

SC PRIVATE LETTER RULING #08-1

**SUBJECT:** Charges for Gas Cylinders Provided to a Manufacturer  
(Sales and Use Tax)

**REFERENCES:** S. C. Code Ann. Section 12-36-120 (2000)  
S. C. Code Ann. Section 12-36-2120(9) & (14) (2000)  
SC Regulation 117-302.1 (Supp. 2007)

**AUTHORITY:** S. C. Code Ann. Section 12-4-320 (2000)  
S. C. Code Ann. Section 1-23-10(4) (2005)  
SC Revenue Procedure #05-2

**SCOPE:** A Private Letter Ruling is an advisory opinion issued to a specific taxpayer by the Department to apply principles of law to a specific set of facts or a particular tax situation. It is 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set forth, and is binding on agency personnel only with respect to the person to whom it was issued and only until superseded or modified by a change in statute, regulation, court decision, or another Departmental advisory opinion, providing the representations made in the request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:

Is an annual charge by a welding supply company to MNO, Inc. for gas cylinders when purchasing gas for use in welding machines used in manufacturing tangible personal property for sale (as described in the facts) subject to the sales and use tax?

Conclusion:

The sale of gas by a welding supply company to MNO, Inc. for use in welding machines used in manufacturing tangible personal property for sale (as described in the facts) is exempt or excluded from the sales and use tax under Code Sections 12-36-2120(9) and 12-36-120.

Since a cylinder was provided by the welding supply company to MNO, Inc. as part of the initial sale of gas and a cylinder is being provided as part of each subsequent sale of gas (as described in the facts), then the cylinders are incidental to the sale of the gas since they are filled with the gas being sold. As such, each sale by the welding supply company to MNO, Inc. of gas for use in welding machines used in manufacturing tangible personal property for sale, and the annual charge by the welding supply company to MNO, Inc. for the cylinders containing the gas being sold (as described in the facts), are exempt or excluded from the sales and use tax under Code Sections 12-36-2120(9) and 12-36-120.

Note: The sale of welding gas for uses other than manufacturing tangible personal property for sale is subject to the sales and use tax. As such, the entire sale of the welding gas and cylinder for uses other than manufacturing tangible personal property for sale is subject to the sales and use tax. In addition, the sale of an empty cylinder is subject to the tax since the cylinder is not being used incident to the sale and delivery of gas and is a storage tank subject to the tax. (See SC Regulation 117-302.5(B)(7).)

Facts:

MNO, Inc. (“MNO”) is engaged in the business of manufacturing stairs, handrails, and other miscellaneous metal products for sale.

In its manufacturing process, MNO uses welding machines in manufacturing its various products and purchases gas for use in these welding machines.

As part of its purchase of gas for use in its welding machines, MNO pays its welding supply company an annual fee for the gas cylinders in which it receives the gas. Payment for the gas is made as the gas is purchased during the year. With each purchase of gas, MNO returns an empty gas cylinder to the welding supply company and receives another gas cylinder containing the gas it has purchased.

As part of this purchase arrangement, MNO has never received an empty cylinder from its welding supply company. Upon entering this agreement, MNO paid the initial annual fee, purchased the gas needed for its welding machines, and received the first cylinder containing the purchased gas. With each subsequent purchase of gas, MNO exchanged an empty cylinder for one containing the gas purchased as described above.

The issue at hand is whether this separate charge for the gas cylinder is subject to the tax.

Discussion:

Code Section 12-36-2120(9) exempts from the sales and use tax the gross proceeds of sales and sales price of:

coal, or coke or other fuel sold to manufacturers, electric power companies, and transportation companies for:

- (a) use or consumption in the production of by-products;

(b) the generation of heat or power used in manufacturing tangible personal property for sale. For purposes of this item, "manufacturer" or "manufacturing" includes the activities of a processor;

(c) the generation of electric power or energy for use in manufacturing tangible personal property for sale; or

(d) the generation of motive power for transportation. For the purposes of this exemption, "manufacturer" or "manufacturing" includes the activities of mining and quarrying;

Code Section 12-36-120 defines the terms "wholesale sale" and "sale at wholesale" to mean, in part, the sale of:

(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;

SC Regulation 117-302.1 states with respect to the exclusions authorized above in Code Section 12-36-120:

Purchases of tangible personal property are not subject to the tax under Code Section 12-36-120 if the tangible personal property:

(a) becomes an ingredient or component part of tangible personal property manufactured or compounded for sale; or,

(b) is used directly in manufacturing, compounding or processing tangible personal property for sale. By "used directly" is meant that the materials or products so used come in direct contact with and contribute to bring about some chemical or physical change in the ingredient or component properties during the period in which the fabricating, converting or processing takes place. It is not necessary that such materials or products be used up or entirely consumed, provided there is a compliance with the requirements set forth herein.

These exclusions apply to:

(a) odorants purchased by gas companies and used in compounding gas for sale.

(b) chemicals, such as soda, ash, alum, chlorine, etc., used in treating water for sale by municipalities and others engaged in the business of processing or compounding water for sale.

(c) refrigerants used by manufacturers to produce ice for sale.

(d) acetylene, oxygen, and other gases sold to manufacturers or compounders which enter into and become an ingredient or component part of the tangible personal property or products which he manufactures or compounds for sale, or which are used directly in fabricating, converting, or processing the materials or products being manufactured or compounded for sale.

(e) plates attached by the manufacturer to his product for identification purposes and which become a part of the product.

These exclusions do not apply to sales of acetylene, oxygen, and other gases for use by [repairmen], welders, dentists, junk dealers, and others [and these sales] are subject to the sales or use tax, whichever applies.  
(Emphasis added.)

Therefore, the sale of the gas for use in welding machines used in manufacturing tangible personal property for sale is exempt or excluded from the sales and use tax under Code Sections 12-36-2120(9) and 12-36-120.

The next issue concerns the taxability of the cylinders.

With respect to containers, the law provides an exclusion and an exemption. Code Section 12-36-120 defines the terms “wholesale sale” and “sale at wholesale” to mean, in part, the sale of:

(4) materials, containers, cores, labels, sacks, or bags used incident to the sale and delivery of tangible personal property ....

Code Section 12-36-2120 exempts from the tax:

(14) wrapping paper, wrapping twine, paper bags, and containers, used incident to the sale and delivery of tangible personal property.

As such, South Carolina considers the vendor to be the user or consumer of the container when such is used incident to the sale and delivery of the item being sold. Purchases of such containers by the welding supply company are therefore not subject to the tax. However, when the welding supply company sells the gas, then the purchase of the cylinder is an expense of the welding supply company and all charges by the welding supply company for the gas and the cylinder used to deliver the gas are either subject to the tax or exempt, depending on whether or not the gas being sold qualifies for an exemption.

Based on the above, the sale of gas by a welding supply company to MNO, Inc. for use in welding machines used in manufacturing tangible personal property for sale (as described in the facts) is exempt or excluded from the sales and use tax under Code Sections 12-36-2120(9) and 12-36-120. Since a cylinder was provided by the welding supply company to MNO, Inc. as part of the initial sale of gas and a cylinder is being provided as part of each subsequent sale of gas (as described in the facts), then the cylinders are incidental to the sale of the gas since they are filled with the gas being sold. As such, each sale by the welding supply company to MNO, Inc. of gas for use in welding machines used in manufacturing tangible personal property for sale, and the annual charge by the welding supply company to MNO, Inc. for the cylinders containing the gas being sold (as described in the facts), are exempt or excluded from the sales and use tax under Code Sections 12-36-2120(9) and 12-36-120.

Note: The sale of welding gas for uses other than manufacturing tangible personal property for sale is subject to the sales and use tax. As such, the entire sale of the welding gas and cylinder for uses other than manufacturing tangible personal property for sale is subject to the sales and use tax. In addition, the sale of an empty cylinder is subject to the tax since the cylinder is not being used incident to the sale and delivery of gas and is a storage tank subject to the tax. (See SC Regulation 117-302.5(B)(7).)

SOUTH CAROLINA DEPARTMENT OF REVENUE

s/Ray N. Stevens  
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Ray N. Stevens, Director

February 29, 2008  
Columbia, South Carolina