



SC PRIVATE LETTER RULING #88-20

TO: ABC, Inc.

SUBJECT: Containers
(Sales and Use)

REFERENCE: S.C. Code Ann. Section 12-35-510 (1976)
S.C. Code Ann. Section 12-35-550(14) (1976)
S.C. Code Ann. Section 12-35-820(2) (1976)
Regulation 117-174.67
Regulation 117-174.79
Regulation 117-174.154

AUTHORITY: S.C. Code Section 12-3-170
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:

Are the gross proceeds of sales of plastic bags, corrugated cartons, and fiber drums, which are supplied to customers of ABC, exempt from sales or use tax [Code Sections 12-35-550(14) and 12-35-820(2)]?

Facts:

ABC, Inc. owns and operates a waste disposal business. As a part of its waste disposal business it picks up, transports and disposes of, or causes to be disposed of, infectious, pathological and biomedical waste from hospitals, medical testing laboratories, doctors' offices, university research centers and other health care related facilities (collectively "waste generators"). ABC has agreed, in certain of its contracts with waste generators, to supply without charge on a when asked basis, bags, corrugated boxes and fiber drums to such waste generators. S.C. Code Section 12-35-510 imposes a sales tax "upon every person engaged or continuing within this State in the business of selling at retail any tangible personal property...., an amount equal to four percent of the gross proceeds of sales of the business (emphasis added)." Code Section 12-35-515, effective July 1, 1984, imposes an additional one percent tax.

The term "gross proceeds of sales" is defined at Code Section 12-35-30, in part, as "the value proceeding or accruing from the sale of tangible personal property...."

The gross proceeds of the sales of certain items are exempt from sales tax, as provided at Code Section 12-35-550. Paragraph (14) of that section exempts, "[t]he gross proceeds of the sale of wrapping paper, wrapping twine, paper bags and containers for use incident to the delivery of tangible personal property" (emphasis added).

Regulation 117-174.67 reads:

Under the provisions of Code Section 12-35-550(14), there are exempted from the sales or use tax, containers for use incident to the delivery of tangible personal property.

This section contemplates the exemption of containers only when used incident to the sale and delivery of tangible personal property and is not intended to exempt containers as such to end users or consumers. For example: Sales of canning jars for domestic consumption are subject to the tax (emphasis added).

Regulation 117-174.79 reads:

Licensed retailers purchase free of sales or use taxes wrapping paper, wrapping twine, paper bags and containers for use incident to the delivery of tangible personal property sold by them. They also purchase tax-free materials used in packaging personal property sold by them. They also purchase tax-free materials used in packaging tangible personal property for shipment or sale.

The list below while illustrative of items falling within the Rule announced above is not exhaustive:

Souffle cups, butter chips, paper cups, paper plates, boxes and crates and glazed tissue used to package articles of food.

It will be seen that items such as straws, napkins, wooden or paper spoons and forks do not meet the requirements outlined above and, hence, must bear the tax. Such items are rather in the nature of supplies used or consumed by the retailer in the operation of his or its business (emphasis added).

Also, Regulation 117-174.154 reads, in part:

The term "wrapping paper" as used in Code Section 12-35-550(14) of the South Carolina Sales and Use Tax Law, is construed to mean paper of the kind and quality that is customarily used by merchants as a wrapping for the property which they sell to the public (emphasis added).

Discussion:

The issue is whether or not purchases of the containers in question qualify for the exemption, when such containers are not used incident to the sale and delivery of tangible personal property but used only incident to the delivery of property.

In Gay v. Canada Dry Bottling Co. of Florida, 59 So. 2d 788, the Supreme Court of Florida, stated:

The purpose of exempting from a retail sales tax such intermediate sales of containers and packaging materials appears to be, as stated in Kroger Grocery and Baking Co. v. Glander, supra [149 St. 120, 77 N.E. 2d 926]" To avoid double taxation and to prevent the increase of ultimate sales price to the consumer, for, after all, the consumer pays the whole tax reflected in the price which he pays for the finished product."

Also, note that Act. No. 176 of 1977 gave "full force and effect of law" to all regulations in place before January 1, 1977. The referenced regulations fall within that category.

Furthermore, it is well settled that administrative interpretations of statutes by the agency charged with their administration and not expressly changed by the legislative body are entitled to great weight. Marchant v. Hamilton, 309 S.E. 2d 781(1983). When, as in this case, the construction or administrative interpretation of a statute has been applied for a number of years and has not been changed by the legislature, there is created a strong presumption that such interpretation or construction is correct. Ryder Truck Lines, Inc. v. South Carolina Tax Commission, 248 S.C. 148, 149 S.E. 2d 435 (1966); Etiwan Fertilizer Company v. South Carolina Tax Commission, 217 S.C. 354, 60 SE 2d 682 (1950).

The following is quoted from 68 Am Jur 2d Sales and Use Tax, Section 10:

The sales tax law should be interpreted as the ordinary person reading it would interpret it. The statute should receive a reasonable interpretation and a practical construction, and in case of doubt weight will be given to the practical effect which a proposed construction of the statute will have. Unreasonable or absurd consequences should, if possible, be avoided. (emphasis added)

In summary, the language found at Code Section 12-35-550(14) and in the referenced regulations comports with the theory espoused in Gay v. Canada Dry, in that, sales of packaging items are exempt from taxation when such items are used to ship tangible property, which has been sold. Such treatment causes the tax to be paid on such items only once.

Conclusion:

It is therefore concluded that sales of the containers in question are subject to the sales or use tax as ABC is deemed to be the end-user.

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
October 26, 1988