



SC PRIVATE LETTER RULING #88-3

TO: XYZ, Inc.

SUBJECT: (Sales Tax) Non-Appropriated Funds Instrumentalities

REFERENCE: S.C. Code Ann. Section 12-35-550(42) (1986 Supp.)

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

SCOPE: A Private Letter Ruling is a temporary document issued to a taxpayer, upon request, and it applies only to the specific facts or circumstances related in the request. Private Letter Rulings have no precedential value and are not intended for general distribution.

Question:

Does the exemption for sales to the Federal Government under Code Section 12-35-550(42) apply to sales to organizations known as Non-Appropriated Funds Instrumentalities (NAFI's)?

Facts:

The taxpayer, XYZ, Inc., sells motor vehicles in North Charleston. From time to time, vehicles are sold to NAFI's. NAFI's include such activities as the Officers' Club, Post Exchange and the Morale Welfare and Recreation Non-Appropriated Fund.

Code Section 12-35-550(42) exempts from the sales tax:

The gross proceeds of the sale of tangible personal property to the Federal Government, not including gross proceeds subject to the tax under Section 12-35-1140 and Section 12-35-1150 of the 1976 Code.

The exemption became effective July 1, 1984. Prior to that date, sales to the Federal Government by in-state retailers were taxable.

Discussion:

In Bowen v. Culotta, D.C. Va 1968, 294 F. Supp. 183, the court stated:

A non-appropriated fund activity is one to which the government has initially provided funds to permit it to begin operations. The governmental loan is repaid out of the profits

earned by the activity. Thus, the activity is created by the government with government funds for government personnel, and is administered by government employees for the use and benefit of the United States.

The court further held:

Plaintiff was employed in a non-appropriated fund activity. These activities are instrumentalities of the United States and are integral parts of the government's military services. Standard Oil Company of California v. Johnson, 316 U.S. 481, 62 S.Ct 1168, 86 L.Fd. 1611; United States v. Holcombe, 176 F.Supp. 297, 303 (E.D. Va. 1959) affirmed 277 F.2d 143 (4th Cir. 1960); United States v. Forfari, supra; Nimco v. Davis, 92 U.S. App. D.C. 293, 204 F.2d 734 (1953); Edelstein v. South Past Officers Club, 118 F.Supp. 40 (E.D. Va. 1951). Non-appropriated fund activities of the government "share in fulfilling the duties entrusted to it and partake of whatever immunities it may have under the constitution and federal statutes." Standard Oil Co. v. California v. Johnson, 316 U.S. 481, 485, 62 S.Ct 1168, 1170. (emphasis added)

In Opinion of Attorney General S-OAG-78 (September 6, 1984) the case of United States v. State Tax Commission of Mississippi, 421 U.S. 599, 44 L. Ed 2d 404, 95 S.Ct 1872 (1975) was cited and read in part:

...post exchanges and similar facilities are instrumentalities of the United States: it is clear that the ship's stores, officers' clubs and post exchanges "as operated are arms of the government deemed by it essential for the performance of governmental function..." (Citations omitted)

The opinion concluded that "sales of tangible personal property purchased by the Morale Welfare and Recreation Non-Appropriated Fund and used to improve, repair or equip areas on Federal property for recreation and social activities of personnel of the base are exempt from the South Carolina sales tax."

Conclusion:

Sales to NAFI's constitute sales to the Federal Government and are therefore exempt pursuant to Code Section 12-35-550(42), effective July 1, 1984.

SOUTH CAROLINA TAX COMMISSION

s/S. Hunter Howard Jr.

S. Hunter Howard, Jr., Chairman

s/John M. Rucker

John M. Rucker, Commissioner

s/A. Crawford Clarkson Jr.

A. Crawford Clarkson, Jr., Commissioner

Columbia, South Carolina
January 27, 1988