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State of South Carolina  
Department of Revenue  
301 Gervais Street, P.O. Box 125, Columbia, South Carolina 29214  
Website Address: <http://www.sctax.org>

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SC PRIVATE LETTER RULING #07-4

**SUBJECT:** Signs – Sales of Tangible Personal Property or Improvements to Realty  
(Sales and Use Tax)

**REFERENCES:** S. C. Code Ann. Section 12-2-25(B) (Supp. 2006)  
S. C. Code Ann. Section 12-36-910 (2000; Supp. 2006)  
S. C. Code Ann. Section 12-36-1310 (2000; Supp. 2006)  
S. C. Code Ann. Section 12-36-60 (2000)  
S. C. Code Ann. Section 12-36-110 (2000)  
S. C. Code Ann. Section 12-36-90 (2000; Supp. 2006)  
S. C. Code Ann. Section 12-36-130 (2000; Supp. 2006)  
SC Regulation 117-309.9 (Supp. 2006)  
SC Regulation 117-314.2 (Supp. 2006)  
SC Regulation 117-313.3 (Supp. 2006)

**AUTHORITY:** S. C. Code Ann. Section 12-4-320 (2000)  
S. C. Code Ann. Section 1-23-10(4) (2006)  
SC Revenue Procedure #05-2

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set forth, and is binding on agency personnel only with respect to the person to whom it was issued and only until superseded or modified by a change in statute, regulation, court decision, or another Departmental advisory opinion, providing the representations made in the request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

Questions:

1. Is XYZ, LLC (“XYZ”) a retailer selling and installing signs or a contractor making improvements to real property with respect to the types of signs described in the facts?

2. If XYZ, LLC is a retailer selling and installing signs, what is the basis for the tax?
3. If XYZ, LLC contracts with a manufacturer in South Carolina to manufacture a sign instead of ABC, Inc., is the taxation of the transaction treated the same as those in which ABC, Inc. is the manufacturer?

Conclusions:

1. XYZ, LLC is a retailer engaged in the business of selling tangible personal property at retail.

However, since XYZ, LLC is a single member limited liability company that is disregarded for federal and state income tax purposes, it is disregarded for all South Carolina tax purposes and the taxpayer for sales and use tax purposes is ABC, Inc. As the taxpayer for sales and use tax purposes and the person liable for the tax, ABC, Inc. must obtain the retail license in its name. In completing the application form (Form SCTC - 111), ABC, Inc. should be listed as the "Owner" on Line 1 of the form with XYZ, LLC listed as the "Trade Name (Doing Business As)" on Line 2 of the form.

2. Sales at retail of signs by ABC, Inc. d/b/a XYZ, LLC ("XYZ"), as described in the facts, are subject to the tax based upon "gross proceeds of sales" as follows:

- (a) Sales at retail of the signs are subject to the tax, unless otherwise exempt under the law.
- (b) All charges by XYZ to customers for services provided in conjunction with, or as a part of, sales at retail of signs are includable in "gross proceeds of sales" and, therefore, subject to the tax unless the sale of the sign is otherwise exempt under the law. This would include, but is not limited to, charges by XYZ to its customers for consultation, engineering and design, surveys, and permits.

However, the following charges are not subject to the tax:

- (i) Charges to install signs (whether installed by XYZ or another person on its behalf), provided "such charges are separately stated from the sales price of the property on billing to customers and provided the seller's books and records of account show the reasonableness of such labor in relation to the sales price of the property;" and,
- (ii) Charges to customers for tangible personal property which becomes a part of the real property, such as concrete used for the foundation of a stand alone sign, provided such charges are separately stated from the sales price of the property on billing to customers and provided such charges are reasonable. However, sales to, or purchases by, XYZ of such tangible personal property are subject to the tax.

If XYZ provides services that are not provided in conjunction with, or as a part of, the sale of a sign, then charges to customers for such services are not subject to the sales and use tax. For example, if XYZ charges a customer to remove a sign, and this transaction is not associated with the sale of a new sign, then the charge for the sign removal service is not subject to the tax.

Note: For information concerning the taxability of charges for freight and delivery, repairs, and warranty and maintenance contracts, see SC Regulation 117-310, SC Regulation 117-306, and SC Revenue Ruling #06-9 respectively.

3. If XYZ, LLC contracts with a manufacturer in South Carolina to manufacture a sign instead of ABC, Inc., the taxation of the sale at retail of the sign is treated the same as those in which ABC, Inc. is the manufacturer of the sign. In other words, XYZ is still the retailer liable for the tax.

Facts:

ABC, Inc. is a Florida S Corporation. It manufactures signs in Florida for out-of-state customers as well as Florida customers. ABC, Inc. also has the signs installed at the out-of-state customer's location using a subcontractor. ABC, Inc. contracts with and pays the subcontractor for installing the sign and then bills the customer for the sign and installation costs and collects sales tax on the transaction in accordance with the law of the state where the sign is delivered. This sales tax is remitted to the taxing authorities in the state where the sign is installed.

To address Florida sales and use tax issues, ABC, Inc. is creating a Florida single-member limited liability company. The new LLC will be named XYZ, LLC. XYZ, LLC will be disregarded for federal and state income tax purposes and, therefore, treated as a division of the ABC, Inc. However, for Florida sales tax purposes, ABC, Inc. and XYZ, LLC will be legally distinct. XYZ, LLC will purchase signs from ABC, Inc. for delivery to its out-of-state customers. ABC, Inc. will deliver the signs by a common carrier or pursuant to the terms of the sales contract deliver the property using ABC, Inc.'s own mode of transportation. XYZ, LLC will contract with and pay a subcontractor for installing the sign and then will bill the customer for the sign and installation costs and collect sales tax on the transaction in accordance with the law of the state where the sign is delivered.

ABC, Inc. manufactures six distinct signage products: channel letters, back-lit letters, pylon signs, monument signs, and electronic display systems, and banners. In addition, ABC, Inc. offers total customer packages which include an array of signage products custom tailored to meet the demands of a diverse range of businesses.

**Channel Letters** are individually illuminated letters and graphics. These letters are found everywhere, from shopping malls to exterior storefront identification. There are three types of channel letters:

The most common type is Standard Channel Letters. These letters are made up of a U-channel base, with colored Plexiglas faces.

Reverse Channel Letters have metal faces and returns (sides of letters) and have a clear plastic backing. These letters are designed to be mounted an inch or two away from the wall. At night, these letters create a halo-lit effect.

The third type of Channel Letters have “open” faces. Though not actually open, the faces of these letters are clear plastic with the balance of the letters built just like Standard Channel Letters. This allows for the raw neon to be seen, as well as the inside of the U-channel letterform itself.

**Back-Lit Letters** are individual letters and graphics that are illuminated from a source that is located behind the letters. The usage of back lighting creates a halo effect around the letters.

**Pylon signs** are an effective way to provide advance notice of the location of a business or to feature a business name or logo. It is very common to see pylon signs on or near main streets. Manufactured of aluminum & steel, the structures are made for long term usage.

**Monument signs** are free-standing signs constructed on the ground with a continuous footing or foundation and a base at grade level.

**Electronic display systems** utilize digital media to display information. The use of electronic display systems has rapidly increased due to their ability to display information rapidly, fluidly and in a more esthetically pleasing manner. Electronic displays are often utilized by companies needing to communicate large amounts of information, such as airports, bus terminals, and stadiums. However, their use has also increased rapidly in mainstream commerce.

**Banners** are temporary signs until the actual sign is manufactured.

**Window Graphics** are vinyl signs applied inside the windows or on the doors that are used to tell store hours and emergency contact information.

ABC, Inc. performs design and engineering services. The marketing design department provides clients with creative artwork concepts.

Finally, from time to time, XYZ, LLC may contract with a sign manufacturer in South Carolina to manufacture a sign instead of contracting with ABC, Inc. to manufacture the sign.

Discussion:

XYZ, LLC is a single member limited liability whose single member is ABC, Inc., a Florida S corporation. XYZ, LLC will be disregarded for federal and state income tax purposes and will, therefore, be treated as a division of ABC, Inc.

Code Section 12-2-25(B) states that “[f]or South Carolina tax purposes ... a single member limited liability company, which is not taxed for South Carolina income tax purposes as a corporation, is not regarded as an entity separate from its owner.”

Based on the above, the taxpayer for South Carolina sales and use tax purposes is ABC, Inc. since XYZ, LLC “is not regarded as an entity separate from its owner.”

For purposes of this advisory opinion, the taxpayer will be referred to as “XYZ.”

Code Section 12-36-910(A) imposes the sales tax and states:

A sales tax, equal to [six] percent<sup>1</sup> 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) imposes the use tax and states:

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 in this State, at the rate of [six] percent<sup>2</sup> 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” and states:

“Tangible personal property” means 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

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<sup>1</sup> Beginning June 1, 2007, the total state sales and use tax rate is 6%. Code Section 12-36-1110, which increased the sales and use tax rate by 1% beginning June 1, 2007, states:

Beginning June 1, 2007, an additional sales, use, and casual excise tax equal to one percent is imposed on amounts taxable pursuant to this chapter, except that this additional one percent tax does not apply to amounts taxed pursuant to Section 12-36-920(A), the tax on accommodations for transients, nor does this additional tax apply to items subject to a maximum sales and use tax pursuant to Section 12-36-2110 nor to the sale of unprepared food which may be lawfully purchased with United States Department of Agriculture food coupons.

<sup>2</sup> See footnote #1.

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. Tangible personal property does not include the transmission of computer database information by a cooperative service when the database information has been assembled by and for the exclusive use of the members of the cooperative service.

Based on the above, in order for the sales or use tax to apply, there must be a retail sale of tangible personal property.

Code Section 12-36-110, defines the terms “retail sale” and “sale at retail” to mean, in part:

Sale at retail and retail sale mean all sales of tangible personal property except those defined as wholesale sales. The quantity or sales price of goods sold is immaterial in determining if a sale is at retail.

(1) The terms include:

(a) sales of building materials to construction contractors, builders, or landowners for resale or use in the form of real estate;

SC Regulation 117-309.9 concerns sign companies, and states:

A person engaged in the business of erecting, on properties owned or controlled by him, signs for the display of products of a second party for a consideration is deemed to be engaged in the business of selling a service. A tax is due measured by the purchase price of all tangible personal property used or consumed by such person as additions or improvements to realty.

A person engaged in the business of designing, fabricating and erecting signs on properties of another, for the display of that person's products, is deemed to be a retailer. The gross proceeds of the sale of such signs are subject to the tax. If the signs are leased or rented, the lease or rental proceeds are subject to the tax.

A person engaged in both of the above businesses shall pay the tax in accordance with the applicable provisions as set forth hereinabove.

A person who designs and constructs a sign as defined in the second paragraph above may, if all statutory requirements are met, be considered a manufacturer. (Emphasis added.)

In addition, in Commission Decision #89-70 the Department held that a taxpayer engaged in the business of designing, fabricating and erecting signs was a retailer of tangible personal property.

Based on the above and the facts set forth above, XYZ is selling tangible personal property at retail.

However, we must consider the application of the tax with respect to tangible personal property which becomes a part of real property. SC Regulation 117-314.2 addresses this matter and states:

Building materials when purchased by builders, contractors, or landowners for use in adding to, repairing or altering real property are subject to either the sales or use tax at the time of purchase by such builder, contractor, or landowner. "Building materials" as used in the Sales and Use Tax Law includes any material used in making repairs, alterations or additions to real property. "Builders," "contractors," and "landowners" mean and include any person, firm, association or corporation making repairs, or additions to real property. The term "building materials" includes such tangible personal property as lumber, timber, nails, screws, bolts, structural steel, elevators, reinforcing steel, cement, lime, sand, gravel, slag, stone, telephone poles, fencing, wire, electric cable, brick, tile, glass, plumbing supplies, plumbing fixtures, pipe, pipe fittings, prefabricated buildings, electrical fixtures, built-in cabinets and furniture, sheet metal, paint, roofing materials, road building materials, sprinkler systems, air conditioning systems, built-in-fans, heating systems, floorings, floor furnaces, crane ways, crossties, railroad rails, railroad track accessories, tanks, builders hardware, doors, door frames, window frames, water meters, gas meters, well pumps, and any and all other tangible personal property which becomes a part of real property.

For additional guidance in this matter, we refer to *City of North Charleston v. Claxton*, 315 S.C. 56, 431 S.E.2d 610 (1993). While that case dealt with the value of property in a condemnation proceeding, it also addressed the issue of real (fixtures) versus personal property.

Quoting from that case:

Criteria for determining whether an item remains personalty or becomes a fixture when affixed to realty includes: (1) the mode of attachment; (2) the character of the structure of the article; (3) the intent of the parties making the annexation; and, (4) the relationship of the parties. Creative Displays, 272 S.C. at 72, 248 S.E.2d at 918.

The Court, in *Claxton*, referenced *Rebel Manufacturing and Marketing Corporation*, 54 B.R. 674 (Bkrcty. D.S.C. 1985). In that case, a bank argued that the sale of a mobile

home was subject to a mortgage on the realty because it was a fixture [real property]. The mobile home was underpinned, anchored, and connected to sewerage, water and electric lines. Also, the home had a screened porch attached and was adjacent to several large trees.

In ruling for the bank, the Court reasoned:

The various substantial structures and trees surrounding the mobile home would be severely damaged, if not destroyed, should the mobile home be removed.

\* \* \* \*

It seems clear that the debtor's positioning the mobile home among the trees, and adding the construction [the porch] warrants the inference that the intent of the debtor was for the mobile home to become a part of the realty.

*Paris Mountain Water Company v. Woodside*, 133 S.C. 383, 131 S.E. 37 (1925), a South Carolina State Supreme Court case, was concerned with whether water pipes placed in lands belonging to others were to be taxed as realty or personalty. The Court, in holding that the pipe was to be taxed as realty, stated:

In the requirement of an intention to make the article annexed a permanent accession to the land, the expression of permanent does not, it seems, imply that the annexation must be intended to be perpetual, but rather that the article shall appear to be intended to remain where fastened until worn out, until the purpose to which the realty is devoted has been accomplished, or until the article is superseded by another article more suitable for the purpose.

Based on the above, if a tangible personal property becomes a part of real property, such as concrete used for the foundation of a stand alone sign, then such tangible personal property is considered used and consumed by XYZ and not sold by XYZ.

The next issue concerns the basis for the tax on sales of tangible personal property at retail.

The sales tax is imposed upon a retailer's "gross proceeds of sales" which is defined at Code Section 12-36-90, in part, as:

...the value proceeding or accruing from the sale, lease, or rental of tangible personal property... without any deduction for... the cost of materials, labor, or service... [or] any other expenses....



The use tax is based upon the "sales price" of tangible personal property. The term "sales price" is defined at Code Section 12-36-130, in part, as:

...the total amount for which tangible personal property is sold, without any deduction for the cost of the property sold, the cost of the materials used, labor or service cost, interest paid, losses, or any other expenses.

(1) The term includes:

(a) any services or transportation costs that are a part of the sale, whether paid in money or otherwise; ...

In *Meyers Arnold, Inc. v. South Carolina Tax Commission*, 285 S.C. 303, 328 S.E.2d 920, 923 (1985), the Court of Appeals of South Carolina held the element of service involved in a lay away sale was subject to tax as being part of the sale of tangible personal property. The test used by the court was as follows:

...But for the lay away sales, Meyers Arnold would not receive the lay away fees. The fees are obviously charged for the service rendered in making lay away sales. For these reasons, this court holds the lay away fees are part of the gross proceeds and subject to the sales tax.

Accordingly, the total amount charged in conjunction with the sale or purchase of tangible personal property is subject to the tax.

A similar conclusion was reached in *Regency Towers Association, Inc. v. South Carolina Tax Commission*, 88-CP-26-1109 (1989), where the Horry County Court of Common Pleas held charges for maid service were not deductible from gross proceeds derived from charges for accommodations. In Commission Decision #92-37, the Commission held that charges for maid services, which were optional, were a part of the accommodations furnished to transients and therefore subject to the accommodations tax. (See Code Section 12-36-920(B) and SC Regulation 117-307 for subsequent changes in the statute concerning "additional guest charges," such as maid service, at places furnishing accommodations.)

In Commission Decision #90-38, the Commission held that charges for engraving services, even though optional, were a part of the sale of plaques and trophies by the retailer and includible in gross proceeds of sales. The decision states, in part:

...We find and conclude that here the "engraving charges" are part of the sale of tangible personal property since the customer is not seeking a professional service but is seeking an engraved trophy or plaque....

\* \* \* \*

...The Courts have held that although the amount of materials used may be inconsequential with respect to the labor involved where the customer seeks to purchase custom made or designed tangible personal property, the artistic skill of the craftsman is a part of the sales price of the product and is inextricably linked....

In summary, charges for services that are made in conjunction with, or as part of the sale of, tangible personal property are includable in "gross proceeds of sales" or "sales price," and, therefore, subject to the tax.

However, it is important to note two additional issues with respect to the basis for the tax.

First, SC Regulation 117-313.3, concerning installation charges, states:

Not subject to the sales or use tax are charges for installation incident to the sale of tangible personal property when such charges are separately stated from the sales price of the property on billing to customers and provided the seller's books and records of account show the reasonableness of such labor in relation to the sales price of the property.

Second, since some tangible personal property used in the transaction becomes a part of the real property, such as concrete used for foundations of stand alone signs, then such tangible personal property is considered used and consumed by XYZ and not sold by XYZ. As such, the sales to, or purchases by, XYZ of such tangible personal property are subject to the tax.

Based on the above, sales at retail of signs by XYZ, as described in the facts, are subject to the tax based upon "gross proceeds of sales" as follows:

- (a) Sales at retail of the signs are subject to the tax, unless otherwise exempt under the law.
- (b) All charges by XYZ to customers for services provided in conjunction with, or as a part of, sales at retail of signs are includable in "gross proceeds of sales" and, therefore, subject to the tax unless the sale of the sign is otherwise exempt under the law. This would include, but is not limited to, charges by XYZ to its customers for consultation, engineering and design, surveys, and permits.

However, the following charges are not subject to the tax:

- (i) Charges to install signs (whether installed by XYZ or another person on its behalf), provided "such charges are separately stated from the sales price of the property on billing to customers and provided the seller's books and records of account show the reasonableness of such labor in relation to the sales price of the property;" and,

(ii) Charges to customers for tangible personal property which becomes a part of the real property, such as concrete used for the foundation of a stand alone sign, provided such charges are separately stated from the sales price of the property on billing to customers and provided such charges are reasonable. However, sale to, or purchases by, XYZ of such tangible personal property are subject to the tax.

If XYZ provides services that are not provided in conjunction with, or as a part of, the sale of a sign, then charges to customers for such services are not subject to the sales and use tax. For example, if XYZ charges a customer to remove a sign, and this transaction is not associated with the sale of a new sign, then the charge for the sign removal service is not subject to the tax.

And finally, if XYZ, LLC contracts with a manufacturer in South Carolina to manufacture a sign instead of ABC, Inc., the taxation of the sale at retail of the sign is treated the same as those in which ABC, Inc. is the manufacturer of the sign. In other words, XYZ is still the retailer liable for the tax.

Note: For information concerning the taxability of charges for freight and delivery, repairs, warranty and maintenance contracts, see SC Regulation 117-310, SC Regulation 117-306, and SC Revenue Ruling #06-9 respectively.

SOUTH CAROLINA DEPARTMENT OF REVENUE

s/Ray N. Stevens  
Ray N. Stevens, Director

July 13 \_\_\_\_\_, 2007  
Columbia, South Carolina