



SC PRIVATE LETTER RULING #88-15

TO: XYZ Computer Data, Ltd

SUBJECT: Clearing House for Telephone Receivables
(Sales and Use Tax)

REFERENCE: S.C. Code Ann. Section 12-35-1150 (1976)
S.C. Code Ann. Section 12-35-550(10) (Supp. 1987)
S.C. Code Ann. Section 12-35-510 (1976)
S.C. Code Ann. Section 12-35-810 (1976)
S.C. Code Ann. Section 12-35-140 (1976)
S.C. Code Ann. Section 12-35-90(7) (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:

1. Is XYZ Computer Data, Ltd., a clearing house for telephone receivables, liable for the tax imposed under Code Section 12-35-1150?
2. If XYZ Computer Data, Ltd. is not liable for the tax, then who is liable?

Facts:

XYZ Computer Data, Ltd., ("XYZ") an out-of-state corporation, is one of several companies throughout the United States which has established a clearing house for telephone receivables.

New technology and the breakup of the phone system, have permitted many new and innovative companies to enter the communication industry. These companies include long distance services, pay phone operators and alternative operator services. XYZ was established to allow such companies to extend their services and accommodate the needs of their customers. XYZ has

entered into contracts with these new communication companies, independent phone companies and the regional phone companies. Now, any company in the phone industry, regardless of size, can accept credit cards from other companies in the phone industry. In addition, these companies can provide operator assistance and bill calls to a specific number.

Any company, which accepts another's credit card or provides operator assistance, can forward their billing information to XYZ who will, in turn, forward it to the proper phone company. When that company receives payment from their customer, the payment is then forwarded, through XYZ, to the company which provided the service.

XYZ does not function in any state other than the state it is located in.

Discussion:

Code Section 12-35-1150 reads:

Notwithstanding any other provision of law, the gross proceeds accruing or proceeding from the charges for the ways or means for the transmission of the voice or of messages, including the charges for use of equipment furnished by the seller or supplier of the ways or means for the transmission of the voice or of messages, are subject to the license, sales or use tax, as provided by this chapter.

Code Section 12-35-90(7) defines the term "retailer" or "seller" to include, in part, "every person engaged in the business of selling or furnishing the ways or means for the transmission of the voice or of messages between persons in this State for a consideration." However, Code Section 12-35-550(10) specifically exempts from the tax "[t]he gross proceeds from toll charges for the transmission of voice or messages between telephone exchanges and telegraph messages, and carrier access charges and customer access line charges established by the Federal Communications Commission or the South Carolina Public Service Commission." (emphasis added)

Therefore, there is exempted from the tax imposed under Code Section 12-35-1150 toll charges between exchanges. In addition, charges for the right of one carrier to enter or use another carrier's system and charges for the right of a customer to enter or use a carrier or phone company's system are exempt, when such charges are established by the Federal Communication Commission or the S.C. Public Service Commission.

In further reviewing the transactions previously described, it is understood that some services are entirely provided outside of this State. Code Section 12-35-140 defines the term "tangible personal property" to include, in part, "...services, accommodations and intangibles, including communications, as are specifically provided for in this chapter (emphasis added)." Code Section 12-35-510 imposes the sales tax "upon every person engaged or continuing within this State in the business of selling at retail any tangible personal property..." Code Section 12-35-810 imposes the use tax upon "the storage, use or other consumption in this State of tangible personal property...for storage, use or consumption in this State."

In summary, the tax imposed by Code Section 12-35-1150 is imposed upon persons engaged in selling, furnishing or using communication services in South Carolina.

Conclusion:

1. XYZ is not furnishing communication services within South Carolina and is, therefore, not liable for the tax imposed under Code Section 12-35-1150.
2. South Carolina retailers providing communication services are liable for the tax on charges for such services, except for toll charges and access charges which are specifically exempt under Code Section 12-35-550(10).

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
June 23, _____, 1988