



SC REVENUE RULING #92-4

SUBJECT: Electricity Used at Apartment Complexes
(Sales Tax)

TAX ANALYST: Deana West

EFFECTIVE DATE: Applies to all periods open under statute.

SUPERSEDES: All previous documents and any oral directives in conflict herewith.

REFERENCE: S.C. Code Ann. Section 12-36-910 (Supp. 1991)
S.C. Code Ann. Section 12-36-2120 (Supp.1991)

AUTHORITY: S.C. Code Ann. Section 12-4-320 (Supp. 1991)
SC Revenue Procedure #87-3

SCOPE: A Revenue Ruling is the Commission's official interpretation of how tax law is to be applied to a specific set of facts. A Revenue Ruling is public information and remains a permanent document until superseded by a Regulation or is rescinded by a subsequent Revenue Ruling.

Question:

Is the sale of electricity used in multi-family residential dwellings, such as apartments, exempt from the sales tax under Code Section 12-36-2120?

Facts:

Questions have arisen with respect to the sales tax exemption available for sales of electricity to multi-family residential dwellings, such as apartments. Electricity is provided to the dwelling units, business office, maintenance facility, and to the common areas. These common areas include hallways, parking lots, laundry facilities, the pool house and club house, tennis courts, trash compactors, and entrance gates. Clarification has been requested concerning the taxable status of these areas.

Discussion:

Code Section 12-36-910(A) imposes a sales tax and reads:

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.

Code Section 12-36-2120 provides exemptions from the sales tax and reads, in part:

Exempted from the taxes imposed by this chapter are the gross proceeds of sales, or sales price of:

* * *

(33) electricity, natural gas, fuel oil, kerosene, LP gas, coal, or any other combustible heating material or substance used for residential purposes....

Code Section 12-36-2120(33), therefore, provides an exemption for electricity used for residential purposes. It must now be determined what is meant by the term "residential purposes".

Regulation 117-177 defines the term "residential purposes" and provides as follows:

...the term "residential purposes" ... is construed to mean any space or area occupied by one or more individuals with the intent that such space or area serves as a residence, house, dwelling or abode.

Included in the exemption are single family houses, duplexes, condominium units, apartments and mobile homes of a permanent type used by a person or persons as a place of residence, house dwelling or abode. All sales to such locations would be exempt.

Electricity, natural gas, fuel, oil, coal or any other type of combustible heating materials centrally metered or delivered to a central storage tank (or area) to duplexes, condominium units, apartments or mobile homes of a permanent type, and billed as such, would be considered as used for residential purposes and exempt.

Excluded from the exemption are hotels, motels, dormitories, nursing homes, summer camps, resort lodges and other dwellings of a temporary or transient nature. All sales to such locations would be taxable.

Attorney General's Opinion, S-OAG-42, dated August 23, 1979, addressed the meaning of the term residential purposes and concluded the literal meaning of the term should apply. This decision was based in part on the reasoning that:

...the word residence in a restrictive covenant is equivalent to "residential" and is used in contradistinction to "business," and that if a building is used as a place of abode and no

business carried on, it would be used for "residence purposes" only, whether occupied by one family or a number of families. See Jernigan v. Capps, 187 Va. 73, 45 S.E. 2d 886. Also, the terms "residence purposes" and "residences" require use of the property for living purposes as distinguished from uses for business or commercial purposes. See MacDonald v. Painter, Texas, 441 S.W. 2d 179.

We must now determine whether the term residence includes only the individual apartment unit or includes areas outside the apartment unit. SC Technical Advice Memorandum #87-5 provides guidance with respect to this issue. This ruling reviewed sales of electricity used to illuminate an area light located in the yard of a single family house. It concluded that the term residential pertains to not only the house in which one resides, but encompasses the entire space or area which is connected with the house. Accordingly, the area light was exempt from sales tax.

Conclusion:

Exempt Sales of Electricity:

The following sales of electricity to an apartment complex used exclusively as a residence are exempt from sales tax under Code Section 12-36-2120(33):

1. Electricity provided to individual apartment units.
2. Electricity provided to common areas which are integral and necessary to the individual apartment units residential use, such as hallways, parking lots, trash compactors and entrance gates.
3. Electricity provided to residential apartment amenities, such as laundry facilities, pool and club houses, and tennis courts, if the amenities are (1) used exclusively for domestic purposes, and (2) used only by apartment residents and their non-paying guests.
4. Electricity provided for use in business related areas of the apartment complex (e.g. office area, maintenance facilities, and repair facilities), if the electricity for the entire apartment complex is centrally metered and billed as such. See Regulation 117-177.

Taxable Sales of Electricity:

The following sales of electricity to an apartment complex used exclusively as a residence are subject to the sales tax:

1. Electricity provided to residential apartment amenities which are available for a business purpose or available to non-residents of the apartment complex for a fee. For example, an apartment complex that sells food and beverage in a lounge located at the apartment complex is using the area for a business purpose.

2. Electricity provided for use in business related areas of the apartment complex (e.g. office area, maintenance facilities, and repair facilities), if the electricity for the entire apartment complex is not centrally metered and billed as such. See Regulation 117-177.

SOUTH CAROLINA TAX COMMISSION

s/A. Crawford Clarkson Jr.

A. Crawford Clarkson, Jr., Chairman

s/T. R. McConnell

T. R. McConnell, Commissioner

s/James M. Waddell Jr.

James M. Waddell, Jr., Commissioner

Columbia, South Carolina

June _____, 1992