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TECHNICAL ADVICE MEMORANDUM #89-25

TO: Mr. Marvin N. Davant, Director
Field Services Division

FROM: Jerry B. Knight, Manager
Tax Policy & Appeals Department

DATE: December 12, 1989

SUBJECT: X Computes Access Time
(Sales & Use)

REFERENCE: S.C. Code Ann. Section 12-35-1150 (1976)
S.C. Code Ann. Section 12-35-140 (1976)
S.C. Code Ann. Section 12-35-550(10) (Supp. 1988)

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

SCOPE: A Technical Advice Memorandum is a temporary document issued to an individual within the Commission, upon request, and it applies only to the specific facts or circumstances related in the request. Technical Advice Memoranda have no precedential value and are not intended for general distribution.

Question:

Are charges by XYZ for X computer access time, subject to sales and use tax, pursuant to Code 12-35-1150?

Facts:

XYZ owns a computer-assisted legal research service commonly known as "X". X operates off a database which is located in another state. XYZ grants licenses to persons desiring to use its service who, in turn, access the information via telephone lines. User license fees are based on the time the X service is used to retrieve information on the database. Users initiate the telephone link through the computer terminal.

Discussion:

Code Section 12-35-1150 provides a special tax imposition which reads:

Notwithstanding any other provision of law, the gross proceeds accruing or proceeding from the charges for the ways or means for the transmission of the voice or of messages, including the charges for use of equipment furnished by the seller or supplier of the ways or means for the transmission of the voice or of messages, are subject to the license, sales or use tax, as provided by this chapter.

The term "tangible personal property", as used in Chapter 35, is defined at Code Section 12-35-140, in part, as "personal property which may be seen, weighed, measured, felt or touched or which is in any other manner perceptible to the senses,..." The last paragraph of that Section reads:

For the purposes of this Chapter the term 'tangible personal property' shall be interchangeable with and apply with equal force and effect to services, accommodations and intangibles including communications, as are specifically provided for in this chapter. (emphasis added)

Code Section 12-35-550(10) provides the only exemption for the charges taxed at Section 12-35-1150. That section exempts "[t]he gross proceeds from the toll charges for the transmission of voice or messages between telephone exchanges and telegraph messages, and carrier access charges and customers access line charges established by the Federal Communications Commission or the South Carolina Public Service Commission".

The issue is whether the charges in question are "charges for the ways or means for the transmission of the voice or of messages".

In Revenue Ruling #89-14, the Commission determined that certain communication services fall within the provisions of Code Section 12-35-1150, for sales and use tax purposes. One of the services held subject to the tax was "Database Access Transmissions", which the Commission defined as:

Transmission of computer database information and programs by and through a modem and telephone lines, whether automatically transmitted or transmitted as a result of a subscriber accessing a computer. Charges may be based on the amount of time the transmission is utilized.

Conclusion:

Charges by XYZ for X computer access time are subject to sales and use tax, pursuant to Code Section 12-35-1150.

The Commission has determined that database access transmissions would be subject to sales and use tax effective September 1, 1989; therefore, XYZ is liable for sales and use taxes on its computer access time effective September 1, 1989.