaction is a sale subject to tax.

**117-305.7. Meals served by railroads, airlines, etc.**

Sales of meals, drinks, etc., by railroads, airlines, pullman, steamships, or other transportation companies within this state are subject to the sales tax.

Meals, etc., served by such transportation companies as a part of the transportation service, for which no separate charge is made, are not required to be reported as retail sales by the companies. In such instances the companies are considered to be the consumers of the foods, etc., served and will be required to pay tax thereon to the suppliers.

**117-305.8. Meals served by boarding houses.**

Food furnished by operators of boarding houses is not considered to be sold at retail when the charge for such food is a lump sum covering meals for a week or for a month when such food is not offered for sale to the general public. The supplier of foodstuffs is liable for the sales tax on sales to the operator at the time of the sale to him. The boarding house operator is considered to be the user of the materials he purchases.

Note, however, in instances where the boarding house operator is liable for the license and the tax under section 12-36-920 he is liable for the tax measured by his gross proceeds of sales of meals plus gross proceeds derived from the rental or charges for rooms, lodgings, or accommodations furnished to transients. In this instance the properties which become a component of the meals prepared for sale are purchased at wholesale, tax-free. All other items of tangible personal property, such as heating and cooking fuels, furniture, linens, appliances, radios, and television sets are subject to the tax at the time of purchase by the boarding house operator.

For SC information go to this website:

Full service restaurants:

[http://www.myscgov.com/SCSGPortal/static/scbos\\_25\\_tem2.html](http://www.myscgov.com/SCSGPortal/static/scbos_25_tem2.html)

Limited service restaurants:

[http://www.myscgov.com/SCSGPortal/static/scbos\\_09\\_tem2.html](http://www.myscgov.com/SCSGPortal/static/scbos_09_tem2.html)

- **Beer, Wine and Alcohol:** If you plan to sell or serve beer, wine or alcohol, you must obtain the appropriate permit from the SC Department of Revenue.
  - The business should complete an Application Packet for Beer, Wine and Alcoholic Liquor [Form ABL-901](#).
  - A separate license for sale of alcohol on SUNDAY must be obtained by completing a Local Option Permit [Form ABL-29](#). In order to qualify for the Local Option Permit, the business must have a valid mini-bottle license and be located in a county or municipality that allows Sunday sales.
  - If you are an organization and would like to serve beer, wine and/or alcohol at a special event, you will need to obtain a temporary permit by completing [Form ABL-900](#)

For information from the IRS on restaurants go to this site:

<http://www.irs.gov/businesses/small/industries/content/0,,id=98720,00.html>

For information about reporting tips go to:

<http://www.irs.gov/pub/irs-pdf/p1872.pdf>

## TOPIC 761 - TIPS – WITHHOLDING AND REPORTING

Your employees who receive tips of \$20 or more in a calendar month, while working for you, are required to report to you the total amount of tips they receive. They must give you written reports by the tenth of the following month. Employees who receive tips of less than \$20 in a calendar month are not required to report their tips.

Employees must report to you tips received directly from customers, tips from other employees, and tips customers charge to their bills.

Service charges added to a bill and paid to your employees are not considered tips for tax reporting purposes.

Employees can use Form 4070A, *Employee's Daily Record of Tips*, to keep a daily record of their tips and Form 4070, *Employee's Report of Tips to Employer*, to report their tips to you. Both of these forms are in [Publication 1244](#) (PDF), *Employee's Daily Record of Tips and Report to Employer*.

When you receive the tip report from your employee, use it to figure the amount of social security, medicare, and income taxes to withhold for the pay period on both wages and reported tips. You are responsible for paying the employer's portion of the Social Security and Medicare tax. You must collect the employee's portion of the Social Security and Medicare taxes and the income tax. You can collect these taxes from the employee's wages or from other funds the employee gives you up to the close of the calendar year. If you don't have enough money from the employee's wages and other funds, apply them in the following order. First, withhold all taxes due on regular wages. Second, withhold Social Security and Medicare taxes due on reported tips. Finally withhold any federal, state or local income tax on reported tips. You can withhold any remaining unpaid taxes from the employee's next paycheck. If you cannot collect all of the employee's Social Security and Medicare taxes on tips, show the uncollected amount in Box 12 on the employee's [Form W-2](#) (PDF), *Wage and Tax Statement*. Also, show the uncollected amount as an adjustment on your [Form 941](#) (PDF), *Employer's Quarterly Federal Tax Return*.

When preparing your employee's Form W-2, include wages, tips and other compensation in Box 1, in Box 3, Medicare wages and tips, and in Box 7 include Social Security tips.

When figuring your liability for federal unemployment tax, add the reported tips to your employee's wages.

If you operate a large food or beverage establishment where tipping is customary and you normally employ more than ten people on a typical business day, you must file [Form 8027](#) (PDF), *Employer's Annual Information Return of Tips Income and Allocated Tips*, each calendar year. If you have more than one food or beverage operation, you must file a separate Form 8027 for each. Form 8027 is due on the last day of February of the next year (or the first business day in April if you

are filing electronically) and is filed with the Internal Revenue Service Center, Andover, MA, 05501.

If the total tips reported by all employees are less than 8 percent of your gross receipts (unless a lower rate has been approved by the IRS), you must allocate the difference among the employees who received tips. The allocation may be based on each employee's share of gross receipts or share of total hours worked, or on a written agreement between you and your employees. Show the amount allocated in Box 8, Allocated Tips, of the employee's Form W-2. Do not withhold income, Social Security or Medicare taxes on allocated tips.

If you are required to allocate tips, your employees must continue to report all tips to you, and you must use the amounts they report to figure payroll taxes.

For more information on employer responsibilities, refer to [Publication 15](#) (PDF), *Circular E, Employer's Tax Guide*. For more information on employee responsibilities, refer to [Publication 531](#) (PDF), *Reporting Tip Income*.

To go directly to Publication 1244 go to:  
<http://www.irs.gov/pub/irs-pdf/p1244.pdf>