



301 Gervais Street, P.O. Box 125, Columbia, South Carolina 29214

SC PRIVATE LETTER RULING #88-7

TO: XYZ County Jail Association, Inc.

SUBJECT: Tax Exempt Status of XYZ County Jail Facility

REFERENCE: S.C. Code Ann. Section 12-37-220(B)(18) (Supp. 1987)
S.C. Code Ann. Section 12-1-60 (1976)
S.C. Code Ann. Section 12-7-410 (Supp. 1987)
S.C. Code Ann. Section 12-7-430(b) (Supp. 1987)

AUTHORITY: S.C. Code Ann. Section 12-3-170 (1976)

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 the XYZ County jail facility exempt from property taxes pursuant to 12-37-220(B)(18)?
2. Are the interest portions of the lease payments received by certificate holders exempt from taxation as certificates of indebtedness of XYZ County?

Facts:

1. XYZ County, South Carolina currently owns the land on which a new jail facility is being built. They have formed a new eleemosynary corporation which is exempt from Federal income tax pursuant to 501(c)(3) of the Internal Revenue Code. XYZ County intends to lease this parcel of real estate to the new eleemosynary corporation. The eleemosynary corporation will then complete construction of the new jail facility. At the completion of construction, the new jail facility will be leased back to the County by the eleemosynary organization. The eleemosynary corporation will then assign all of its leasehold interest in the jail facility to ABC Bank as trustee. ABC Bank will sell "Certificates of Participation" in the lease payments to be made by the county to members of the general public. The new South Carolina eleemosynary corporation will not receive any profits from the transaction.

2. Rental payments under the lease will consist of specifically and separately stated principal and interest components so that the lease will be treated as an installment sales contract for Federal income tax purposes. The holders of the certificate will be entitled to receive portions of the lease payments, both principal and interest, and will treat as income the interest portion of those payments. For Federal income tax purposes, the interest portion of the payments received by the certificate holders will be exempt from taxation.

Discussion:

1. The terms of Section 12-37-220(B)(18) provide an exemption of ad valorem taxes for:

Real property leased on a nonprofit basis, to a state agency, county, municipality or other political sub-division so long as it is used for a general public purpose; provided, however, this exemption shall not apply to property used for office space or warehousing.

The South Carolina Code does not define the term "general public purpose" but common law holds that the objective of a public purpose is "the promotion of the public health, safety, morals, welfare, security, prosperity, and contentment of all the inhabitants or residents within a given political division." (Lott v. City of Orlando, 142 Fla. 338, 196 So. 313 (1939)). Using this as a guide, a jail facility would promote the safety, morals, and security of XYZ County. As such, it is used for a public purpose and falls within the provisions of 12-37-220(B)(18). It should be noted, however, that this statute specifically excludes property used for office space. The Supreme Court in Charleston Aviation Authority v. Robert C. Wasson, 289 S.E. 2d 416 (1982) stated that a property may be used exclusively for a public purpose notwithstanding the incidental use for other purposes. Therefore the jail facility would qualify for the exemption, notwithstanding the fact that it may contain office space which is incidental to the facility's operation.

Section 12-7-410 provides that the South Carolina gross income, adjusted gross income and taxable income of an individual is the same as determined under the Internal Revenue Code with the modifications specified in Section 12-7-430 and 12-7-435. The interest portions of the lease payments received by the certificate holders would be exempt from taxation pursuant to Section 12-1-60 and Section 12-7-430(b)(1) provided that the Internal Revenue Service accepts this arrangement as obligations of a subdivision of this state and exempts the interest.

Conclusion:

1. The XYZ County jail facility will be exempt from property tax pursuant to 12-37-220(B)(18).
2. The interest portions of the lease payments received by certificate holders will be exempt from taxation pursuant to 12-1-60 and 12-7-430(b)(1) provided that the Internal Revenue Service allows the exemption on the federal return.

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

April 13, 1987