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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 #12-1

**SUBJECT:** Broadcasting Software for Radio and Television Stations and Cable Television Systems  
(Sales and Use Tax)

**REFERENCES:** S. C. Code Ann. Section 12-36-2120(26) (2000)  
SC Regulation 117-328 (Supp. 2010)

**AUTHORITY:** S. C. Code Ann. Section 12-4-320 (2000)  
S. C. Code Ann. Section 1-23-10(4) (2008)  
SC Revenue Procedure #09-3

**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set forth, and is binding on agency personnel only with respect to the person to whom it was issued and only until superseded or modified by a change in statute, regulation, court decision, or another Departmental advisory opinion, providing the representations made in the request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 the broadcasting software sold by XYZ Corporation, as described in the facts, exempt from the sales and use tax under Code Section 12-36-2120(26)?

Conclusion:

The broadcasting software sold by XYZ Corporation, as described in the facts, is exempt from the sales and use tax under Code Section 12-36-2120(26) when sold to radio stations, television stations and cable television systems. It is, when sold in tangible form, a part for an exempt machine – the server dedicated for scheduling, and initiating the broadcast of, programs, commercials and public service announcements.

Note: Software, regardless of the purpose for which it is used or to whom it is sold, that is sold and delivered by electronic means via telephone lines, the Internet, a wireless network, or any other wireless connection is not subject to the sales and use tax, provided no part of the software, including back-up tapes, diskettes, or flash drives, is delivered by tangible means.

However, charges by an Application Service Provider (ASP) for customer access to the ASP website and use of the software on that website are subject to the sales and use tax under Code Sections 12-36-910(B)(3) and 12-36-1310(B)(3), unless otherwise exempt under Code Section 12-36-2120.

For information on software, see SC Revenue Rulings #11-2 and #03-5. For information on Application Service Providers, see SC Revenue Ruling #06-8 and SC Regulation 117-329.

Facts:

XYZ Corporation (d/b/a 123 Communications) sells broadcasting transmitters, hardware and broadcasting software.

The broadcasting software is used to program the broadcasting schedule. This software schedules all programming for broadcast, places commercials and public service announcements, and creates "programming logs" maintained by the customer. The software also automatically initiates the broadcasting of all programs, commercial and public service announcements. It is installed in a server dedicated for this purpose.

The software is primarily sold and delivered electronically; however, it may also be sold and delivered via a disk drive or tape.

Discussion:

Code Section 12-36-2120(26) exempts from the sales and use tax:

all supplies, technical equipment, machinery, and electricity sold to radio and television stations, and cable television systems, for use in producing, broadcasting, or distributing programs. For the purpose of this exemption, radio stations, television stations, and cable television systems are deemed to be manufacturers[.]

SC Regulation 117-328, concerning radio and televisions stations, states in part:

Code Section 12-36-2120(26) exempts from the tax the sale of "all supplies, technical equipment, machinery and electricity sold to radio and television stations, and cable television systems, for use in producing, broadcasting or distributing programs. For the purpose of this exemption, radio, and television stations, and cable television systems are deemed to be manufacturers."

In light of the last sentence hereinabove, another statutory exemption (Code Section 12-36-2120(17)) is available. It reads that there is exempted from the measure of the tax levied, assessed or payable, "The gross proceeds of the sale of ... machines used in ... compounding, processing and manufacturing of tangible personal property; provided that the term 'machines,' as used in this article, shall include the parts of such machines, attachments and replacements therefor which

are used, or manufactured for use, on or in the operation of such machines and which are necessary to the operation of such machines and are customarily so used; but this exemption shall not include automobiles or trucks ..."

An AM radio station is defined as a broadcasting station licensed by the Federal Communications Commission for the transmission of radiotelephone emissions primarily intended to be received by the general public and operated on a channel in the band 535-1605 kc/s. An FM radio station, including non-commercial educational radio stations, would come within the same definition except that it is operated on a channel in the band 88.1-107.9 mc/s. A television broadcasting station would also come within the same definition except that it is licensed to transmit both visual and aural radiotelephone emissions and is to be operated in the 54-890 mc/s frequency.

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The term "technical equipment and machinery" is defined as specialized equipment and machinery peculiar to the industry when purchased for use directly in preparing programs or broadcasting. The term shall likewise include replacement parts and attachments therefor, and power wiring or cable connecting exempt technical equipment and machinery when such wiring is not built into and a part of a building or structure.

Examples of exempt technical equipment and machinery used in programming are timers, splicers, viewers, sound readers, projectors, screens, editing tables and lighting boards, darkroom equipment and machinery used for developing film for use in preparing programs, and cameras, recorders and mobile equipment and machinery (not including automobiles and trucks) used by station employees in newsgathering and in transmission.

Examples of studio technical equipment and machinery are: For radio stations, turntables, microphones, audio consoles, tape recorders, headphones and speech input equipment.

For television stations, all of the foregoing, and in addition, video switching equipment, cameras, film chains, slide projectors, film projectors, studio lighting and studio dimmer or light control boards.

Transmission equipment consists of AM, FM, and TV transmitters complete, to include coaxial cables or transmission lines connecting antennas to transmitters.

Antenna equipment consists of the antenna proper, not including towers and lights. (Note, however, when the tower is the antenna, as in AM radio, it is deemed to be exempt technical equipment.)

Purchases of broadcast testing machinery used primarily for the purpose of maintaining audio or visual transmission quality are not subject to the tax.

Machines, including typewriters, purchased for use primarily in producing program logs are exempted from the tax.

Machinery purchased for use in fabricating backdrops or props is not subject to the tax.

Subject to the tax are purchases of standard or stock articles of office equipment, such as desks, chairs, typewriters, billing machines, filing cabinets, film storage cabinets and general office supplies used in billing customers and for general office use; machinery, equipment and supplies (not including, however, tubes and replacement parts) for use in repairing technical equipment or machinery; and all purchases of building materials for use in constructing a building or structure, to include soundproofing materials for studios, radio or television towers (except as indicated hereinabove), plumbing fixtures, pipe, wiring, structural foundations (even though for exempt equipment or machinery) and air conditioning ductwork. (Note, however, that air conditioning machinery necessary to the production of live telecast and for the proper functioning of exempt technical equipment and machinery is not subject to the tax.)

Based on the above, the broadcasting software sold by ABC Corporation, as described in the facts, is exempt from the sales and use tax under Code Section 12-36-2120(26) when sold to radio stations, television stations and cable television systems. It is, when sold in tangible form, a part for an exempt machine – the server dedicated for scheduling, and initiating the broadcast of, programs, commercials and public service announcements.

Note: Software, regardless of the purpose for which it is used or to whom it is sold, that is sold and delivered by electronic means via telephone lines, the Internet, a wireless network, or any other wireless connection is not subject to the sales and use tax, provided no part of the software, including back-up tapes, diskettes, or flash drives, is delivered by tangible means.

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SOUTH CAROLINA DEPARTMENT OF REVENUE

s/James F. Etter

James F. Etter, Director

March 29 \_\_\_\_\_, 2012  
Columbia, South Carolina