



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

SC PRIVATE LETTER RULING #88-2

TO: XYZ, Inc.

SUBJECT: Use Tax - Drop Shipments by Manufacturers

REFERENCE: S.C. Code Ann. Section 12-35-170 (1976)
S.C. Code Ann. Section 12-35-810 (1976)

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

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 general distribution.

Question:

Is an out-of-state manufacturer liable for payment of the use tax on tangible personal property drop shipped to an out-of-state distributor's South Carolina customer?

Facts:

XYZ, Inc. is an equipment manufacturer located in North Carolina and an authorized collector of the South Carolina use tax. At times, the company fills orders for distributors located outside South Carolina, which are not authorized collectors of the use tax. XYZ invoices and receives payments from such distributors at wholesale prices and the distributors invoice their customers at retail prices unknown to XYZ.

Discussion:

A "drop shipment" is a shipment of goods directly from a manufacturer to the consumer to fill an order for a dealer or distributor.

South Carolina Code Section 12-35-170 reads in part:

The terms 'wholesale sale' and 'sale at wholesale' mean a sale of tangible personal property by wholesalers to licensed retail merchants, jobbers, dealers or other wholesalers for resale, and do not include a sale by wholesalers to users or consumers, not for resale.

South Carolina Code Section 12-35-810 reads in part:

An excise 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...., regardless of whether the retailer is or is not engaged in business in this State.

Conclusion:

The sales by XYZ to out-of-state distributors are "wholesale sales", pursuant to Code Section 12-35-170, and therefore, are not subject to the use tax. The purchaser in this case is liable for the use tax pursuant to Code Section 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/A. Crawford Clarkson Jr.

A. Crawford Clarkson, Jr., Commissioner

Columbia, South Carolina
January 27, 1988