



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

SC PRIVATE LETTER RULING #89-18

TO: XYZ Company, Inc.

SUBJECT: Aircraft - Flight Instruction/Rentals  
(Sales and Use Taxes)

REFERENCE: S.C. Code Ann. Section 12-35-510 (1976)  
S.C. Code Ann. Section 12-35-810 (1976)  
S.C. Code Ann. Section 12-35-110 (Supp. 1988)  
S.C. Code Ann. Section 12-35-30 (Supp. 1988)  
S.C. Code Ann. Section 12-35-90 (1976)  
S.C. Code Ann. Section 12-35-70 (1976)  
S.C. Code Ann. Section 12-35-516 (Supp. 1988)

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.

Questions:

1. Are charges for leasing of aircraft, paid by XYZ Company, Inc. to various owners, subject to the sales or use tax, pursuant to Code Sections 12-35-510 and 12-35-810?
2. Are sales of gasoline and repair parts to XYZ, by the ABC Airport, subject to the sales tax, pursuant to Code Section 12-35-510?

Facts:

XYZ Company, Inc. is a South Carolina corporation, whose primary business is flight instruction and rental of aircraft. The taxpayer does not sell aircraft. Aircraft used by the taxpayer are leased from an officer of XYZ, and from other individuals. The lease with the officer is on a long-term basis and those with others are on an "as needed" basis. XYZ does not collect sales tax on charges for flight instruction, but does collect the tax when planes are rented to individuals.

Repair parts are purchased from the ABC Airport, as needed, and subsequently installed by ABC Airport employees. Gasoline is also purchased from ABC Airport.

Discussion:

1. Code Section 12-35-510 imposes the sales tax and reads, in part:

...there is levied..., upon every person engaged or continuing within this State in the business of selling at retail any tangible personal property whatsoever, ..., an amount equal to [five] percent of the gross proceeds of sales of the business.

The term "sale at retail" is defined at Code Section 12-35-110, in part, as:

...all sales of tangible personal property except those defined in this article as wholesale sales.....

\* \* \* \*

The terms "sale at retail" or "retail sale" shall also include (a) the withdrawal, use or consumption of any tangible personal property by anyone who purchases it at wholesale, except (i) property which has been previously withdrawn...and so used or consumed and...the tax has been paid because of such previous withdrawal, use or consumption.

The measure of the sales tax, "gross proceeds of sales", is defined at Code Section 12-35-30, in part, as:

...the value proceeding or accruing from the sale of tangible personal property....

\* \* \* \*

The term shall also include the reasonable and fair market value of any tangible personal property previously purchased at wholesale which is withdrawn or used from the business or stock and used or consumed in connection with the business.....

Code Section 12-35-90 defines the term "retailer", in part, as "[e]very person engaged in the business of renting or leasing...any tangible personal property for a consideration,...".

Subjecting rentals of tangible personal property to the tax is supported by *Edisto Fleets, Inc. v. South Carolina Tax Commission*, 256 S.C. 350, 182 SE2d 713 (1971). In *Edisto Fleets*, the State Supreme Court ruled:

It would be unreasonable to conclude that the General Assembly amended their section [12-35-90] in 1955 to define as a retailer a person who leases or rents tangible personal property and at the same time intended that such person be exempt from the tax because the lease or rental was not a sale of tangible personal property

In summary, the sales tax is imposed upon the retail sale, rental or lease of tangible personal property. However, pursuant to Code Section 12-35-110, the tax is not due on wholesale sales. Therefore, property leased from one party for subsequent

rental to other parties may be acquired tax free. If property previously acquired tax free (at wholesale) is subsequently withdrawn, or used, by the business, then the tax is due, measured by the fair market value of the property.

The use tax is imposed at Code Section 12-35-810, which 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 [five] percent of the sales price of such property,.....

The term "purchase" is defined at Code Section 12-35-70, in part; as:

...acquired for a consideration, whether....such consideration be a price or rental in money....

Quoting, again, from Edisto Fleets, supra., the State Supreme Court ruled "[t]he term 'purchase' specifically refers to the lease or rental of tangible personal property". The Court also ruled "[t]he terms 'sale' and 'purchase' are inextricably related and bound together and must be so construed".

In summary, the use tax is imposed upon the storage, use or consumption of property purchased, rented or leased, at retail, for storage, use or consumption in this State; except, property which is leased for the purpose of being rented to third parties.

Furthermore, Regulation 117-174.254, entitled "Airport Fixed Base Operators", reads, in part:

Only aircraft purchased for resale or rental may be purchased tax free as for resale.

When an aircraft is withdrawn for use primarily in flight instruction .....a tax is due measured by the reasonable and fair market value (purchase price) of the aircraft and a tax is also due when the aircraft is subsequently sold.

\* \* \* \*

Rental of aircraft. Proceeds derived from lease or rental of aircraft are subject to the tax.

Flight instruction. Receipts from courses of instruction given to students seeking private, commercial, instrument and/or instructor's licenses are not subject to the sales tax. Included in such exempt services are receipts from dual and solo flights which are a part of a course of instruction.

As for sales of gasoline and repair parts, Regulation 117-174.254 provides:

Sales of gasoline for use in aircraft are subject to the tax.

Proceeds derived from the sale of repair parts and service are subject to the tax; provided, however, that where a separation is made between the sale of the parts and the sale of the service, the tax is due only on the sale of the repair parts. The invoice to the customer must show this separation.

Furthermore, Code Section 12-35-550(16), which exempts gasoline from the sales tax, provides an exception to the exemption, which reads, in part: "Gasoline sold or dispensed for use in aircraft is subject to the retail sales and use tax".

Our discussion would not be complete without referring to Code Section 12-35-516, which reads, in part: "[i]n case of the sale...of any (1) aircraft, ....., the maximum tax levied...is three hundred dollars....". Furthermore, with respect to leases, the maximum tax due is \$300, for those leases executed after 9-1-85 for a period in excess of 90 days.

Conclusions:

1. Payments for leasing of aircraft, paid by XYZ Company, Inc., to various owners are not subject to the sales or use tax, where such aircraft are both rented to other parties and used to provide flight instruction.

Flight instruction. The sales tax is due upon the first use of an airplane used for flight instruction, measured by the fair market value at the time of such use. The subsequent sale or rental of any airplane used for flight instruction would also be subject to the tax.

The maximum tax due upon first use of an aircraft for flight instruction or upon being sold is \$300.

Rental. Amounts received from rentals of aircraft are subject to the sales tax, without regards to the \$300 cap. However, leases executed on or after 9-1-85, for a period in excess of 90 days, are subject to the \$300 cap.

2. Sales of gasoline and repair parts to XYZ, by the ABC Airport, are subject to the sales tax, pursuant to Code Section 12-35-510.

SOUTH CAROLINA TAX COMMISSION

s/S. Hunter Howard Jr.  
S. Hunter Howard, Jr., Chairman

s/A. Crawford Clarkson Jr.  
A. Crawford Clarkson, Jr., Commissioner

s/T. R. McConnell  
T. R. McConnell, Commissioner

Columbia, South Carolina  
September 27, 1989