



SC PRIVATE LETTER RULING #88-10

TO: XYZ, Inc.

SUBJECT: Fuel Used in Tugs
(Sales Tax)

REFERENCE: S.C. Code Ann. Section 12-35-550(8) (1976)

AUTHORITY: S.C. Code Ann. Section 12-3-170 (1976)
SC Revenue Procedure #87-3

SCOPE: A Private Letter Ruling is a temporary document issued to a taxpayer, upon request, and it applies only to the specific facts or circumstances related in the request. Private Letter Rulings have no precedential value and are not intended for general distribution.

Question:

Is fuel used in tugs, owned by XYZ, Inc., subject to the State's sales and use tax?

Facts:

XYZ, Inc. operates tugs and barges throughout the east coast, primarily in North Carolina, South Carolina and Georgia. Movement of their equipment and cargo is intrastate as well as interstate.

XYZ, for example, may pull a Navy ship from Norfolk, Virginia to Charleston for repair at the Navy's shipyard. The taxpayer may also transport gasoline for a major oil company from Savannah, Georgia to Charleston. Barges are pulled from ports in other states to ports in South Carolina. In addition, a small portion of the taxpayer's business includes assisting ships in the Charleston harbor.

The taxpayer, depending on time and economic considerations, may transport cargo via the inland waterway. For use of the inland waterway, XYZ, Inc. presently pays a federal excise tax of ten cents per gallon on fuel used on any inland or intracoastal waterway.

Discussion:

South Carolina Code Section 12-35-550(8) exempts from the sales and use tax "[t]he gross proceeds of the sale of...fuel to...transportation companies...for the generation of motive power for transportation." (emphasis added)

It is an accepted practice in South Carolina to resort to the dictionary to determine the literal meaning of words used in statutes. For cases where this has been done, see Hay v. South Carolina Tax Commission 273 SC 269, 255 SE2d 837 (1979); Fennell v. South Carolina Tax Commission, 233 S.C. 43, 103 SE2d 424 (1958); Etiwan Fertilizer Co. v. South Carolina Tax Commission, 217 SC 484, 60 SE2d 682 (1950).

Black's Law Dictionary, Fifth Edition, defines "transportation" as "the movement of goods or persons from one place to another, by a carrier."

Further, Section 4042(d) of Title 12 of the U.S. Code, which pertains to a tax on fuel used on inland waterways, defines "commercial waterway transportation" as:

- any use of a vessel on any inland or intercoastal waterway of the United States -
- (A) in the business of transporting property for compensation or hire, or
- (B) in transporting property in the business of the owner, lessee, or operator of the vessel (other than fish or other aquatic animal life caught on the voyage).

XYZ, Inc. is considered to be using vessels in "commercial waterway transportation" by the federal government and remits the tax imposed by Section 4042.

Conclusion:

XYZ, Inc., is a transportation company under Code Section 12-35-550(8) and therefore the sale or purchase of fuel used in its tugs for transportation is not subject to the State's sales and use tax. However, tugs used to assist ships in the Charleston harbor are not involved in transportation and the sale or purchase of fuel for this purpose is not exempt from taxation.

SOUTH CAROLINA TAX COMMISSION

s/S. Hunter Howard Jr.

S. Hunter Howard, Jr., Chairman

s/John M. Rucker

John M. Rucker, Commissioner

s/A. Crawford Clarkson Jr.

A. Crawford Clarkson, Jr., Commissioner

Columbia, South Carolina
March 30, 1988