



301 Gervais Street, P.O. Box 125, Columbia, South Carolina 29214

SC PRIVATE LETTER RULING #87-3

TO: XYZ Corporation

SUBJECT: Taxation of Tire Shredding Machines

REFERENCE: S.C. Code Section 12-3-170

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 distribution.

Question:

Are tire shredding machines used to prepare tires for disposal in municipal landfills exempt from sales and use tax as machines used in processing tangible personal property?

Facts:

XYZ Corporation is a corporation engaged in the business of manufacturing, selling, distributing, using and maintaining machines. The XYZ machine is a machine which cuts tires into six separate segments prior to their being disposed of in a municipal landfill. The machines are currently being manufactured out of state and shipped to the XYZ Corporation. Once received at the Distribution Center, XYZ Corporation will then either sell the machines to a city and/or county government, or a third party purchaser who will utilize the machines to provide tire disposal services to municipal landfills. XYZ Corporation may also retain some of the machines and provide tire disposal services itself.

Discussion:

Code Section 12-35-550(17), an exemption section, reads, in part:

"The gross proceeds of the sale of animal or motor drawn or operated machinery.... used in mining, quarrying, compounding, processing and manufacturing of tangible personal property;...(emphasis added)."

One of the primary rules of statutory construction is that words used in a statute should be taken in their ordinary and popular meaning, unless there is something in the statute which requires a different interpretation. Hughes v. Edwards, 265 S.C. 529, 220 S.E. 2d 231; Investors Premium

Corp. v. South Carolina Tax Commission, 260 S.C. 13, 193 S.E. 2d 642. Also, where the terms of a statute are clear and unambiguous and leave no room for construction, they must be applied according to their literal meaning. Mitchell v. Mitchell, 266 S.C. 196, 222 S.E. 2d 217; Green v. Zimmerman, 269 S.C. 535, 238 S.E. 2d 323.

The Code does not provide a definition for the word "processing", as found at 12-35-550(17); therefore, it is necessary to determine the "ordinary and popular meaning" of the term.

It is an accepted practice in South Carolina to resort to the dictionary to determine the literal meaning of words used in statutes. For cases where this has been done, see Hay v. S.C. Tax Commission, 255 S.E. 2d 837; Fennell v. S.C. Tax Commission, 102 S.E. 2d 424; Etiwan Fertilizer Co. v. S.C. tax Commission, 60 S.E. 2d 682.

Black's Law Dictionary defines "process" as:

"A series of actions, motions, or occurrences; progressive act or transaction; continuous operation; method, mode or operation, whereby a result or effect is produced, normal or actual course of procedure; regular proceeding, as, the process of vegetation or decomposition; a chemical process; processes of nature."

"Process is mode, method or operation whereby a result is produced; and means to prepare for market or to convert into marketable form (emphasis added)." Employment Security Commission of Ariz. v. Bruce Church, Inc., 109 Ariz. 183, 507 P. 2d 108, 112.

The following discussion is from 68 Am. Jur. 2d, 224: "In determining the preliminary question as to whether the taxpayer was a manufacturer or processor within the general terms of the statute, the courts have tended to give these terms a restricted, popular meaning, generally limiting the term to those who transform raw materials into a finished item of personal property to be ultimately sold and produce a sales tax, ..." Kress v. Dept. of Revenue, 34 NW 2d 501; National tube Co. v. Glander, 105 NE2d 648.

There are other court cases which tend to support the position that "processing" involves the preparation of property for market. See Auricchi's v. U.S., 49 F. Supp. 184; Huron Fish Co. v. Glander, 67 N.E. 2d 546; France Co. v. Evatt, 55 N.E. 2d 652; Rawls, Inc. v. Peck, 111 N.E. 2d 916; State v. Joe H. Brady and Associates, 87 So. 2d 852; State v. Try Me Bottling Co., 57 So. 2d 537; National Tube Co. v. Glander, 105 N.E. 2d 648; Colbert Mill & Feed Co. v. Oklahoma Tax Commission, 109 P. 2d 504; and, Kennedy v. State Board of Assessment and Review, 276 N.W. 205.

As a general rule, tax exemption statutes are strictly construed against the taxpayer. Owen Industrial Products, Inc. v. Sharpe, 274 S.C. 193, 262 S.E. 2d 33 (1980) Hollingsworth on Wheels, Inc. v. Greenville County Treasurer et al, 276 S.C. 314, 278 S.E. 2d 340 (1981). This rule of strict construction simply means that constitutional and statutory language will not be strained or liberally construed in the taxpayer's favor. York County Fair Association v. S.C. Tax Commission, 249 S.C. 337, 154 S.E. 2d 361 (1967).

The Commission has consistently interpreted Section 12-35-550(17) as applicable to those machines used by taxpayers in the business of manufacturing or processing tangible personal property for sale. For example, vendors of ice milk or cream using freezers are considered to be in a mercantile business and not in the business of manufacturing or processing tangible personal property for sale. (Memorandum #38, dated 3-16-66).

Administrative interpretations of statutes by the agency charged with their administration and not expressly changed by the legislative body are entitled to great weight. Marchant v. Hamilton 309 S.E. 2d 781(1983). When as in this case, the construction or administrative interpretation of a statute has been applied for a number of years and has not been changed by the legislature, there is created a strong presumption that such interpretation or construction is correct. Ryder Truck Lines, Inc. v. South Carolina Tax Commission, 248 S.C. 148, 149 S.E. 2d 435; Etiwan Fertilizer Company v. South Carolina Tax Commission, 217 S.C. 354, 60 SE 2d 682.

In Southern Equipment Sales Company, Inc. v. the South Carolina Tax Commission, the Court of Common Pleas upheld the Master for Richland County who held that Section 12-35-550(17) is applicable only when a machine is used in the manufacture, processing or compounding of tangible personal property for sale. The plaintiff asserted that any construction "which requires that an exemption is to be based upon a manufacture of tangible personal property for 'sale' or 'resale' is an unauthorized alteration and restriction of the exemption clause...." However, the Court disagreed and ruled "the construction thereof by the Master is sound, logical and correct."

Conclusion:

We conclude that it is a reasonable interpretation of Code Section 12-35-550(17) to define "processing" as an operation whereby tangible personal property is prepared or converted into a form suitable for sale. Therefore, based upon the facts presented, the shredding of tires for disposal in a landfill is not processing and the sale and/or use of the machines in question is subject to taxation pursuant to Code Sections 12-35-510 and 12-35-810.

SOUTH CAROLINA TAX COMMISSION

s/S. Hunter Howard Jr.

S. Hunter Howard, Jr., Chairman

s/John M. Rucker

John M. Rucker, Commissioner

s/Howard E. Duvall Jr.

Howard E. Duvall, Jr., Commissioner

Columbia, South Carolina
April 22, 1987