



SC PRIVATE LETTER RULING #88-16

TO: Mr. X

SUBJECT: Motor Vehicle Sale to Nonresident
(Sales Tax)

REFERENCE: S.C. Code Ann. Section 12-35-555 (Supp. 1987)

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. Was the sale of an automobile by a South Carolina dealer to a resident of West Virginia subject to the State's sales tax (Code Section 12-35-555)?
2. If the tax was erroneously paid, then is Mr. X entitled to a refund from the Tax Commission?

Facts:

S.C. Code Section 12-35-555 reads, in part:

The sale in this State of new or used motor vehicles as defined in Section 56-1-10 is taxable for purposes of this article in an amount equal to the sales tax which would be imposed on the sale in the purchaser's state of residence. The tax on the sale may not exceed the tax that would other-wise be imposed under this article.

On March 8, of this year, Mr. X purchased an automobile from a South Carolina dealer for \$5,600, plus \$280 sales tax. The dealer collected the tax based upon a chart supplied by the Tax Commission. The chart was prepared based upon the results of a questionnaire completed by the taxing authorities of the various states. The chart provided to the dealers indicates that the State of West Virginia does impose a sales tax of 5% on sales of motor vehicles. Therefore, based

upon the language in Section 12-35-555 and the aforementioned chart, the dealer charged Mr. X \$280 sales tax. This appeared to be "an amount equal to the sales tax which would be imposed on the sale in the purchaser's state of residence."

Upon titling his automobile in West Virginia, Mr. X was advised that the State of West Virginia does not impose a sales tax on sales of motor vehicles. However, that state does impose a 5% tax for the privilege of titling a motor vehicle.

Based upon the above facts, Mr. X is now requesting a refund of the \$280 paid to the South Carolina dealer.

Discussion:

1. An examination of the Code of Laws of West Virginia reveals that Section 11-15-9(d) does provide an exemption from sales tax for:

Sales of motor vehicles which are titled by the department of motor vehicles and which are subject to the tax imposed by section four, article three, chapter seventeen-a [Section 17A-3-4] of the code;

The West Virginia State Reporter of Commerce Clearing House, paragraph 50-151, reads, in part:

CERTIFICATE OF TITLE FEE-PRIVILEGE TAX.-A tax is imposed on the issuance of a certificate of title equal to 5% of the actual value of a motor vehicle at the time of certification.

2. South Carolina's sales tax is imposed at Code Section 12-35-510, and reads, in part:

....there is levied....upon every person engaged or continuing within this State in the business of selling at retail....., an amount equal to four percent..... (emphasis added)

In other words, this state's sales tax is imposed on in-state re-tailers. Code Section 12-35-610 allows the retailer to collect the tax from his customer; however, the retailer is liable for the tax, whether collected from the customer or not (Code Section 12-35-620).

Code Section 12-47-440 allows for refunds of taxes erroneously paid. That section reads, in part:

..., whenever it shall appear to any taxpayer that any.....tax.....has been erroneously, improperly or illegally....paid..., the taxpayer, may make application to the Commission to abate or refund.....such.... tax (emphasis added).

The word "taxpayer" is defined at Code Section 12-35-150 as, "any person liable for taxes under this chapter (emphasis added)."

In Furman University v. Livingston, 244 S.C. 200, 136 S.E. 2d (1964), the Supreme Court of South Carolina ruled, "[t]he right...to sue for a refund of taxes erroneously, improperly or illegally assessed is restricted to those on whom the tax liability is imposed." That case concerned the state's admissions tax, which is imposed on the purchaser.

Conclusion(s):

1. As the State of West Virginia does not impose a sales tax on sales of motor vehicles, the sale in question was not subject to the South Carolina sales tax.
2. Because Mr. X is not the taxpayer, he is not entitled to a refund from the Commission. Only the S.C. dealer is entitled to the refund, unless the dealer assigns his right to the refund, in writing, to Mr. X. (See Slater Corporation v. South Carolina Tax Commission, 280 S.C. 584, 314 S.E. 2d 31, (S.C. App. 1984) concerning assignments)

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 29, 1988