



STATE OF SOUTH CAROLINA
DEPARTMENT OF REVENUE

300A Outlet Pointe Blvd., Columbia, South Carolina 29210
P.O. Box 125, Columbia, South Carolina 29214-0575

SC PRIVATE LETTER RULING #20-3

SUBJECT: Concrete Mixing Charges for Use in Road Construction Project
(Sales and Use Tax)

REFERENCES: S.C. Code Ann. Section 12-36-60 (2014)
S.C. Code Ann. Section 12-36-110 (2014)
S.C. Code Ann. Section 12-36-910 (2014)
SC Regulation 117-308 (2012)
SC Regulation 117-314 (2012)

AUTHORITY: S.C. Code Ann. Section 12-4-320 (2014)
S.C. Code Ann. Section 1-23-10(4) (2005)
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set forth, and is binding on agency personnel only with respect to the person to whom it was issued and only until superseded or modified by a change in statute, regulation, court decision, or another Departmental advisory opinion, providing the representations made in the request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

Are fees charged to MNO Corporation by the operator of a mobile concrete batch plant for mixing concrete for use in a road construction project, as described in the facts, subject to sales tax?

CONCLUSION

Fees charged to MNO Corporation by the operator of a mobile concrete batch plant for mixing concrete for use in a road construction project, as described in the facts, are not subject to sales tax. The true object of the transaction is providing a mixing service. However, MNO Corporation's purchases of aggregates and cement for use in mixing concrete are subject to sales tax.

FACTS

MNO Corporation (“MNO”) is a road construction contractor. MNO entered into an agreement with a third party (“operator”) to place and operate a mobile concrete batch plant on a project site in South Carolina and to mix concrete for MNO’s road construction project. MNO, and not the operator, purchases all of the aggregates and cement needed for the operator to mix the concrete. The operator does provide the water needed to mix the concrete. MNO purchases the aggregates and cement from in-state suppliers, pays sales tax on these transactions, and arranges for delivery of these items to the mobile concrete batch plant. The aggregates and cement remain MNO’s property at all times, and ownership does not transfer to the operator. The operator mixes the aggregates, cement, and water into concrete and charges MNO a fee for mixing each cubic yard of concrete.

LAW AND DISCUSSION

Code Section 12-36-910(A) imposes the sales tax and provides:

A sales tax, equal to [six]¹ 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.

Thus, for the sales tax to be imposed, there must be a retail sale or a retail purchase of tangible personal property.

The terms “sale at retail” and “retail sale” are defined at Code Section 12-36-110 as:

. . . 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.

(1) The terms include:

(a) sales of building materials to construction contractors, builders, or landowners for resale or use in the form of real estate[.] (Emphasis added)

* * *

The term “building materials” is defined in SC Regulation 117-314.2, and includes cement, and any and all other tangible personal property, which becomes a part of real property.

In summary, purchases of building materials by a contractor are retail transactions and the tax is due on the material’s purchase price. However, we must determine whether the operator is selling tangible personal property or providing a service.

Tangible personal property is defined in Code Section 12-36-60 as:

[P]ersonal property which may be seen, weighed, measured, felt, touched, or which is in any other manner perceptible to the senses. It also includes services

¹ Code Section 12-36-1110 increased the state sales tax rate to 6% from 5% beginning June 2007.

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. . . . (Emphasis added)

SC Regulation 117-308 provides that:

The receipts from services, when the services are the true object of the transaction, are not subject to the sales and use tax, unless the sales and use tax is specifically imposed by statute on such services (i.e. accommodation services, communication services). . . . (Emphasis added)

The so-called “true object” test is generally used to delineate sales of tangible personal property from sales of services. This test is one of determining the basic purpose of the buyer.²

If the tangible personal property (concrete) is the true object of the transaction, the mixing service would be incidental to the sale of the tangible personal property, and the entire fee charged would be subject to the sales tax. If the true object is a mixing service, then such charges would not be considered a sale of tangible personal property.

Based on the facts provided, the true object of the transaction is providing a mixing service. Accordingly, fees charged to MNO by the operator of a mobile concrete batch plant for mixing concrete for use in a road construction project, as described in the facts, are not subject to sales tax under Code Section 12-36-910(A). However, MNO’s purchases of aggregates and cement for use in mixing concrete are subject to sales tax.

SOUTH CAROLINA DEPARTMENT OF REVENUE

s/W. Hartley Powell

W. Hartley Powell, Director

March 31 _____, 2020
Columbia, South Carolina

CAVEAT: This advisory opinion is issued to the taxpayer requesting it on the assumption that the taxpayer’s facts and circumstances, as stated, are correct. If the facts and circumstances given are not correct, or if they change, then the taxpayer requesting the advisory opinion may not rely on it. If the taxpayer relies on this advisory opinion, and the Department discovers, upon examination, that the facts and circumstances are different in any material respect from the facts and circumstances given in this advisory opinion, then the advisory opinion will not afford the taxpayer any protection. It should be noted that subsequent to the publication of this advisory opinion, changes in a statute, a regulation, or case law could void the advisory opinion.

² 9 *Vanderbilt Law Review* 231 (1956).