



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

SC PRIVATE LETTER RULING #90-11

TO: Department of the XYZ

SUBJECT: Nonresident Military Sales Tax Exemption

REFERENCE: S.C. Code Ann. Section 12-35-550(25)(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.

Question:

Are sales of automobiles to members of the Armed Forces, who are "passing through" South Carolina enroute to a new assignment, exempt from the sales tax, pursuant to Code Section 12-35-550(25)?

Facts:

The Department of XYZ frequently encounters situations whereby a service member, concluding a tour of duty in Europe, is "passing through" South Carolina enroute to a military base located outside of this State. The service member has ordered an automobile, through one of several buying services, and will travel to Charleston to pick up the automobile before proceeding to a new assignment outside of South Carolina.

Code Section 12-35-550(25), which concerns sales of automobiles to nonresident military personnel, exempts from the sales tax:

The gross proceeds of the sale of automobiles or motor bikes to a person domiciled in or resident of another state, who is located within South Carolina by reason of orders of the Armed Forces of the United States. This claim for exemption is allowed only if within ten days of the sale or purchase a statement is furnished the vendor from a commissioned officer of the Armed Forces of a higher rank than the purchaser certifying that the person claiming the exemption is a member of the Armed Forces on active duty and is domiciled in or a resident of another state. Since the exemption requires a statement from a commissioned officer of higher rank than the purchaser, XYZ personnel in Charleston need to know whether or not such service members qualify for the exemption.

Discussion:

To answer the question at hand, the meaning of the phrase "located within South Carolina by reason of orders", as found in Code Section 12-35-550, must be determined.

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. South Carolina Tax Commission, 273 SC 269, 255 SE2d 837 (1979); Fennell v. South Carolina Tax Commission, 233 SC 43, 103 SE2d 424 (1958); Etiwan Fertilizer Co. v. South Carolina Tax Commission, 217 SC 484, 60 SE2d 682 (1950).

The Second College Edition of the American Heritage Dictionary provides the following definitions:

- "Locate" - To station, situate, or store. To become established; settle
- "Settle" - To put firmly in a desired position or place; establish.

In summary, the word "located", as used in Code Section 12-35-550(25), means settled or established.

Furthermore, tax exemption statutes are strictly construed against the taxpayer. Owen Industrial Products, Inc. v. Sharpe, 274 SC 193, 262 SE2d 33 (1980); Hollingsworth on Wheels, Inc. v. Greenville County Treasurer et al, 276 SC 314, 278 SE2d 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. SC Tax Commission, 249 SC 337, 154 SE2d 361 (1967).

Conclusion:

Sales of automobiles to members of the Armed Forces, who are "passing through" South Carolina by reason of orders, enroute to a new assignment, are not exempt from the sales tax pursuant to Code Section 12-35-550(25).

NOTE: Sales of automobiles to members of the Armed Forces, who are "passing through" South Carolina enroute to a new assignment in another State, may qualify as a sale to a "nonresident" under the provisions of Code Section 12-35-555 (See Information Letter #90-8).

SOUTH CAROLINA TAX COMMISSION

s/S. Hunter Howard Jr.

S. Hunter Howard, Jr., Chairman

s/A. Crawford Clarkson Jr.

A. Crawford Clarkson, Jr., Commissioner

Columbia, South Carolina
April 5 _____, 1990