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State of South Carolina  
Department of Revenue  
301 Gervais Street, P.O. Box 125, Columbia, South Carolina 29214  
Website Address: <http://www.sctax.org>

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SC PRIVATE LETTER RULING #07-3

**SUBJECT:** Equipment and Services for Enhancement of Wireless Communications within Buildings  
(Sales and Use Tax)

**REFERENCES:** S. C. Code Ann. Section 12-36-910 (2000; Supp. 2006)  
S. C. Code Ann. Section 12-36-1310 (2000; Supp. 2006)  
S. C. Code Ann. Section 12-36-60 (2000)  
S. C. Code Ann. Section 12-36-110 (2000)  
S. C. Code Ann. Section 12-36-90 (2000; Supp. 2006)  
S. C. Code Ann. Section 12-36-130 (2000; Supp. 2006)  
SC Regulation 117-314.2 (Supp. 2006)  
SC Regulation 117-313.3 (Supp. 2006)

**AUTHORITY:** S. C. Code Ann. Section 12-4-320 (2000)  
S. C. Code Ann. Section 1-23-10(4) (2006)  
SC Revenue Procedure #05-2

**SCOPE:** A Private Letter Ruling is an advisory opinion issued to a specific taxpayer by the Department to apply principles of law to a specific set of facts or a particular tax situation. It is the Department's opinion limited to the specific facts set forth, and is binding on agency personnel only with respect to the person to whom it was issued and only until superseded or modified by a change in statute, regulation, court decision, or another Departmental advisory opinion, providing the representations made in the request reflect an accurate statement of the material facts and the transaction was carried out as proposed.

Questions:

1. Is XYZ, Ltd. engaged in the business of selling tangible personal property or making improvements to real property?
  
2. If XYZ, Ltd. is engaged in the business of selling tangible personal property at retail, are its charges to customers for consultation, design, tangible personal property, and installation labor subject to the sales and use tax?

Conclusions:

1. XYZ, Ltd. is engaged in the business of selling tangible personal property and is not engaged in the business of making improvements to real property. Therefore, its sales of tangible personal property at retail, such as external antennas and system electronics housed in a telecommunications closet, are subject to the sales and use tax.

2. Since XYZ, Ltd. is engaged in the business of selling tangible personal property at retail, its charges to customers for consultation, design, tangible personal property, and installation labor are subject to the sales and use tax as follows:

(a) Charges for consultation and design that are made in conjunction with, or as part of, the sale at retail of tangible personal property are includable in "gross proceeds of sales" or "sales price", and, therefore, subject to the tax, unless the sale of the tangible personal property is otherwise exempt under the law.

However, if a customer is charged for consultation and design but does not purchase tangible personal property, then no tax is due on the design and consultation charges since such charges were not made in conjunction with, or as part of, the sale at retail of tangible personal property.

(b) Charges to install tangible personal property are not subject to the tax provided "such charges are separately stated from the sales price of the property on billing to customers and provided the seller's books and records of account show the reasonableness of such labor in relation to the sales price of the property."

However, if the charges to install tangible personal property are not separately stated from the sales price of the property on billing to customers, or are not reasonable in relation to the sales price of the property, then such charges are subject to the tax.

(c) Sales at retail of tangible personal property (e.g., external antennas, system electronics housed in a telecommunications closet, etc.) are subject the tax, unless otherwise exempt under the law.

Note: For information as to the taxability of charges by XYZ to its customer for delivery of tangible personal property, see SC Regulation 117-310.

(d) Charges by XYZ to its customer for tangible personal property which becomes a part of the building, such as cabling incorporated into the walls of the building, are not subject to the tax provided such charges are separately stated from the sales price of the property on billing to customers and provided such charges are reasonable.

However, the sale to, or withdrawal for use by, XYZ of such tangible personal property is subject to the tax.

Facts:

XYZ, Ltd. (“XYZ”) designs and installs wireless communications systems that enhance radio signal strength within buildings.

XYZ receives “Requests for Proposals” from multiple markets via e-mail and phone. In response to a request, XYZ sends one or two individuals to the customer’s facility to meet with the customer and facility manager and to evaluate the status of wireless coverage at the facility. Using state-of-the-art test equipment and detailed documentation, data is collected about the site which facilitates in the development of the most cost-effective, technically appropriate design.

A formal proposal, including the design and quote, are completed at the home office of XYZ and forwarded to the customer.

If the customer accepts the proposal, equipment is ordered and drop shipped to the installation site. A team of 2 – 6 individuals are sent to the facility to install the system.

A very basic system consists of the installation of an external antenna (pointed in the direction of a donor radio site), a transmission cable (running through the roof) to connect the external antenna to the system electronics (e.g., bi-directional amplifier) housed in a telecommunications closet. The signal is intensified by the electronics and sent through a distribution system of radio frequency cable and small antennas.

The end user picks up the signal with a radio device (e.g., pager, cell phone, 2-way radio). The end user also sends signals (voice, data) out to the donor site via the distribution cable and system electronics

The bi-directional amplifier increases the power of both incoming (receive) and outgoing (send) signals. Fiber optic components are used when long distances must be covered (e.g., multiple building campus, tunnels, and subways) because the loss of signal strength is minimal in fiber optic cable. Fiber optic components also require the integration of special interfaces into the distribution system to allow the conversion of the signal back and forth between radio and light energies.

Finally, a walk-through is conducted with the customer to obtain final approval. A final report is issued very similar in content to the initial proposal but modified to include actual system design, system performance data and as-built drawings.

Discussion:

Code Section 12-36-910(A) imposes the sales tax and states:

A sales tax, equal to five percent<sup>1</sup> 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.

Code Section 12-36-1310(A) imposes the use tax and states:

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<sup>2</sup> of the sales price of the property, regardless of whether the retailer is or is not engaged in business in this State.

Code Section 12-36-60 defines the term “tangible personal property” and states:

“Tangible personal property” means personal property which may be seen, weighed, measured, felt, touched, or which is in any other manner perceptible to the senses. It also includes services and intangibles, including communications, laundry and related services, furnishing of accommodations and sales of electricity, the sale or use of which is subject to tax under this chapter and does not include stocks, notes, bonds, mortgages, or other evidences of debt. Tangible personal property does not include the transmission of computer database information by a cooperative service when the database information has been assembled by and for the exclusive use of the members of the cooperative service.

Based on the above, in order for the sales or use tax to apply, there must be a retail sale of tangible personal property.

Code Section 12-36-110, defines the terms “retail sale” and “sale at retail” to mean, in part:

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.

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<sup>1</sup> At the time this document was issued, the total state sales and use tax rate was 5%. Beginning June 1, 2007, the total state sales and use tax rate will be 6%. Code Section 12-36-1110, which increases the sales and use tax rate by 1% beginning June 1, 2007, states:

Beginning June 1, 2007, an additional sales, use, and casual excise tax equal to one percent is imposed on amounts taxable pursuant to this chapter, except that this additional one percent tax does not apply to amounts taxed pursuant to Section 12-36-920(A), the tax on accommodations for transients, nor does this additional tax apply to items subject to a maximum sales and use tax pursuant to Section 12-36-2110 nor to the sale of unprepared food which may be lawfully purchased with United States Department of Agriculture food coupons.

<sup>2</sup> See footnote #1.

(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;

The so-called “true object” test is generally used to delineate sales of services from sales of tangible personal property. Applying this test to the matter at hand, it must be determined whether XYZ is selling construction services or tangible personal property. In other words, what is the “true object” of the transaction between these two parties?

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

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

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

If the article sold has no value to the purchaser except as a result of services rendered by the vendor, and the transfer of the article to the purchaser is an actual and necessary part of the services rendered, then the vendor is engaged in the business of rendering service, and not in the business of selling at retail. If the article sold is the substance of the transaction and the service rendered is merely incidental to and an inseparable part of the transfer to the purchaser of the article sold, then the vendor is engaged in the business of selling at retail, and the tax which he pays ... [is measured by the total cost of the article and services]. If the service rendered in connection with an article does not enhance its value and there is a fixed or ascertainable relation between the value of the article and the value of the service rendered in connection therewith, then the vendor is engaged in the business of selling at retail and also engaged

in the business of furnishing service, and is subject to tax as to the one business and tax exempt as to the other.

While the above quotes do not establish rigid rules, they do provide general guidance in determining the purpose of a transaction, and are particularly helpful in addressing the issue at hand.

Based on the above and the facts set forth above, XYZ is selling tangible personal property – the major components of a wireless communication system.

However, we must consider the application of the tax with respect to tangible personal property which becomes a part of the building. SC Regulation 117-314.2 addresses this matter and states:

Building materials when purchased by builders, contractors, or landowners for use in adding to, repairing or altering real property are subject to either the sales or use tax at the time of purchase by such builder, contractor, or landowner. "Building materials" as used in the Sales and Use Tax Law includes any material used in making repairs, alterations or additions to real property. "Builders," "contractors," and "landowners" mean and include any person, firm, association or corporation making repairs, or additions to real property. The term "building materials" includes such tangible personal property as lumber, timber, nails, screws, bolts, structural steel, elevators, reinforcing steel, cement, lime, sand, gravel, slag, stone, telephone poles, fencing, wire, electric cable, brick, tile, glass, plumbing supplies, plumbing fixtures, pipe, pipe fittings, prefabricated buildings, electrical fixtures, built-in cabinets and furniture, sheet metal, paint, roofing materials, road building materials, sprinkler systems, air conditioning systems, built-in-fans, heating systems, floorings, floor furnaces, crane ways, crossties, railroad rails, railroad track accessories, tanks, builders hardware, doors, door frames, window frames, water meters, gas meters, well pumps, and any and all other tangible personal property which becomes a part of real property.

For additional guidance in this matter, we refer to City of North Charleston v. Claxton, 431 S.E.2d 610 (S.C. 1993). While that case dealt with the value of property in a condemnation proceeding, it also addressed the issue of real (fixtures) versus personal property.

Quoting from that case:

Criteria for determining whether an item remains personalty or becomes a fixture when affixed to realty includes: (1) the mode of attachment; (2) the character of the structure of the article; (3) the intent of the parties making the annexation; and, (4) the relationship of the parties. Creative Displays, 272 S.C. at 72, 248 S.E.2d at 918.

The Court, in Claxton, referenced Rebel Manufacturing and Marketing Corporation, 54 B.R. 674 (Bkrty. D.S.C. 1985). In that case, a bank argued that the sale of a mobile home was subject to a mortgage on the realty because it was a fixture [real property]. The mobile home was underpinned, anchored, and connected to sewerage, water and electric lines. Also, the home had a screened porch attached and was adjacent to several large trees.

In ruling for the bank, the Court reasoned:

The various substantial structures and trees surrounding the mobile home would be severely damaged, if not destroyed, should the mobile home be removed.

\* \* \* \*

It seems clear that the debtor's positioning the mobile home among the trees, and adding the construction [the porch] warrants the inference that the intent of the debtor was for the mobile home to become a part of the realty.

Paris Mountain Water Company v. Woodside, 133 S.C. 383, 131 S.E. 37 (1925), a South Carolina State Supreme Court case, was concerned with whether water pipes placed in lands belonging to others were to be taxed as realty or personalty. The Court, in holding that the pipe was to be taxed as realty, stated:

In the requirement of an intention to make the article annexed a permanent accession to the land, the expression of permanent does not, it seems, imply that the annexation must be intended to be perpetual, but rather that the article shall appear to be intended to remain where fastened until worn out, until the purpose to which the realty is devoted has been accomplished, or until the article is superseded by another article more suitable for the purpose.

Based on the above, if a tangible personal property becomes a part of the building, such as cabling incorporated into the walls of the building, then such tangible personal property is considered used and consumed by XYZ and not sold by XYZ.

The next issue concerns the basis for the tax of XYZ's sales of tangible personal property at retail.

The sales tax is imposed upon a retailer's "gross proceeds of sales" which is defined at Code Section 12-36-90, in part, as:

...the value proceeding or accruing from the sale, lease, or rental of tangible personal property... without any deduction for... the cost of materials, labor, or service... [or] any other expenses....

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

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

(1) The term includes:

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

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

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

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

A similar conclusion was reached in Regency Towers Association, Inc. v. South Carolina Tax Commission, 88-CP-26-1109 (1989), where the Horry County Court of Common Pleas held charges for maid service were not deductible from gross proceeds derived from charges for accommodations. In Commission Decision #92-37, the Commission held that charges for maid services, which were optional, were a part of the accommodations furnished to transients and therefore subject to the accommodations tax.<sup>3</sup>

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

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<sup>3</sup> Commission Decision #92-37 was based on the statute prior to recodification and an amendment to the statute with respect to "additional guest charges" such as maid service. For information concerning the present application of the tax to "additional guest charges" at places furnishing accommodations, see Code Section 12-36-920(B) and SC Regulation 117-307.



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

\* \* \* \*

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

In summary, charges for services that are made in conjunction with, or as part of the sale of, tangible personal property are includable in "gross proceeds of sales" or "sales price", and, therefore, subject to the tax.

However, it is important to note two additional issues with respect to the basis for the tax.

First, SC Regulation 117-313.3, concerning installation charges, states:

Not subject to the sales or use tax are charges for installation incident to the sale of tangible personal property when such charges are separately stated from the sales price of the property on billing to customers and provided the seller's books and records of account show the reasonableness of such labor in relation to the sales price of the property.

Second, since some tangible personal property used in the transaction becomes a part of the building, such as cabling incorporated into the walls of the building, then such tangible personal property is considered used and consumed by XYZ and not sold by XYZ. As such, the sale to, or withdrawal for use by, XYZ of such tangible personal property is subject to the tax.

Based on the above, charges by XYZ to customers for consultation, design, tangible personal property, and installation labor are subject to the sales and use tax as follows:

1. Charges for consultation and design that are made in conjunction with, or as part of, the sale at retail of tangible personal property are includable in "gross proceeds of sales" or "sales price", and, therefore, subject to the tax, unless the sale of the tangible personal property is otherwise exempt under the law.

However, if a customer is charged for consultation and design but does not purchase tangible personal property, then no tax is due on the design and consultation charges since such charges were not made in conjunction with, or as part of, the sale at retail of tangible personal property.

2. Charges to install tangible personal property are not subject to the tax provided “such charges are separately stated from the sales price of the property on billing to customers and provided the seller’s books and records of account show the reasonableness of such labor in relation to the sales price of the property.”

However, if the charges to install tangible personal property are not separately stated from the sales price of the property on billing to customers, or are not reasonable in relation to the sales price of the property, then such charges are subject to the tax.

3. Sales at retail of tangible personal property (e.g., external antennas, system electronics housed in a telecommunications closet, etc.) are subject the tax, unless otherwise exempt under the law.

Note: For information as to the taxability of charges by XYZ to its customer for delivery of tangible personal property, see SC Regulation 117-310.

4. Charges by XYZ to its customer for tangible personal property which becomes a part of the building, such as cabling incorporated into the walls of the building, are not subject to the tax provided such charges are separately stated from the sales price of the property on billing to customers and provided such charges are reasonable.

However, the sale to, or withdrawal for use by, XYZ of such tangible personal property is subject to the tax.

SOUTH CAROLINA DEPARTMENT OF REVENUE

s/Ray N. Stevens  
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Ray N. Stevens, Director

March 20 \_\_\_\_\_, 2007  
Columbia, South Carolina