



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

SC PRIVATE LETTER RULING #88-22

TO: ABC Company

SUBJECT: Prosthetic Devices Sold to Hospitals, Clinics & Doctors
(Sales and Use Tax)

REFERENCE: S.C. Code Ann. Section 12-35-810 (1976)
S.C. Code Ann. Section 12-35-110 (Supp. 1987)
S.C. Code Ann. Section 12-35-550(31) (Supp. 1987)
S.C. Code Ann. Section 12-35-515 (Supp. 1987)
S.C. Regulation 117-166
S.C. Regulation 117-174.161

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:

Are sales of prosthetic devices by ABC Company to hospitals, clinics and doctors subject to the State's use tax, pursuant to Code Section 12-35-810?

Facts:

ABC Company of another state sells prosthetic devices to hospitals, doctors and clinics located in this State. Such customers will either telephone or mail their purchase orders to ABC and receive the prosthetic devices via the U.S. Postal Service or a common carrier. ABC Company is an authorized collector of the State's use tax.

Discussion:

Code Section 12-35-810 imposes the use tax and 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, at the rate of four percent of the sales price of such property, regardless of whether the retailer is or is not engaged in business in this State.

Code Section 12-35-515 imposes an additional one percent tax.

Code Section 12-35-110 reads, in part:

Where drugs, prosthetic devices and other supplies are furnished by hospitals, infirmaries, sanitariums, nursing homes and like institutions to their patients as a part of the service rendered, such hospitals, infirmaries, sanitariums, nursing homes and like institutions are deemed to be the users or consumers of such drugs, prosthetic devices and other supplies.

Regulation 117-166 reads, in part:

Hospitals, infirmaries, sanitariums, nursing homes and like institutions are engaged primarily in the business of rendering services. They are not liable for the sales tax with respect to their gross proceeds or receipts from meals, bandages, dressings, drugs, x-ray photographs and other tangible personal property where such property is used in the rendering of the primary medical service to patients. This is true irrespective of whether or not such tangible items are billed separately to their patients. Hospitals, infirmaries, sanitariums, nursing homes and like institutions are deemed to be the users or consumers of such tangible personal property and the instate sellers of these items are required to report and remit the tax due on the sale of such property to the hospitals, infirmaries, sanitariums, nursing homes, and like institutions or in the case of out-of-state purchases, use tax shall be reported and remitted by the purchaser.

This regulation also paraphrases the above-cited portion of Code Section 12-35-110.

Regulation 117-174.161 reads:

Doctors are the consumers of the supplies, medicines, office furniture and fixtures and special tools and equipment they use in the practice of their profession. Sales of such supplies and equipment to doctors are retail sales and subject to the tax.

It is only when a doctor has a stock of drugs from which he makes numerous and substantial retail sales that he is required to have a retail license and to remit sales tax directly to the Tax Commission.

In summary, sales of prosthetic devices to hospitals, clinics and doctors are sales to the consumer. However, a review of this issue requires a discussion of Code Section 12-35-550(31). That section exempts from the sales and use tax the "[g]ross proceeds from the sale of medicine and prosthetic devices, sold by prescription."

Commission Decision S-D-155 concerns the issue in question with respect to a health clinic which furnished drugs and prosthetic devices "to their patients as a part of the medical and/or dental services rendered." The taxpayer contended they were a retailer and entitled to the exemption under Code Section 12-35-550(31). The Division contended the sales were taxable

pursuant to Code Section 12-35-110. The Commission held that "the exemption found at [Section] 12-35-550(31) allows an exemption for the retail sale of medicine and prosthetic devices, sold by prescription. The taxpayer did not acquire the medicines here by prescription. Hence, on its face, the exemption does not apply." (emphasis added)

Furthermore, in Revenue Ruling #88-9 dated June 1, 1988, the Commission held that "[t]he purchases of prosthetic devices by dentists from out-of-state dental labs do not constitute.....prosthetic devices, sold by prescriptions and are therefore subject to the use tax...."

It has been the long-standing administrative policy of the Commission that medicine and prosthetic devices cannot be "sold by prescription" to an institution or a physician. Such can only be "sold by a prescription" when sold directly to a patient or customer. When the 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 is correct. Ryder Truck Lines, Inc. v. South Carolina Tax Commission, 248 SC 148, 149 S.E. 2d 435 (1966). In Etiwan Fertilizer Company v. South Carolina Tax Commission, 217 S.C. 354, 60 S.E. 2d 682 (1950), the Supreme Court of South Carolina held that "where the construction of the statute has been uniform for many years in administrative practice, and has been acquiesced in by the General Assembly for a long period of time, such construction is entitled to weight, and should not be overruled without cogent reasons." (emphasis added)

Conclusion:

The sale of prosthetic devices to hospitals, clinics and doctors do not constitute "...prosthetic devices, sold by prescriptions,..." The sales in question are therefore subject to the State's use tax, pursuant to Code Section 12-35-810.

SOUTH CAROLINA TAX COMMISSION

S. Hunter Howard, Jr., Chairman

A. Crawford Clarkson, Jr., Commissioner

Columbia, South Carolina

October 26, 1988