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State of South Carolina  
**Department of Revenue**  
301 Gervais Street, P. O. Box 125, Columbia, South Carolina 29214  
Website Address: <http://www.sctax.org>

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SC PRIVATE LETTER RULING #04-3

SUBJECT: Sales Between Related Entities  
(Sales and Use Tax)

REFERENCES: S. C. Code Ann. Section 12-36-910(A) (Supp. 2000)  
S. C. Code Ann. Section 12-36-60 (Supp. 2000)  
S. C. Code Ann. Section 12-36-100 (Supp. 2000)  
S. C. Code Ann. Section 12-36-110 (Supp. 2000)  
S. C. Code Ann. Section 12-36-2120(36) (Supp. 2000)  
S. C. Code Ann. Section 12-36-1310 (Supp. 2000)

AUTHORITY: S. C. Code Ann. Section 12-4-320 (Supp. 2000)  
S. C. Code Ann. Section 1-23-10(4) (Supp. 2003)  
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set forth, and is binding on agency personnel only with respect to the person to whom it was issued and only until superseded or modified by a change in statute, regulation, court decision, or advisory opinion, providing the representations made in the request reflect an accurate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 transactions described in the Facts in which 123 Printing produces and delivers printed materials to an affiliated company or its designee, and internal accounting entries are made to reflect these transactions, subject to the South Carolina sales and use tax?

Conclusion:

The transactions described in the Facts in which 123 Printing produces and delivers printed materials to an affiliated company or its designee, and internal accounting entries are made to reflect these transactions, are subject to the South Carolina sales and use tax provided the printed materials are delivered by 123 Printing, the U.S Postal Service or a common carrier to the affiliate or its designee at a location in South Carolina. If the printed materials are delivered by 123 Printing, the U.S Postal Service or a common carrier to the affiliate or its designee at a location outside of South Carolina in accordance with Code Section 12-36-2120(36), then the transaction is exempt from the sales tax.

Note: If the printed materials are delivered by 123 Printing, the U.S Postal Service or a common carrier to the affiliate or its designee at a point outside of South Carolina, the affiliate may be liable for the use tax if it returns the printed materials to South Carolina for first use in South Carolina. See Code Section 12-36-1310.

Facts:

JMG Services, doing business as 123 Printing (“123”), is a printing company located in South Carolina. 123 produces various types of printed material including, but not limited to, forms, letters, statements, checks, directories, and catalogs.

As part of its business, 123 produces printed materials for affiliated companies. These affiliates include entities related through common ownership. When an affiliate needs printed materials, it will electronically submit an order through 123’s computerized ordering system. The information contained within this electronic order includes the actual type of printed materials and quantity to be produced. Based on the orders submitted, the items are printed and shipped either directly to the affiliate or to the affiliate’s designee. The affiliate does not resell the printed materials to its designee.

In the case of any transaction between 123 and its affiliates, 123 does not currently create a paper bill or invoice for the printed materials produced. Because of 123’s automated ordering process, paper bills or invoices are unnecessary. Affiliates are able to use on-line technology to verify orders and amounts to be charged. The affiliates do not physically transfer cash to 123 in consideration for the printed materials. Internal accounting entries are made on the books of 123 and its affiliates to reflect these transactions. Through these accounting entries, 123’s books ultimately show an increase in sales and a decrease in inventory and the affiliates’ books reflect a decrease in cash and an increase in expenses.

123 is a separate legal entity from its affiliates. 123 files income tax returns separate from its affiliates, maintains a separate place of business, separate books and records for accounting purposes, and operates separate and distinct lines of business.

Discussion:

Code Section 12-36-910(A) reads:

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 12-36-60 defines the term "tangible personal property" to mean:

personal property which may be seen, weighed, measured, felt, touched, or which is in any other manner perceptible to the senses. It also includes services and intangibles, including communications, laundry and related services, furnishing of accommodations and sales of electricity, the sale or use of which is subject to tax under this chapter and does not include stocks, notes, bonds, mortgages, or other evidences of debt.

Code Section 12-36-110 defines the terms "sale at retail" and "retail sale," in part, as follows:

Sale at retail and retail sale mean all sales of tangible personal property except those defined as wholesale sales. The quantity or sales price of goods sold is immaterial in determining if a sale is at retail.

Code Section 12-36-100 defines the terms "sales" and "purchase" to mean:

"Sale" and "purchase" 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.

In *International Harvester Company v. Wasson*, 281 SC 458, 316 S.E. 2d 378 (1984), the South Carolina Supreme Court held in part:

Section 12-35-510 [now Code Section 12-36-910], South Carolina Code of Laws, 1976, as amended, imposes the sales tax "upon every person engaged or continuing within this State in the business of selling at retail any tangible personal property ...." Thus to be subject to the tax, the plaintiff must be in business of making retail sales in South Carolina. ... The second criteria for the sales tax is that the sales be retail sales. Section 12-35-110 says that retail sales are any sales except those defined as wholesale sales. ... The final criteria for being a taxable sale is that the sale must be a sale within South Carolina. Section 12-35-100 [now Code Section 12-36-100] defines a sale as any transfer of tangible personal property for a consideration. Thus, if the transfer of the trucks, i.e., delivery, took place in South Carolina, the sale would take place in this State. ...

Based on the above, the transactions described in the facts are subject to the sales tax if 123 is in the business of making retail sales in South Carolina, the sales are retail sales, and the sale (i.e., delivery) took place in South Carolina.

In reviewing the facts, 123 is located and conducting business in South Carolina and is transferring printed materials to its affiliates for their own use. Therefore, if there is consideration paid for this transfer, then the transfer is a sale and all three requirements of the statute are met and the transactions are subject to the sales tax when delivery takes place in South Carolina.

In Commission Decision #90-25, the Commissioners held that accounting entries between two related entities established that a charge for a taxable communication service was made and therefore established the existence of consideration. In that ruling, the Commissioners held:

The second argument raised by this dispute is whether there was a taxable sale of services to ABC by XYZ. The argument is that there was no consideration given by ABC to XYZ on the services provided by XYZ and thus there was no taxable sale. In short XYZ argues

it was providing services to ABC at no charge. We are again unable to agree. We find there was consideration.

We find as a factual matter that a retail sale occurred when XYZ provided services to ABC. The records of XYZ show that accounting entries were made establishing a charge for the services rendered to ABC. In fact the charges were accrued upon the books of XYZ as income and set out as expenses on the books of ABC. Further, the income from these charges was shown as income on the partnership returns filed by XYZ and the expenses were shown as deductions on the partnership returns of ABC. These acknowledgements of the existence of consideration for the services are sufficient to establish a taxable charge. There is no requirement that the charge be collected in order to be a taxable charge. All that is required is that the charge result from a fixed or unconditional right to receive the sum. Franklin County Distilling Co. v. Comm. I.R.S., 125 F.2d 800. We find there was a fixed charge in the instant case and that the tax assessed in the audit is properly due.

Based on the above, the transaction between 123 and its affiliates are sales as defined in Code Section 12-36-100.

Finally, Code Section 12-36-2120(36) exempts from the tax:

tangible personal property where the seller, by contract of sale, is obligated to deliver to the buyer, or to an agent or donee of the buyer, at a point outside this State or to deliver it to a carrier or to the mails for transportation to the buyer, or to an agent or donee of the buyer, at a point outside this State

Based on the above, the transactions described in the Facts in which 123 Printing produces and delivers printed materials to an affiliated company or its designee, and internal accounting entries are made to reflect these transactions, are subject to the South Carolina sales and use tax provided the printed materials are delivered by 123 Printing, the U.S Postal Service or a common carrier to the affiliate or its designee at a location in South Carolina. If the printed materials are delivered by 123 Printing, the U.S Postal Service or a common carrier to the affiliate or its designee at a location outside of South Carolina in accordance with Code Section 12-36-2120(36), then the transaction is exempt from the sales tax.

However, if the printed materials are delivered by 123 Printing, the U.S Postal Service or a common carrier to the affiliate or its designee at a point outside of South Carolina, the affiliate may be liable for the use tax if it returns the printed materials to South Carolina for first use in South Carolina. See Code Section 12-36-1310.

SOUTH CAROLINA DEPARTMENT OF REVENUE

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

April 5, 2004  
Columbia, South Carolina