



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

SC PRIVATE LETTER RULING #94-7 (TAX)

TO: ABC

SUBJECT: Grease and Oil Used in Manufacturing Machinery
(Sales and Use Taxes)

DATE: June 3, 1994

REFERENCE: S. C. Code Ann. Section 12-36-120 (Supp. 1993)
S. C. Code Ann. Section 12-36-910 (Supp. 1993)
S. C. Code Ann. Section 12-36-1310 (Supp. 1993)
S. C. Code Ann. Section 12-36-2120 (Supp. 1993)

AUTHORITY: S. C. Code Ann. Section 12-4-320 (Supp. 1993)
SC Revenue Procedure #93-6

SCOPE: A Private Letter Ruling is a document issued by the Department of Revenue to a specific person.

NOTE: A Private Letter Ruling may only be relied upon by the person to whom it is issued and only for the transaction or transactions to which it relates. A Private Letter Ruling has no precedential value.

Question:

Are grease and oil purchased by ABC and used to lubricate manufacturing machinery exempt or excluded from South Carolina sales and use taxes?

Conclusion:

Grease and oil purchased by ABC and used to lubricate manufacturing machinery are not exempt or excluded from South Carolina sales and use taxes.

Facts:

ABC operates several manufacturing plants in South Carolina. These plants weave, spin and sew sheets, towels and comforters. Much of the equipment used in manufacturing at these plants operates at medium to high speed and cannot operate without the presence or application of

lubricants (i. e. grease and motor oil). The grease and motor oil in question are for the lubrication of manufacturing equipment which is exempt from South Carolina sales and use taxes. Later, the lubricants are disposed of in one of the following ways: disposed of by a waste handling firm, sold or given to an oil recycling firm, or consumed as boiler fuel in a manufacturing plant.

Discussion:

Sales and Use Tax Law

Code Section 12-36-910 (A) imposes the sales tax and reads, in part:

A sales tax, equal to five percent of the gross proceeds of sales, is imposed upon every person engaged or continuing within this State in the business of selling tangible personal property at retail.

Code Section 12-36-1310 (A) imposes the use tax and reads, in part:

A use 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 the property, regardless of whether the retailer is or is not engaged in business in this State.

Based on the above, the sales tax and the use tax are transactional taxes that are imposed when there is a retail sale or retail purchase of tangible personal property. Thus, the sales tax is imposed on the seller and the use tax is imposed on the purchaser, ABC, unless the transaction is otherwise exempt or excluded.

In determining whether the grease and oil are exempt or excluded from South Carolina sales and use taxes, we must consider the following questions: (1) Are the lubricants exempt machines or machine parts under Code Section 12-36-2120(17)? (2) Are the lubricants consumed as boiler fuel in a manufacturing plant exempt fuel under Code Section 12-36-2120(9)(b)? and, (3) Are the purchases of lubricants by ABC purchases for resale which are excluded from tax under Code Section 12-36-120?

Machines or Machine Parts

As stated in the facts, ABC uses machines in manufacturing tangible personal property for sale. Code Section 12-36-2120(17) provides an exemption for:

machines used in manufacturing, processing, compounding, mining, or quarrying tangible personal property for sale. "Machines" include the parts of machines, attachments, and replacements used, or manufactured for use, on or in the operation of machines and which are necessary to the operation of the machines and are customarily so used. The law, therefore, provides that machines, their parts and attachments, that are used in manufacturing tangible personal property for sale qualify for the exemption found in Code Section 12-36-2120(17). This code section, however, does not exempt lubricants used in machines.

Where the words of a statute are clear there is no room for construction and such terms must be given their literal meaning. Duke Power Co. v. South Carolina Tax Commission, 292 S.C. 64, 354 S.E. 2d 902 (1987). Based upon the plain meaning of the words in Code Section 12-36-2120(17), oil and grease are not machines or machine parts or attachments exempt from the sales and use taxes.

The above represents the longstanding policy of the Department of Revenue. 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, 279 SC 497, 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 (1966); Etiwan Fertilizer Company v. South Carolina Tax Commission, 217 S.C. 354, 60 S.E. 2d 682 (1950).

Fuel

As stated in the facts, ABC may dispose of the utilized grease and oil by using it as boiler fuel.

Code Section 12-36-2120(9)(b) provides an exemption for fuel sold to manufacturers for "the generation of heat or power used in manufacturing tangible personal property for sale...".

This exemption, however, is not applicable to ABC's purchases of oil and grease. Since the sales and use taxes are transactional taxes, it has been the longstanding policy of the Department of Revenue to determine the taxability of tangible personal property based upon the primary purpose for which the property was purchased. The primary purpose for which the grease and oil are purchased by ABC is to lubricate manufacturing machinery. The fact that the grease and oil may be consumed as boiler fuel in manufacturing is of no consequence. Therefore, grease and oil used by ABC to lubricate manufacturing machinery are not exempt from the sales and use taxes under Code Section 12-36-2120(9)(b).

Purchases for Resale

As stated in the facts, ABC may also dispose of the utilized lubricants by selling or giving the grease and oil to a waste handling firm or oil recycling firm. Therefore, it must be determined if purchases of the lubricants by ABC are retail purchases which are subject to tax, or whether they are wholesale purchases that are not subject to tax.

Code Section 12-36-120 provides for the meaning of the term wholesale sale and reads, in part:

"Wholesale sale" and "sale at wholesale" mean a sale of:

- (1) tangible personal property to licensed retail merchants, jobbers, dealers, or wholesalers for resale, and do not include sales to users or consumers not for resale;

(2) tangible personal property to a manufacturer or compounder as an ingredient or component part of the tangible personal property or products manufactured or compounded for sale;

(3) tangible personal property used directly in manufacturing, compounding, or processing tangible personal property into products for sale;

Code Section 12-36-100 provides that "sale and purchase mean any transfer, exchange, barter, conditional or otherwise, of tangible personal property for a consideration..."

Based upon the above statutes, ABC's purchases of lubricants do not qualify as purchases for resale. The lubricants are purchased for use by ABC.

As previously discussed, the primary purpose for which the grease and oil are purchased is to lubricate manufacturing machinery. The fact that the grease and oil may be sold or given away after it is utilized is of no consequence. Therefore, purchases of grease and oil used by ABC to lubricate manufacturing machinery are not exempt or excluded from the sales and use taxes, regardless of the method of disposal by ABC.

This interpretation represents the longstanding policy of the Department of Revenue. 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, 279 SC 497, 309 S.E. 2d 781 (1983).

For questions concerning lubricants used in manufacturing machinery, contact Deana West at 803-737-4439 or John McCormack at 803-737-4438 in the Tax Policy and Special Procedures Division.