



SC PRIVATE LETTER RULING #88-18

TO: Mrs. XYZ

SUBJECT: ABC Guard Auxiliary and
ABC Guard Auxiliary National Board, Inc.
(Sales and Use Tax)

REFERENCE: S.C. Code Ann. Section 12-35-550(1) (1976)
S.C. Code Ann. Section 12-35-550(42) (1987 Supp.)
S.C. Code Ann. Section 12-35-820(2) (1976)
14 USCA Section 821 et. seq.

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.

Questions:

1. Is the ABC Guard Auxiliary exempt from the State's sales and use taxes, pursuant to S. C. Code Sections 12-35-550(1), 12-35-550(42) and 12-35-820(2)?
2. Is the ABC Guard Auxiliary National Board, Inc., as a nonprofit corporation, exempt from the State's sales and use taxes on its sales and purchases?

Facts:

1. The ABC Guard Auxiliary ("Auxiliary") was established on February 19, 1941 as a non-military organization administered by the Commandant of the Coast Guard. Section 822 of Title 14 of the Federal Code reads:

The purpose of the Auxiliary is to assist the Coast Guard:

- (a) to promote safety and to effect rescues on and over the high seas and on navigable waters;

- (b) to promote efficiency in the operation of motor boats and yachts;
- (c) to foster a wider knowledge of, and better compliance with the laws, rules, and regulations governing the operation of motorboats and yachts; and
- (d) to facilitate other operations of the ABC Guard.

Members of the Auxiliary are private citizens of the United States who are owners of various vessels, aircraft and radio stations. They must meet special training and experience requirements. The member's vessels, aircrafts and radio stations are deemed to be property of the United States when under the control of the Coast Guard. In addition, members are reimbursed from Coast Guard funds for such items as fuel, oil, etc. when assisting the Coast Guard with safety patrols, search and rescue missions and war game exercises. While performing such duties, the Auxiliary is supervised by the Commandant or his designated representative.

- 2. The ABC Guard Auxiliary National Board, Inc. ("National Board") is a nonprofit corporation, not wholly owned by the government, and separate and distinct from the Auxiliary. The National Board's purpose is "to assist any and all of the authorized activities of the U. S. ABC Guard Auxiliary", Articles of Incorporation. It is also exempt from Federal income tax under section 501(c)(3) of the Internal Revenue code and may carry out any activity permitted by that section. National Board members consist of those who are members of the Auxiliary and such members pay annual dues.

Discussion:

- 1. South Carolina Code Section 12-35-550, paragraphs (1) and (42), and 12-35-820(2) specifically exempt from the sales and use tax:
 - (1) The gross proceeds of the sale of tangible personal property or the gross receipts of any business which the State is prohibited from taxing under the Constitution or laws of the United States of America or under the Constitution of this State.
- * * * *
- (42) The gross proceeds of the sale of tangible personal property to the Federal Government, not including gross proceeds subject to the tax under [Section] 12-35-1140 and [Section] 12-35-1150 of the 1976 Code.

In Dominguez v. Schooner Brindicate, 204 F. Supp 817 (1962), the court stated that "[t]he ABCt Guard Auxiliary is a civilian organization administered by the ABC Guard under the direction of the Secretary of the Treasury. 14 USC Section 821." The ABC Guard is now under the direction of the Secretary of Transportation. In Dick V. United States, 671 F.2d 724 (1982), it was held that "[t]he United States ABC Guard Auxiliary is a volunteer organization which assists the Coast Guard in educating and protecting the boating public."

Furthermore, the Supreme Court of South Carolina in Laurens Federal Savings and Loan Association v. South Carolina Tax Commission. 236 S.C. 2, 112 S.E. 2d 716 (1960), stated that:

A corporation cannot escape state taxation merely because it was created by the federal government, nor because it was subsidized by it, nor because it is employed by the Federal government, wholly or in part, unless it is really an agency or instrumentality for the exercise of the constitutional powers of the United States.

Note: The court's decision was later reversed on other grounds. See 81 S. Ct 719, 365 U.S. 517, 5 L.Ed. 749 (1961).

2. The National Board is a nonprofit corporation. S.C. Code Sections 12-35-550 and 12-35-820(2) do not provide any exemptions for such organizations.

Regulation 117-174.60 reads:

Charitable and nonprofit organizations and institutions have no special exemptions from the sales and use taxes. Further, they are required to comply with all of the provisions of these laws relating to the filing of returns, making payments of taxes, etc.

Conclusion:

1. The ABC Guard Auxiliary is a volunteer, civilian (non-military) organization and is not an instrumentality of the federal government. Therefore sales to and purchases by the Auxiliary are subject to the State's sales and use taxes.
2. The ABC Guard Auxiliary National Board, Inc. is a nonprofit organization and therefore subject to the sales and use tax.

SOUTH CAROLINA TAX COMMISSION

s/S. Hunter Howard Jr.

S. Hunter Howard, Jr., Chairman

s/A. Crawford Clarkson Jr.

A. Crawford Clarkson, Jr., Commissioner

Columbia, South Carolina
August 10, 1988