



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

SC INFORMATION LETTER #92-8

TO: Vicki Ringer
Public Information Director

FROM: John McCormack, Tax Manager
Tax Policy and Appeals Department

DATE: February 19, 1992

SUBJECT: Religious Publications
(Sales and Use Tax)

REFERENCE: S. C. Code Ann. Section 12-36-2120 (Supp. 1991)

AUTHORITY: S. C. Code Ann. Section 12-4-320 (Supp. 1991)
SC Revenue Procedure #87-3

SCOPE: An Information Letter is a temporary document issued for the purpose of disseminating general tax information and to respond to technical questions from within the Commission which are not related to a specific set of facts.

Recently, the South Carolina Supreme Court reviewed the constitutionality of the sales and use tax exemption granted for religious publications. This exemption, pursuant to Code Section 12-36-2120(8), provides, in part, that sales of religious publications are exempt from South Carolina sales and use tax. Examples of religious publications include bibles, church bulletins, hymnals, Sunday School material, and prayer books.

The Court found the exemption granted in Code Section 12-36-2120(8) to religious publications violates the establishment clause of the First Amendment and is, therefore, unconstitutional. The Court held its determination was controlled by the United States Supreme Court decision in Texas Monthly, Inc. v. Bullock, 489 U.S. 1, 109 S. Ct. 890 (1989). Therefore, sales of religious publications are subject to the sales and use tax.

Taxpayers responsible for the sales tax or the use tax, as a result of the Court's ruling, should either (1) file or amend a sales and use tax return, Form ST-3, for each month in question, or (2) submit a letter that itemizes the tax due on a per month basis and not submit tax returns. The returns or letter, and any tax due, should be mailed to the following address:

South Carolina Tax Commission
P.O. Box 125
Columbia, South Carolina 29214

In determining who is responsible for remitting the sales or use tax on sales or purchases of religious publications, the following points should be noted:

Sales by In-State Retailers:

South Carolina's sales tax is imposed upon persons engaged in the business of selling tangible personal property at retail (i.e. retailers). Accordingly, South Carolina retailers are liable for the sales tax due on sales of religious publications, including the Holy Bible, made on or after February 21, 1989, the date of the Texas Monthly decision.

See exception below for sales by certain nonprofit organizations that may be exempt from sales tax.

Purchases From Out-of-State Retailers:

The State use tax is imposed upon the use, storage, or consumption of tangible personal property purchased at retail from out-of-state retailers. South Carolina purchasers are liable for the use tax on purchases of religious publications, including the Holy Bible, made on or after February 21, 1989, the date of the Texas Monthly decision.

Responsibility for remitting use tax due depends upon whether the out-of-state retailer is required or authorized by the Tax Commission to collect South Carolina use tax.

Certain out-of-state retailers are required or authorized by the Tax Commission to collect and remit the use tax. Such retailers, not the purchaser, should remit the use tax due on all sales of religious publications, including the Holy Bible, made on or after February 21, 1989. The purchaser, however, remains liable for the use tax if the out-of-state retailer does not remit the tax.

In some situations, out-of-state retailers are not required or authorized by the Tax Commission to collect and remit the use tax. Since the purchaser is liable for the use tax, the purchaser must remit the use tax on any purchase of religious publications made on or after February 21, 1989.

Persons who have purchased religious publications from out-of-state retailers may wish to contact the retailer to determine whether the retailer has remitted the use tax.

See exception below for purchases from certain nonprofit organizations that may be exempt from the use tax.

Exception - Sales by or Purchases From Nonprofit Organizations:

South Carolina law, pursuant to Code Section 12-36-2120(41), exempts from the sales and use tax sales by or purchases from certain nonprofit organizations. To enjoy the exemption, organizations which qualify are required to complete and file Form ST-387, Application for

Sales Tax Exemption. Upon approval of the application, the Tax Commission issues the organization an exemption certificate. Therefore, sales by or purchases from certain nonprofit organizations having a South Carolina exemption certificate are exempt from South Carolina sales and use tax as provided below:

1. Sales by Nonprofit Organizations (In-State Retailers) - Sales of religious publications by nonprofit in-state retailers who have a South Carolina exemption certificate are exempt from South Carolina sales tax.
2. Purchases from Nonprofit Organizations (Out-of-State Retailers) - Purchases of religious publications from nonprofit out-of-state organizations who have a South Carolina exemption certificate are exempt from South Carolina use tax.

Retailers who do not have an exemption certificate, but feel they may qualify for the exemption, may apply for an exemption certificate. If approved, the exemption certificate is valid retroactively to July 1, 1989 (the effective date of Code Section 12-36-2120(41)). Therefore, sales by or purchases from nonprofit organizations who obtain an exemption certificate are not subject to South Carolina sales and use tax on or after July 1, 1989. For more information concerning application for the sales and use tax exemption available to certain nonprofit organizations, see SC Revenue Procedure #89-5.

Penalties:

The Tax Commission will waive penalties for all taxpayers remitting the sales and use tax on sales or purchases of religious publications from February 21, 1989 to March 20, 1992.

Additional Questions:

For further information, please call the Tax Commission's Administrative Division at 803-737-4405, Gary Heuer at 803-737-4744, or John McCormack at 803-737-4438.