



SC PRIVATE LETTER RULING #88-4

TO: XYZ Savings & Loan Association

SUBJECT: Sales Tax - Sales of United States Mint Constitution Coins

REFERENCE: S.C. Code Ann. Section 12-35-510 (1976)
S.C. Code Ann. Section 12-35-30 (1976)
S.C. Code Ann. Section 12-35-550(1) (1976)

AUTHORITY: S.C. Code Ann. Section 12-3-170 (1976)
S.C. 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:

Are sales of United States Mint Constitution Coins by the XYZ Savings & Loan Association subject to the sales tax pursuant to Code Section 12-35-510?

Facts:

XYZ Savings and Loan Association ("Association") has entered into an agreement to become an authorized United States Mint consignee. The Association is selling United States Constitution Coins.

The agreement provides for the consignment of coins, disposition of proceeds and modification or termination of the agreement.

With respect to these stipulations, the agreement reads, in part:

The United States Mint ("Mint") authorizes the above named financial institution ("Consignee") to act as a consignee for the retail sale of United States Coins. Consignee is hereby designated as a depository and financial agent of the United States solely for the purpose of exercising Consignee's responsibilities under this Agreement.

The agreement also provides the following stipulations:

1. "Title to each Coin will remain with the Mint until sale by Consignee occurs."
2. "All Coins are to be sold within the United States, over the counter, and in the presentation cases provided, at retail prices set by the Mint."
3. "Consignee shall establish an insured internal deposit account in the name of the U.S. Mint for the United States Coin Program. Consignee shall, on a daily basis, deposit into the account net proceeds from the day's Coin sales." Net proceeds is defined as the retail price of the coins minus the Consignee's commission.
4. "Consignee acknowledges that Coins and funds covered by this Agreement are property of the U.S. Government...."
5. "The Mint reserves the right to recall particular Coins at any time, when in the best interest of the program..."

The minting and selling of Constitution Coins is authorized by the "Bicentennial of the Constitution Coins Act" ("Act"), Public Law 99-582 [H.R. 3415], effective October 29, 1986.

Further, neither Federal nor state statutes provide an exemption from the State's sales and use tax for Federal savings and loan associations. Section 1464(h) of Title 12 of the U.S. Code provides that "[n]o State, county, municipal, or local taxing authority shall impose any tax on such associations or their franchise, capital, reserves, surplus, loans or income greater than that imposed by such authority on other similar local mutual or cooperative thrift and home financing institutions."

Discussion:

The Supreme Court of Utah in Manger v. Davis, 619 P.2d 687 (1981), held:

"A true consignment constitutes an agency.....relationship between the consignor and consignee. The consignor, as principle retains ownership, may recall the goods, and set the sales price. The consignee (agent) receives a commission and not the profits of the sale. (emphasis added)

It should be noted that all elements of the above definition are contained in the agreement between the Mint and the Association.

South Carolina Code Section 12-35-510 imposes the sales tax on the "gross proceeds of sales" of any business selling tangible personal property at retail. Code Section 12-35-30 defines "gross proceeds of sales" as, "the value proceeding or accruing from the sale of tangible personal property (and including the proceeds from the sale of any property handled on consignment by the taxpayer)..." (emphasis added)

Sales on consignment are usually subject to the tax; however, the courts have viewed agency relationships involving the Federal Government differently.

"Without congressional action there is immunity from state and local taxation, implied from the Constitution itself, of all properties, functions, and instrumentalities of the Federal Government. It necessarily follows that a state and the subordinate taxing units thereof are without power to subject to taxation the property of the Federal Government or the means, instrumentalities, and agencies thereof which it employs to carry out its proper functions, unless Congress expressly confers a right upon the states to tax such agencies, instrumentalities, or property." 71 AM Jur 2d State and Local Taxation, Section 221 (Kern-Limerick, Inc. v. Scurlock, 347 US 110, 98 L.Ed 546, 74 S.Ct 403; Mayo v. United States, 319 US 441, 87 L.Ed 1504, 63 S.Ct 1137, 147 ALR 761).

The Act does not provide the necessary congressional mandate to tax the sale of these coins.

South Carolina Code Section 12-35-550(1) reiterates the principal of federal immunity from state taxation by providing an exemption for "the gross proceeds of sale of tangible personal property or the gross receipts of any business which the State is prohibited from taxing under the Constitution or laws of the United States of America....."

Conclusion:

Sales of U.S. Mint Constitution Coins by the XYZ Savings & Loan Association are sales by an agent of the Federal Government and are immune from the State's sales tax.

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