



SC PRIVATE LETTER RULING #88-23

TO: ABC Aviation, Inc.

SUBJECT: Sale of Aircraft Parts; Form ST-299
(Sales Tax)

REFERENCE: S.C. Code Ann. Section 12-35-550(40) (Supp. 1987)
S.C. Code Ann. Section 12-35-1160 (1976)
S.C. Regulation 117-170

AUTHORITY: S.C. Code Ann. Section 12-3-170 (1976)
S.C. 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 ABC Aviation, Inc. liable for the sales tax on the sale of certain aircraft engines and parts purchased by XYZ Contractors where the items were installed in South Carolina and subsequently delivered to the purchaser in North Carolina?

Facts:

On April 15, 1988, ABC Aviation, Inc. sold XYZ Contractors, a foreign corporation, two airplane engines and other parts and maintenance for the total cost of \$221,238.40. The engines and other parts were installed in XYZ's aircraft at ABC's facility in South Carolina. Employees of ABC delivered the aircraft to XYZ in Charlotte, North Carolina.

At the time of the delivery of the aircraft, a Form ST-299 was executed stating that delivery of the engines and parts was made to XYZ's agent in Charlotte, North Carolina. Form ST-299 is used to acknowledge receipt of tangible personal property by the purchaser at a point outside of South Carolina, pursuant to Code Section 12-35-1160.

The aircraft which contained the new engines and parts was transported to [a foreign county], and it is not anticipated that the aircraft will return to South Carolina.

Code Section 12-35-1160 reads:

Notwithstanding any other provision of law, the sales and use tax on sales of tangible personal property delivered to the purchaser in a state other than South Carolina, may be transferred to the purchaser if the seller received from the purchaser a statement given under oath that the property was purchased for use, storage or consumption outside of South Carolina, and that the property will not be returned for use, storage or consumption in South Carolina; provided, that the statement contains a description of the property, the date of sale, the amount of the purchase price, and the city and state of delivery. The original copy of the statement shall be attached to the sales and use tax return of the seller for the period in which the sale was made and a copy shall be retained by the seller. If any such property, for which a statement provided for by this Section is received by the seller, is subsequently used, stored or consumed in this State, the sales and use tax due on such property shall be the liability of the purchaser and, in addition, the South Carolina Tax Commission shall add a penalty in an amount equal to fifty percent of the tax. The Tax Commission may forward a copy of any such statement to the Revenue Department of the state of delivery.

Discussion:

The issue is whether or not transfer of title or possession occurred in South Carolina.

Code Section 12-35-550(40) exempts from the tax:

The gross proceeds of the sales of tangible personal property where the seller by contract of sale is obligated to delivery to the buyer or to an agent of the buyer or to a donee of the buyer at a point outside of the State or to deliver it to a carrier or to the mails for transportation to the buyer, to an agent of the buyer or to a donee of the buyer at a point outside this State.

Furthermore, Regulation 117-170, part 2, reads:

Goods shipped from this State. When personal property is sold within the State and the seller is obligated to deliver it to the buyer or to an agent of the buyer at a point outside of the State or to deliver it to a carrier or to the mails for transportation to the buyer or to an agent of the buyer at a point outside this State, the retail sales tax does not apply provided the property is not returned to a point within the State. The most acceptable proof of transportation outside the State will be:

- (a) A way-bill or bill of lading made out to the seller's order and calling for delivery; or
- (b) An insurance receipt or registry issued by the United States Postal Department, or Post Office Department receipt Form 3817; or
- (c) A trip sheet signed by the seller's delivery agent and showing the signature and address of the person outside this State who received the goods delivered.

However, where tangible personal property pursuant to a sale is delivered in this State to the buyer or to an agent of his other than a common carrier the retail sales tax applies not withstanding that the buyer may subsequently transport the property out of the State. (March 23, 1984)

In State v. Communication Equipment & Contracting Company, Inc., __ Ala. App. __, 335 So.2d 123 (1976), the Court of Civil Appeals of Alabama stated the facts of the case as follows:

Taxpayer, a Delaware corporation with its principal place of business in Union Springs, Alabama, is primarily engaged in repairing telephones for over four hundred independent telephone companies in Alabama and throughout the United States.

Taxpayer sends its trucks to the independent telephone companies to pick up the instruments that need repair, and takes them to its plant in Union Springs where the repair job is performed. There the instruments are disassembled, cleaned, and examined, and if there are defective parts, they are replaced. The replacement parts do not lose their identity when installed on the telephones. The instruments are reassembled, tested, packed and returned to the customer in the taxpayer's truck to points outside the State.

The State argued that sale and delivery of the replacement parts occurred in Alabama since the parts became the property of the telephone company by accession. It was also argued that "a 'constructive delivery' to the customer occurred upon attachment of the part to the telephone" in Alabama.

The ter "accession" is defined in Black's Law Dictionary, Fifth Edition, in part, as: "[t]he right to own things that become a part of something already owned;...."

The court concluded:

Although the repair parts are enclosed in the telephone unit casing owned by customer pending delivery, the evidence consistently shows that the part maintains its identity and is easily removable while the entire telephone unit is in the taxpayer's hands. The repair part thus does not pass out of [the] taxpayer's control until actual delivery to [the] customer.

Furthermore, the Commerce Clearing House State Tax Cases Reporter, Sales and Use Taxes, Paragraph 60-028 reads, in part:

The sales tax does not extend to gross receipts from sales in which the seller is obligated, under the terms of his agreement with the purchaser, to make physical delivery of the goods sold from a point in the taxing state to a point outside that state, where the goods are not to be returned to a point within the taxing state. This holds true whether the seller makes delivery of the goods by means of his own employees or vehicles, whether he places them in the possession of a common carrier for transportation outside the taxing state, or whether he places them with the United States Postal Department for delivery by mail outside the state. It is also immaterial whether such goods are sold f.o.b. point of origin or f.o.b. destination.

This general rule is based on the doctrine enunciated by the United States Supreme Court in the case of J.D. Adams Manufacturing Co. v. Storen et al. ('38), 304 U.S. 307, 58 S. Ct. 913, prohibiting taxation of sales in both the state where the goods are sold as well as those in which they are manufactured.

Conclusion:

The sale in question qualifies for the exemption at Code Section 12-35-550(40), as transfer of the property does not pass within this state.

SOUTH CAROLINA TAX COMMISSION

s/S. Hunter Howard Jr.

S. Hunter Howard, Jr., Chairman

s/A. Crawford Clarkson Jr.

A. Crawford Clarkson, Jr., Commissioner

s/T. R. McConnell

T. R. McConnell, Commissoiner

Columbia, South Carolina
December 14, 1988