

SC PRIVATE LETTER RULING #04-2

SUBJECT: Construction Debris Disposal Service  
(Sales and Use Tax)

REFERENCES: S. C. Code Ann. Section 12-36-910 (2000)  
S. C. Code Ann. Section 12-36-1310 (2000)  
S. C. Code Ann. Section 12-36-60 (2000)  
S. C. Code Ann. Section 12-36-100 (2000)

AUTHORITY: S. C. Code Ann. Section 12-4-320 (2000)  
S. C. Code Ann. Section 1-23-10(4) (2000)  
SC Revenue Procedure #03-1

SCOPE: A Private Letter Ruling is a written statement issued to a specific taxpayer by the Department to apply principles of law to a specific set of facts or a particular tax situation. **A Private Letter Ruling is an advisory opinion; it does not have the force and effect of law, and is not binding on the person who requested it or the public.** It is, however, the Department's opinion limited to the specific facts set forth, and is binding on agency personnel only with respect to the person to whom it was issued and only until superseded or modified by a change in statute, regulation, court decision, or advisory opinion, providing the representations made in the request reflect an accurate statement of the material facts and the transaction was carried out as proposed.

Question:

Are the charges by ABC, Inc. (as described in the facts) for delivering a garbage container to a construction site and disposing of construction waste placed in the container subject to the sales and use tax?

Conclusion:

No, charges by ABC, Inc. (as described in the facts) for delivering a garbage container to a construction site and disposing of construction waste placed in the container are not subject to the sales and use tax.

Facts:

From time to time, contractors will need construction debris hauled away to area landfills.

ABC, Inc. delivers containers (dumpsters) at construction sites and, when filled, disposes the waste. A container holds up to five tons of construction waste and is provided by ABC, Inc. to every customer. ABC, Inc. does not dispose of construction debris for persons who own their own container.

Each customer is charged the following

Delivery	\$ 50.00
Rent	\$ 2.50 per day
Dump	\$100.00
Disposal	\$ 28.00
Fuel Surcharge	\$ 4.88 per dump

Discussion:

Code Section 12-36-910 imposes "a sales tax, equal to five percent of gross proceeds of sales, upon every person engaged ... within this State in the business of selling tangible personal property at retail."

Code Section 12-36-1310 imposes a "use tax ... 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."

The term "tangible personal property" is defined in Code Section 12-36-60, in part, to mean:

personal property which may be seen, weighed, measured, felt, touched, or which is in any other manner perceptible to the senses."

The term "sale" is defined in Code Section 12-36-100 to mean:

any transfer, exchange, or barter, conditional or otherwise, of tangible personal property for a consideration including:

- (1) a transaction in which possession of tangible personal property is transferred but the seller retains title as security for payment, including installment and credit sales;
- (2) a rental, lease, or other form of agreement;
- (3) a license to use or consume; and
- (4) a transfer of title or possession, or both.

From time to time it is necessary to determine if the transaction is a sale or rental of tangible personal property or the furnishing of a service. The so-called "true object" test is generally used to delineate sales of services from sales of tangible personal property.

The "true object" test is best described in 9 Vanderbilt Law Review 231 (1956), wherein it is stated:

The true test then is one of basic purpose of the buyer. When the product of the service is not of value to anyone other than the purchaser, either because of the confidential character of the product, or because it is prepared to fit the purchaser's special need - a contract or will prepared by a lawyer, or the accident investigation report prepared for an insurance company - this fact is evidence tending to show that the service is the real purpose of the contract. When the purpose of a contract is to produce an article which is the true object of the agreement, the final transfer of the product should be a sale, regardless of the fact that special skills and knowledge go into its production. Under this analysis, printing work, done on special order, and of significant value only to the particular customer, is still a sale. The purchaser is interested in the product of the services of the printer, not in the services per se. Similarly, it would seem that contracts for custom-produced articles, be they intrinsically valuable or not, should be classified as sales when the product of the contract is transferred.

The Vanderbilt Law Review article, in quoting *Snite v Department of Revenue*, 398 Ill. 41, 74 N.E.2d. 877 (1947), also establishes the following general rule:

If the article sold has no value to the purchaser except as a result of services rendered by the vendor, and the transfer of the article to the purchaser is an actual and necessary part of the services rendered, then the vendor is engaged in the business of rendering service, and not in the business of selling at retail. If the article sold is the substance of the transaction and the service rendered is merely incidental to and an inseparable part of the transfer to the purchaser of the article sold, then the vendor is engaged in the business of selling at retail, and the tax which he pays ... [is measured by the total cost of article and services]. If the service rendered in connection with an article does not enhance its value and there is a fixed or ascertainable relation between the value of the article and the value of the service rendered in connection therewith, then the vendor is engaged in the business of selling at retail, and also engaged in the business of furnishing service, and is subject to tax as to the one business and tax exempt as to the other.

While the above quotes do not establish rigid rules, they do provide general guidance in determining the purpose of a transaction, and are particularly helpful in addressing the issues at hand.

A similar issue was addressed by the State of Virginia in Ruling of the Tax Commissioner #91-275. In that ruling the Tax Commissioner addressed the treatment of portable toilets and whether they should be treated in the same manner as the taxpayer's refuse disposal operation. The Tax Commissioner of Virginia held:

It has been the longstanding policy of the department to treat the lease or rental of portable toilets as a taxable transaction. The "true object" of the refuse service provided by the Taxpayer is the actual pickup and removal of refuse. The "true object" of the portable toilet operation is the provision of tangible personal property. The waste removal in the portable toilet operation is incidental to the provisions of the toilets. ...

Based on the above and the facts provided by the taxpayer, the true object of the taxpayer's business is the providing of a service. Customers are hiring the taxpayer to haul away and dispose of construction waste. Customers are not renting containers from the taxpayer. Such containers are being used and consumed by the taxpayer in providing a service.

However, it is important to note that if the taxpayer was only providing the container and was not providing the service of hauling away and disposing of the waste (e.g. the customer disposed of the waste or hired a third party to dispose of the waste), then the charge for the container would be subject to the tax as a rental of tangible personal property.

In addition, since the taxpayer provides every customer a container and the true object of the transaction and the taxpayer's method of operating is the providing of a service, the itemized charges are a part of the total charge for the service provided and are not subject to the tax.

Therefore, charges by the taxpayer (as described in the facts) for delivering a garbage container to a construction site and disposing of construction waste placed in the container are not subject to the sales and use tax. However, sales to, or purchases by, the taxpayer of tangible personal property for use in providing its service (e.g., containers, trucks, etc.) are subject to the sales and use tax.

Note: Sales and use taxes are transaction taxes. Therefore, if the taxpayer changes its method of operating, the application of the sales and use tax to the taxpayer's business may also change.

SOUTH CAROLINA DEPARTMENT OF REVENUE

s/Burnet R. Maybank  
Burnet R. Maybank, Director

January 12, 2004  
Columbia, South Carolina