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

SC PRIVATE LETTER RULING #07-5

SUBJECT: Federal National Mortgage Association
(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 12-36-1110 (Supp. 2006)
S. C. Code Ann. Section 12-36-60 (2000)
S. C. Code Ann. Section 12-36-2120 (2000; Supp. 2006)
12 USC 1717
12 USC 1723a

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set forth, and is binding on agency personnel only with respect to the person to whom it was issued and only until superseded or modified by a change in statute, regulation, court decision, or another Departmental advisory opinion, providing the representations made in the request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.

PRIVATE LETTER RULINGS ARE GENERALLY EDITED FOR CONFIDENTIALITY. THE TAXPAYER HAS GRANTED THE DEPARTMENT PERMISSION TO PUBLISH THIS DOCUMENT UNEDITED.

Questions:

Are charges by the Federal National Mortgage Association for an online information service subject to the sales and use tax?

Conclusion:

Charges by the Federal National Mortgage Association for an online information service are not subject to the sales and use tax pursuant to Code Section 12-36-2120(1) and 12 USC 1723a.

Facts:

The Federal National Mortgage Association (“FNMA”) is a shareholder-owned company that works to make sure mortgage money is available for people in communities all across America. It does not lend money directly to home buyers. Instead, it works with lenders to make sure they have sufficient mortgage funds.

In 1938, the Federal government established FNMA to expand the flow of mortgage money by creating a secondary market. In 1968, it became a private company operating with private capital on a self-sustaining basis.

Today, FNMA operates under a congressional charter that directs it to channel its efforts into increasing the availability and affordability of homeownership for low-, moderate-, and middle-income Americans. FNMA receives no government funding or backing.

As part of its services, FNMA offers a suite of online information services which its customers, including customers in South Carolina, access through an “application service provider” model. FNMA’s customers are generally financial service firms which offer online services to their customers free of charge. These online services include tools to assist individuals in calculating monthly payments on loans, obtaining credit reports, and obtaining access to other similar types of information that will facilitate the issuance of loans.

Discussion:

Code Section 12-36-910(A) states:

A sales tax, equal to [six]¹ 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.)

¹ Beginning June 1, 2007, the total state sales and use tax rate is 6%. Code Section 12-36-1110, which increased 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.

Code Section 12-36-1310(A) reads:

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 [six]² 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.)

Code Section 12-36-60 defines the term "tangible personal property" to mean:

...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. ... (Emphasis added).

Therefore, the term tangible personal property includes the sale or use of intangibles, including communications, that are subject to South Carolina sales or use taxes under Chapter 36 of Title 12.

Communications are subject to sales and use taxes under Chapter 36 of Title 12 pursuant to Code Sections 12-36-910(B)(3) and 12-36-1310(B)(3), which impose the tax on the:

gross proceeds accruing or proceeding from the charges for the ways or means for the transmission of the voice or messages, including the charges for use of equipment furnished by the seller or supplier of the ways or means for the transmission of the voice or messages. ...

Based on the above discussion, it has been the Department's position that charges for the ways or means of communication include charges for access to, or use of, a communication system (the manner, method or instruments for sending or receiving a signal of the voice or of messages), whether this charge is based on a fee per a specific time period or per transmission. See SC Revenue Ruling #06-8.

The Department of Revenue has taxed communication services such as telephone services, paging services, answering services, cable television services, satellite programming services (includes, but is not limited to, emergency communication services and television, radio, music or other programming services), fax transmission services, voice mail messaging services, e-mail services, and database access transmission services (on-line information services), such as legal research services, credit reporting/research services, and charges to access an individual website.

² See footnote #1.

However, Code Section 12-36-2120(1) exempts from the sales and use tax the gross proceeds of sales, or sales price of:

tangible personal property or receipts of any business which the State is prohibited from taxing by the Constitution or laws of the United States of America or by the Constitution or laws of this State;

FNMA has been granted an exemption from most state and local taxes by Congress in 12 USCA 1723a, which states in part:

The corporation³, including its franchise, capital, reserves, surplus, mortgages or other security holdings, and income, shall be exempt from all taxation now or hereafter imposed by any State, territory, possession, Commonwealth, or dependency of the United States, or by the District of Columbia, or by any county, municipality, or local taxing authority, except that any real property of the corporation shall be subject to State, territorial, county, municipal, or local taxation to the same extent as other real property is taxed.

Based on the above, charges by FNMA for an online information service are not subject to the sales and use tax pursuant to Code Section 12-36-2120(1) and 12 USC 1723a.

SOUTH CAROLINA DEPARTMENT OF REVENUE

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

July 13, 2007
Columbia, South Carolina

³ 12 USC 1717 concerns the establishment by Congress of the Federal National Mortgage Association and refers to it as the “corporation.”