



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 #25-1 (Sanitized)

SUBJECT: Providing Scaffolding for the Installation of Insulation
(Sales and Use Tax)

REFERENCES: S.C. Code Ann. Section 12-36-90 (2014 & Supp. 2024)
S.C. Code Ann. Section 12-36-100 (2014)
S.C. Code Ann. Section 12-36-130 (2014 & Supp. 2024)
S.C. Code Ann. Section 12-36-910(A) (2014)
S.C. Code Regs. Ann. 117-308 (2012)
S.C. Code Regs. Ann. 117-313.3 (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set forth, and is binding on agency personnel only with respect to the person to whom it was issued and only until superseded or modified by a change in statute, regulation, court decision, or another Departmental advisory opinion, providing the representations made in the request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.

QUESTIONS:

1. In the context of insulation installation services by XYZ to a customer, whereby XYZ installs insulation into a building owned by the customer, is XYZ's use of scaffolding in furtherance of these services subject to sales tax as a rental of tangible personal property?
2. Is the delivery and subsequent removal of scaffolding owned by ABC to a job site for XYZ's use in installing insulation subject to sales tax as a rental of tangible personal property, and if so, to what extent?
3. If the delivery and subsequent removal of scaffolding by ABC to XYZ's job site is the rental of tangible personal property subject to sales tax, does South Carolina law allow a credit for sales or use taxes paid upon the original purchase of the scaffolding materials?

CONCLUSIONS:

1. Based on the facts provided, the true object of the transactions between XYZ and the customer is for the installation of insulation and not for the rental of scaffolding; therefore, XYZ's use of scaffolding in furtherance of installing insulation is not a rental of tangible personal property subject to sales tax.
2. Based on the facts provided, the delivery and subsequent removal of scaffolding owned by ABC to a job site for XYZ's use in installing insulation is a rental of tangible personal property subject to sales tax.
3. South Carolina law does not allow a credit for any sales taxes paid on the original purchase of the scaffolding materials.

FACTS:

XYZ¹ was a construction contractor and installed insulation for commercial and industrial property owners (the "customer"). XYZ frequently utilized temporary scaffolding in performing these installation services.

ABC² contracted with XYZ, ABC's only client, to deliver, install, and remove ABC owned scaffolding to XYZ's project sites. ABC never held a South Carolina retail sales tax license based on ABC's own determination that it was a contractor. On this basis, ABC paid sales tax on all of its purchases of taxable tangible personal property, including the scaffolding it delivered to XYZ's job sites.

ABC did not use the scaffolding at XYZ's job site; rather, XYZ operated, used, and otherwise exercised control over the scaffolding while it remained at XYZ's job sites in furtherance of providing insulation installation services to the customer. Neither ABC nor XYZ granted XYZ's customers, who contracted for the installation of insulation, the right to move, use, or otherwise direct the usage of the scaffolding.

ABC did not charge XYZ a rental fee or a daily/monthly charge for the use of the scaffolding. Rather, ABC charged XYZ the actual costs of labor and materials to deliver, install, and remove the scaffolding. XYZ then passed along any charges from ABC to the customers of the insulation installation services at cost plus a small mark up.

¹ XYZ merged out of existence, effective October 17, 2024, as part of a transaction that left the business under new ownership. The transactions discussed herein relate to the business conduct of XYZ on or before October 17, 2024.

² ABC was related to XYZ through similar ownership. ABC also merged out of existence, effective October 17, 2024, as part of the same transaction as described in footnote 1.

LAW AND ANALYSIS:

South Carolina law imposes “[a] sales tax, equal to [six]³ percent of the gross proceeds of sales . . . upon every person engaged or continuing within this State in the business of selling tangible personal property⁴ at retail.” S.C. Code Ann. § 12-36-910(A). The “gross proceeds of sales” means “the value proceeding or accruing from the sale, lease, or rental of tangible personal property.” S.C. Code Ann. § 12-36-90. South Carolina law does not impose the sales and use tax on the receipts from services,⁵ “when the services are the true object of the transaction.” S.C. Regulation 117-308.

Both the Department and South Carolina courts use the “true object” test to determine whether a transaction is a taxable sale or rental of tangible personal property or a nontaxable service.

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

³ S.C. Code Ann. § 12-36-910(A) imposes a 5% sales tax. S.C. Code Ann. § 12-36-1110 imposes an additional 1% sales and use tax.

⁴ South Carolina law defines “tangible personal property” as “personal property which may be seen, weighed, measured, felt, touched, or which is in any other manner perceptible to the senses.” S.C. Code Ann. § 12-36-60.

⁵ With the exception of those services on which South Carolina law specifically imposes the sales and use tax (i.e. accommodation services, communication services). S.C. Regulation 117-308.

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.

In this case, there are two separate transactions. First, the transaction between XYZ and the customer involving the installation of insulation by XYZ into the customer's building, where XYZ uses temporary scaffolding in furtherance of its installation services. Second, the transaction between ABC and XYZ, where ABC delivers, assembles, disassembles, and removes scaffolding from XYZ's job sites in exchange for a consideration. The Department must determine if these transactions were the rental of tangible personal property subject to sales tax or nontaxable services.

I. Transactions between XYZ and the customer

In this first transaction, the customer hired XYZ to install insulation in, on, or around the customer's property. While XYZ contracted with ABC for the delivery, assembly, disassembly, and removal of scaffolding at the customer's property, the customer did not rent the scaffolding equipment and would not be subject to sales tax for the use of the scaffolding.⁶ XYZ's use of the scaffolding, like other tangible personal property used in the installation of the insulation, was incidental to the purpose of the transaction between XYZ and the customer.

Furthermore, South Carolina law defines a "sale at retail" or a "retail sale" to include "sales to contractors for use in the performance of construction contracts." S.C. Code Ann. § 12-36-110(1)(e). South Carolina law also states that "building materials when purchased by . . . contractors . . . for use in adding to, repairing or altering real property are subject to either the sales or use tax at the time of purchase by such . . . contractor." S.C. Regulation 117-314.2. In such instances, the contractor is considered to be the user and consumer of the item purchased, making that transaction subject to the sales tax. This further supports the conclusion that XYZ's use of scaffolding in the performance of its installation services is not a rental of tangible personal property to the customer, as it is XYZ who is the user and consumer of the scaffolding and not the customer.

II. Transactions between ABC and XYZ

South Carolina law defines a "sale" as "any transfer, exchange, or barter, conditional or otherwise, of tangible personal property for a consideration." S.C. Code Ann. § 12-36-100. The Department previously determined businesses that temporarily provide portable toilets to others for a fee are renting tangible personal property because such transactions constitute the transfer of tangible personal property for a consideration. See S.C. Revenue Rulings #09-5 and #19-10.

⁶ If, however, there were any transactions where the customer did not hire XYZ for insulation installation services and strictly engaged in a transaction with XYZ for the rental of scaffolding, such transaction would be subject to sales tax.

In *Boggero v. South Carolina Department of Revenue*, the South Carolina Court of Appeals affirmed the Administrative Law Court's ("ALC") decision, holding that the "true object" of a transaction involving a portable toilet is the rental of tangible personal property as opposed to the furnishing of a nontaxable service. See *Boggero v. S.C. Dep't of Revenue*, 414 S.C. 277, 777 S.E.2d 842 (Ct. App. 2015). In the ALC decision, the Administrative Law Judge used the "true object" test to determine that, without the portable toilet units, there would be no need for any services, thus the services provided along with the unit were merely incidental to the transaction—the lease or use of the unit. *Eugenia Boggero, d/b/a Boggero's Portable Toilets v. South Carolina Dep't of Revenue*, 2014 WL 104827, at *6 (S.C. Admin Law Ct., January 6, 2014).

In this case, ABC temporarily provided scaffolding to XYZ for a fee. Therefore, ABC rented tangible personal property to XYZ, as it transferred tangible personal property to XYZ for a consideration. ABC also provided services in the form of delivery, assembly, and disassembly of the scaffolding at XYZ's job sites. The need for such services does not exist without the scaffolding itself. Accordingly, the services for constructing and deconstructing the scaffolding were merely incidental to, and an inseparable part of, the transfer of the scaffolding from ABC to XYZ. The "true object" of the transactions between ABC and XYZ was the rental of tangible personal property, i.e. scaffolding, and is subject to sales tax.

The fact that neither ABC nor XYZ characterized the consideration as a rental fee is irrelevant in determining the "true object" of the sale. As noted by the lower court in *Boggero*, "the characterization of the transaction through mere nomenclature cannot be controlling as to whether there is a retail sale of tangible personal property," but rather the application of the "true object" test is determinative. *Boggero's Portable Toilets*, at *7. The "true object" of the transactions at issue is the rental of tangible personal property, regardless of whether ABC ever charged a rental fee.

a. Tax Base

Because these transactions are subject to sales tax, the Department must next determine what is included in calculating the sales tax for these transactions.

Gross proceeds of sales, as defined above, include "the proceeds from the sale of tangible personal property without any deduction for . . . the cost of materials, labor, or service" or "any other expenses." S.C. Code Ann. §§ 12-36-90(1)(b)(ii) and (vii). South Carolina law defines "sales price" as "the total amount for which tangible personal property is sold, without any deduction for the cost of the property sold, the cost of the materials used, labor or service cost, interest paid, losses, or any other expenses." S.C. Code Ann. § 12-36-130. Accordingly, the tax base upon which South Carolina law imposes the sales tax includes the value proceeding or accruing from the rental of tangible personal property, without any deduction for the cost of materials, labor, services, or any other expenses.

In the case of *Meyers Arnold, Inc. v. South Carolina Tax Commission*, the Court of Appeals determined that lay away fees Meyers Arnold charged to its customers when making lay away sales were a part of the gross proceeds of sales and subject to sales tax. *Meyers Arnold, Inc. v. S.C. Tax Com'n*, 285 S.C. 303, 328 S.E.2d 920 (Ct. App. 1985). In making the connection between the lay away sales and the lay away fees, the Court stated that, "but for the lay away sales, Meyers Arnold would not receive the lay away fees." *Id.* at 307.

In this case, but for the rental of the scaffolding materials themselves, there would be no charges for labor wages, services, charges, overtime pay, other hourly services, or any other expenses that proceed or accrue from the scaffolding rentals. The entire gross proceeds of sales for the rental of scaffolding is subject to sales tax, without any deduction for cost of materials, labor, service, or any other expenses.⁷

b. Credit for Sales Taxes Previously Paid

The last item to address is whether South Carolina law allows a credit for the sales taxes ABC previously paid on the original purchase of the scaffolding materials.

South Carolina law allows taxpayers to receive a credit for sales tax previously paid only in the case of out-of-state sales. In such a case, the credit applies to use taxes and not to sales taxes. See S.C. Code Ann. § 12-36-1310(C). However, South Carolina law does not provide a credit for sales taxes previously paid under the facts and circumstances presented in this case.

ABC claims to have been a contractor, not a retailer, for the transactions at issue. As a purported contractor, ABC paid sales tax on its original purchase of the scaffolding materials. (See S.C. Regulation 117-314.2) (stating that a contractor must pay sales tax at the time of purchasing any building materials for use in adding to, repairing, or altering real property)).

A “contractor” is “any person, firm, association, or corporation making repairs, or additions to real property” and is deemed to be the user and consumer of the materials purchased in furtherance of repairing or altering real property. Id. Based on the information provided, ABC did not make any repairs, additions, or alterations to real property, nor did it use or consume the scaffolding materials in furtherance of repairing or altering real property. Rather, ABC rented tangible personal property, scaffolding materials, to XYZ for a consideration. ABC was a retailer, not a contractor. See S.C. Code Ann. § 12-36-70(1)(c) (stating that the term “retailer” includes, among other things, every person “renting, leasing, or otherwise furnishing tangible personal property for a consideration”).

⁷ S.C. Regulation 117-313.3 provides that “charges for installation incident to the sale of tangible personal property” are not subject to tax. However, the seller must separately state such charges from the sales or rental price of the property on the billing to customers. *Id.* Further, the seller’s records must show the reasonableness of these charges in relation to the sales or rental price of the property. *Id.* In determining the reasonableness of the installation charges, the Department will consider, on a case-by-case basis, whether the charges are issued in a way that would reduce the tax base beyond what is intended by the Regulation. Factors the Department will take into account to make this determination include, but are not limited to: (1) whether the charges seek to reduce the tax base by eliminating the majority or the entirety of the sales or rental price of the tangible personal property; and (2) whether the charges seek to remove from the tax base charges which are specifically included in the gross proceeds of sales, i.e., cost of materials, labor, services, and any other expenses. Lastly, the Department does not consider tangible personal property which is not affixed to real property “installed” for purposes of Regulation 117-313.3. See *Tronco’s Catering, Inc., v. S.C. Dep’t of Revenue*, 2010 WL 5781622 (S.C. Admin Law Ct., April 12, 2010); see also S.C. Technical Advice Memorandum #89-9.

Based on the facts provided, ABC operated as a retailer renting tangible personal property. ABC, as a retailer, had the option to present a resale certificate to the seller at the time of purchase, relieving the seller of its liability to remit the sales tax on the scaffolding materials; thereby shifting the liability to ABC. See S.C. Code Ann. § 12-36-950. Failing to utilize a resale certificate on its original purchases, however, does not grant ABC or any other taxpayer a credit for sales tax liability determined after the fact.⁸

CONCLUSION:

Based on the above and the facts represented to the Department, it is the Department's position that the true object of the transaction between XYZ and the customer was for the installation of insulation and not for the rental of scaffolding; therefore, XYZ's use of scaffolding in furtherance of installing insulation is not a rental of tangible personal property subject to sales tax. It is also the Department's position that the transfer of scaffolding materials from ABC to XYZ for a consideration, the charges for which were subsequently passed on to XYZ's customers, was a rental of tangible personal property and subject to sales tax. Furthermore, the entire gross proceeds of these rental sales are subject to sales tax, without any deduction for cost of materials, labor, service, or any other expenses.

SOUTH CAROLINA DEPARTMENT OF REVENUE

s/W. Hartley Powell

W. Hartley Powell, Director

September 15 _____, 2025
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.

⁸ While the Department does not guarantee a refund claim will be accepted, nothing herein prohibits ABC from seeking a refund of sales taxes paid on its original purchases, so long as the refund claim falls within the statutory time period set forth in S.C. Code Ann. § 12-54-85(F).