



STATE OF SOUTH CAROLINA  
**DEPARTMENT OF REVENUE**

300A Outlet Pointe Blvd., Columbia, South Carolina 29210  
P.O. Box 125, Columbia, South Carolina 29214-0575

SC PRIVATE LETTER RULING #24-2

**SUBJECT:** Sale and Rental of Digital Textbooks  
(Sales and Use Tax)

**REFERENCES:** S.C. Code Ann. Section 12-36-910(A) (2014)  
S.C. Code Ann. Section 12-36-910(B)(3)(a) (2014)  
S.C. Code Ann. Section 12-36-2120(3)(a) (2014)  
S.C. Code Regs. Ann. 117-316 (2012)

**AUTHORITY:** S.C. Code Ann. Section 12-4-320 (2014)  
S.C. Code Ann. Section 1-23-10(4) (2005)  
SC Revenue Procedure #09-3

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set forth, and is binding on agency personnel only with respect to the person to whom it was issued and only until superseded or modified by a change in statute, regulation, court decision, or another Departmental advisory opinion, providing the representations made in the request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

**QUESTION:**

Are the sales and rentals of digital textbooks exempt from the sales and use tax as "textbooks" under Code Section 12-36-2120(3)(a)?

**CONCLUSION:**

The sale and rental of digital textbooks are exempt from the sales and use tax under Code Section 12-36-2120(3)(a), as there is no distinction that would exclude digital textbooks from the exemption.

**FACTS:**

Company B, LLC, ("CoB") is a subsidiary of Company A, Inc. ("CoA"), which is one of the largest contract operators of physical and virtual bookstores for college and university campuses and K-12 institutions across the country.<sup>1</sup>

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<sup>1</sup> Company A, Inc., 2023 10-K, p. 5.

CoB offers digital textbooks, also known as eTextbooks or eText, (“eTextbooks”) for college and university students to either buy or rent for their courses of study. These eTextbooks are digital, downloadable versions of a printed textbook. The eTextbooks can be read online or offline through any supported device (PC, Mac, Smartphone, or Tablet running iOS or Android, Kindle Fire, and Chromebook) and provide interactive features including highlights, notes, flashcards, and read aloud.

The sales and rentals of eTextbooks can occur either in CoB’s physical stores or online. If a student rents or purchases an eTextbook online, CoB either mails a physical card to the student with an access code or emails an access code to the student. If the sale or rental occurs in-store, then the student immediately receives a card with an access code. The access code is the means by which students access the eTextbooks they have purchased or rented from CoB. Regardless of the method of purchase, the eTextbooks are available to the student immediately following the purchase.

Students access their eTextbooks via a browser using ABC Online or through the ABC app. Students do not have to have an internet connection to access their eTextbook if they are accessing it through the ABC app. Students only have access to the eTextbooks they purchased or rented. If a student purchases an eTextbook, then the access code is valid indefinitely. If a student rents the eTextbook, the access code expires at the end of the semester for which the student rented the eTextbook.

The eTextbooks are available in two formats: a Fixed Layout Textbook and a Reflowable Textbook. A Fixed Layout Textbook is a PDF version of the corresponding printed textbook. The PDF maintains the appearance of a bound book, but in a digital format. A Reflowable Textbook, also known as an EPUB, provides additional features for the student including responsive text that can be adjusted to the student’s preference. Both formats support a wide range of features, including notes, highlights, text to speech, printing, and syncing across devices. According to the request, students only receive a digital version of the corresponding printed textbook for the prescribed course of study when downloading either format. There is also nothing in the request suggesting that students can change the content of the eTextbook under either of these formats.

## **LAW AND ANALYSIS:**

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

A sales tax, equal to [six]<sup>2</sup> 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 12-36-1310(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

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<sup>2</sup> Code Section 12-36-1110 increased the sales and use tax rate by 1% beginning June 1, 2007.

in this State, at the rate of [six]<sup>3</sup> percent 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” 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 services and intangibles, including communications, that are subject to South Carolina sales or use taxes under Chapter 36 of Title 12.

Communication services 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 . . . .

“Charges for the ways or means for the transmission of the voice or messages’ is defined to include, but is not limited to, charges for access to, or use of, a communications 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 or any other method.” S.C. Code Ann. Regs. 117-329.1.

Regulation 117-329.4 provides a list of examples of communication services which are subject to the sales and use tax, including “[d]atabase access transmission services or on-line information services, including, but not limited to, legal research services, credit reporting/research services, and charges to access an individual website (including Application Service Providers).”

Accordingly, charges for the access or use of a communications system, as well as charges for the use of database access transmission services or on-line information services, such as charges to access an individual website, are subject to the sales and use tax under Code Sections 12-36-910(B)(3) and 12-36-1310(B)(3).

The South Carolina Code provides several exemptions from the sales and use tax. Relevant to this discussion is the exemption found in Code Section 12-36-2120(3)(a), which exempts from sales and use tax the gross proceeds of sales and sales price of:

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<sup>3</sup> See footnote 1.

Textbooks, books, magazines, periodicals, newspapers, and access to on-line information systems used in a course of study in primary and secondary schools and institutions of higher learning or for students' use in the school library of these schools and institutions;

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Items in this category may be in any form, including microfilm, microfiche, and CD ROM; however, transactions subject to tax under Sections 12-36-910(B)(3) and 12-36-1310(B)(3) do not fall within this exemption . . . . (Emphasis added).

Regulation 117-316 further explains this exemption for textbooks used in public and private schools, colleges, and universities:

The term "textbook" is construed to include only books purchased for and used in elementary schools, high schools and institutions of higher learning. Included within the definition of textbooks are school library books, encyclopedias and dictionaries. Also deemed textbooks when part of a prescribed course of study are workbooks, band and sheet music, plays, filmstrips, transparencies, motion picture films, audio tapes and records, recorded music and periodicals.

Therefore, unless they are "the ways or means for the transmission of the voice or messages," "textbooks" and "online information systems used in a course of study" purchased for and used in institutions of higher learning as part of a prescribed course of study are exempt from the sales and use tax, regardless of the format.

Thus, the remaining question is whether the charges for the eTextbooks are "communication services" subject to tax under Code Sections 12-36-910(B)(3) and 12-36-1310(B)(3). If the eTextbooks are communication services, they do not qualify for the sales and use tax exemption in Code Section 12-36-2120(3)(a). In short, to fully answer CoB's question, the Department must determine whether the purchaser of the eTextbook is paying for access or use of a communication system. *See* S.C. Revenue Ruling #12-1.

In S.C. Revenue Ruling #12-1, the Department applied the "true object test" to determine whether the purchaser of software paid to access or use a communication system when the software was sold and delivered by electronic means via the Internet, a wireless network, or any other wireless connection at the purchaser's location. In those instances where the buyer purchases, receives and downloads software by electronic means, the Department determined that the "true object" of that transaction was the sale of the intangible software and not for access or use of a communication system.

In this case, students who purchase an eTextbook are given an access code, which students then use to access their eTextbook via a browser on ABC Online or through the ABC app. Students are not required to have an internet connection to access their eTextbook if accessing it through the ABC app. Further, the access code does not provide students with access to a library of course materials and educational information, but only provides students with access to the purchased or

rented eTextbook. Accordingly, students who purchase eTextbooks from CoB are not paying for access or use of a communication system; rather, the “true object” of the transaction is for a textbook, albeit in the digital format. Therefore, CoB’s charges for eTextbooks are not charges for communications services subject to tax under Code Sections 12-36-910(B)(3) and 12-36-1310(B)(3).

Even though CoB’s eTextbooks are not subject to tax as communication services under Code Sections 12-36-910(B)(3) and 12-36-1310(B)(3), we should consider whether this alternate form of traditional textbooks qualify as “textbooks” for purposes of the sales and use tax exemption in Code Section 12-36-2120(3)(a). The exemption statute states that “items in this category may be in *any* form.” (Emphasis added). Aside from the exclusion of any transactions subject to tax under Code Sections 12-36-910(B)(3) and 12-36-1310(B)(3), there is no limitation within the exemption as to what form a textbook must take in order to qualify for the exemption.

Further, “[t]he general rule is that statutes are not confined in application to contemporary instances and their principles are to be extended to embrace new factual situations and new technological developments, so long as such extension is in accord with the legislative intent of the statute.” See S.C. Rev. Rul. #94-11 (citing *Smith v. Pan Air Corp.*, 684 F.2d 1102 (5th Cir. 1982)). In S.C. Rev. Rul. #94-11, the Department determined that alternative forms of the traditional printed textbooks, namely the alternate forms enumerated in Code Section 12-36-2120(3)(a), are “new technological developments for the same use” as traditional printed textbooks.

South Carolina has long instructed that this exemption goes beyond traditional printed and bound textbooks. In S.C. Technical Advice Memorandum #90-6, the Department queried whether software which was used to teach students basic skills, such as math and English, was considered a “textbook” for purposes of the sales and use tax exemption in Code Section 12-36-2120(3)(a). In concluding that such software was considered a “textbook” for purposes of Code Section 12-36-2120(3)(a), the Department made the following findings:

The term “textbook” has been expanded in the above regulation to not only include printed matter but also tapes, recordings, and filmstrips when used as “part of a prescribed course of study.” The items deemed to be textbooks and subject to the sales tax exemption are those which contain and, in fact, are themselves, educational sources of information. In other words, these items contain the information which is being taught, just as a textbook does.

Accordingly, a “textbook,” for purposes of the exemption in Code Section 12-36-2120(3)(a), can include additional alternate forms of the traditional printed textbooks beyond those specifically enumerated by statute and regulation, so long as the alternate form is purchased for the same use, and contains the same information which is being taught, as a traditional printed textbook and are used as a part of a prescribed course of study.

In this case, the eTextbooks purchased by students are digital, downloadable versions of a printed textbook. Whether students choose to download the eTextbook in PDF or EPUB format does not change the content of the eTextbook. Once a student downloads the eTextbook, he or she is able to receive the same educational information that is published in the corresponding printed textbook. Furthermore, these eTextbooks are offered to and purchased by college and university students for their prescribed courses of study. Accordingly, CoB's eTextbooks are acceptable alternate forms of printed textbooks for purposes of Code Section 12-36-2120(3)(a).

Based on the above and the facts represented by CoB to the Department, it is the Department's position that the eTextbooks sold by CoB to college and university students are textbooks used in a course of study in institutions of higher learning and are thus exempt from sales and use taxes under Code Section 12-36-2120(3)(a).

SOUTH CAROLINA DEPARTMENT OF REVENUE

s/W. Hartley Powell  
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W. Hartley Powell, Director

March 18 \_\_\_\_\_, 2024  
Columbia, South Carolina

**CAVEAT: This advisory opinion is issued to the taxpayer requesting it on the assumption that the taxpayer's facts and circumstances, as stated, are correct. If the facts and circumstances given are not correct, or if they change, then the taxpayer requesting the advisory opinion may not rely on it. If the taxpayer relies on this advisory opinion, and the Department discovers, upon examination, that the facts and circumstances are different in any material respect from the facts and circumstances given in this advisory opinion, then the advisory opinion will not afford the taxpayer any protection. It should be noted that subsequent to the publication of this advisory opinion, changes in a statute, a regulation, or case law could void the advisory opinion.**