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SC TECHNICAL ADVICE MEMORANDUM #90-4

TO: Mr. Marvin N. Davant, Director  
Field Services Division

FROM: John P. McCormack, Manager  
Tax Policy and Special Procedures Department

DATE: February 21, 1990

SUBJECT: Corporate Dissolution - Effect on Retail License  
Issuance of a Retail License  
(Retail License)

REFERENCE: S.C. Code Ann. Section 12-35-320 (Supp. 1988)  
S.C. Code Ann. Section 12-35-380 (Supp. 1988)  
S.C. Code Ann. Section 12-35-390 (Supp. 1988)  
S.C. Code Ann. Section 33-14-105 (Supp. 1988)  
S.C. Code Ann. Section 33-2-103 (Supp. 1988)  
S.C. Code Ann. Section 33-1-270 (Supp. 1988)  
S.C. Code Ann. Section 33-1-280 (Supp. 1988)

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

SCOPE: A Technical Advice Memorandum is a temporary document issued to an individual within the Commission, upon request, and it applies only to the specific facts or circumstances related in the request. Technical Advice Memoranda have no precedential value and are not intended for general distribution.

Questions:

1. Does the dissolution of a corporation automatically invalidate its retail license?
2. Should a retail license be issued to a business claiming corporate status, when the articles of incorporation cannot be located, or the organization cannot produce a corporate charter?

Facts:

From time to time, the situation arises where a corporate entity has its charter revoked or an entity, claiming to be a corporation, cannot produce articles of incorporation or a corporate charter. In such situations, the status of the organization's retail license, or whether a retail license should be issued, becomes questionable.

Discussion:

1. The first question to be addressed is whether dissolution of a corporation effectively revokes the corporation's retail license?

Code Section 12-35-320 reads, in part:

Every person who engages in any business as a retailer, as a condition precedent to engaging in the business, shall obtain from the commission a retail license for each branch, establishment, or agency of the retailer situated or located in this State (emphasis added).

The term "person" is defined at Code Section 12-35-60, in part, as:

...any individual, firm, copartnership, association, corporation, receiver, trustee or any other group or combination acting as a unit (emphasis added).

Code Section 12-35-380 provides, in part:

The retail license provided for in this Article....shall only be valid for the person in whose name it is issued....

Further, Code Section 12-35-390 provides, in part:

Any person operating under a retail license....shall, upon discontinuance of business by sale or otherwise, return such retail license to the Commission for cancellation....

In summary, under the sales tax code, a corporation is a "person" required to obtain a retail license, if engaged in business as a retailer. Also, a retail license is only valid for the "person" to whom issued; and, must be returned to the Commission upon discontinuance of the business.

However, Code Section 33-14-105, which concerns the effects of corporate dissolution (whether voluntary, administrative or judicial dissolution), reads, in part:

(a) A dissolved corporation continues its corporate existence but may not carry on any business except that appropriate to wind up and liquidate its business and affairs...

\* \* \* \* \*

(b) A dissolved corporation shall wind up and liquidate its business and affairs as expeditiously as practicable.

In summary, a dissolved corporation continues as a corporation until it can wind up its affairs.

However, Code Section 12-54-90 reads:

(A) When a person fails, neglects, violates, or refuses to comply with a provision of law or regulation administered by the commission, the commission, in its discretion, may revoke one or more licenses held by the taxpayer within ten days of notification in writing of the taxpayer's failure to comply. The notification may be served by certified mail or personally.

(B) A person whose license has been revoked must not be issued a new license until all outstanding liabilities are satisfied.

(C) The commission may review and determine whether a new license may be issued according to guidelines established by it.

2. The second issue concerns the verification of corporate existence prior to issuing a retail license.

Code Section 33-2-103, entitled "Incorporation", reads, in part, that "[u]nless a delayed effective date is specified, the corporate existence begins when the articles of incorporation are filed [with the Secretary of State]".

Code Section 33-1-270, entitled "Evidentiary effect of copy of filed document", provides:

A certificate attached to a copy of a document filed by the Secretary of State, bearing his signature (which may be in facsimile) and the seal of this State, is conclusive evidence that the original document is on file with the Secretary of State and must be taken and received in all courts, public offices, official bodies, and in all proceedings as prima facie evidence of the facts therein stated (emphasis added).

If a copy of the Articles of Incorporation are not available, then a copy of a certificate of existence may be obtained from the Secretary of State. Code Section 33-1-280, entitled "certificate of existence", provides:

(a) Anyone may apply to the Secretary of State to furnish a certificate of existence for a domestic corporation or a certificate of authorization for a foreign corporation.

\* \* \* \* \*

(c) Subject to any qualification stated in the certificate; a certificate of existence or authoriza- tion issued by the Secretary of State may be relied upon as conclusive evidence that the domestic or foreign corporation is in existence or is authorized to transact business in this State (emphasis added).

In summary, a certificate attached to a business' Articles of Incorporation, per Code Section 33-1-270, or a certificate of existence or authorization, per Code Section 33-1-280, is "conclusive evidence" that a business is incorporated.

Conclusions:

1. The dissolution of a corporation does not automatically invalidate the corporation's retail license, as the "dissolved corporation continues its corporate existence" while it winds up and liquidates its business.

However, once the dissolved corporation ceases winding up its business, which may include selling of any tangible personal property, the corporation's retail license is no longer valid and must be returned to the Commission. It should also be noted that even though the dissolution of a corporation does not automatically invalidate the corporation's retail license, Code Section 12-54-90 authorizes the revocation of a retail license if the taxpayer has failed to comply with the tax laws of this State.

2. If a person applying for a retail license, for a corporation, is unable to prove the corporation exists, then the retail license should not be issued to the corporation.

However, the provisions of Title 33 of the South Carolina law, as out-lined above; and, all other available information, should be considered before an application for a retail license is denied.