



SC PRIVATE LETTER RULING #90-1

TO: Federal Reserve Bank of Richmond
Columbia Office
Columbia, S.C. 29210

SUBJECT: Federal Reserve Bank
(Sales and Use)

REFERENCE: S.C. Code Ann. Section 12-35-510 (1976)
S.C. Code Ann. Section 12-35-810 (1976)
S.C. Code Ann. Section 12-35-550(1) (1976)
S.C. Code Ann. Section 12-35-550(42) (1976)

AUTHORITY: S.C. Code 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:

Are sales to, or purchases by, the Columbia Office of the Federal Reserve Bank of Richmond exempt from sales and use tax, pursuant to Code Sections 12-35-550(1) and 12-35-550(42)?

Facts:

The Federal Reserve Bank and its district banks were created under 12 U.S.C.A. Section 226. The district banks in turn established satellite offices, one of which is located in Columbia.

Section 531 of Title 12 of the United States Code reads:

Federal reserve banks, including the capital stock and surplus therein and the income derived therefrom shall be exempt from Federal, State, and local taxation, except taxes upon real estate.

Code Section 12-35-510 imposes "upon every person engaged or continuing within this State in the business of selling at retail any tangible personal property...[a sales tax in] an amount equal to [five] percent of the gross proceeds of sales of the business".

Code Section 12-35-810 imposes the use tax "on the storage, use or other consumption in this State of tangible personal property purchased at retail for storage, use or other consumption in this State, at the rate of [five] percent of the sales price of such property".

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, including gross proceeds subject to the tax under Sections 12-35-1140 and 12-35-1150.

Discussion:

The issue is whether federal reserve banks are instrumentalities of the federal government.

In Federal Reserve Bank of St. Louis v. Metrocentre Improvement District #1, 657 F.2d 183 (8th Cir. 1981), aff'd, 455 U.S. 995 (1981), the United States Court of Appeals, Eighth Circuit, stated that the test for determining whether an entity is a federal instrumentality is whether it performs an "important governmental function". The court held:

In light of the important governmental functions performed by the federal reserve banks and the United States Supreme Court's willingness to hold that financial institutions performing even fewer governmental functions are federal instrumentalities, we hold that the federal reserve banks are instrumentalities of the federal government. Our holding is consistent with other circuits that have faced this question. Federal Reserve Bank v. City of Memphis, 515 F.Supp. 63 (W.D. Tenn., 1979), aff'd 649 F.2d 462 (6th Cir. 1981); Federal Reserve Bank v. Kalin, 77 F.2d 50, 51 (4th Cir. 1935); Raichle v. Federal Reserve Bank, 34 F.2d 910, 916 (2d Cir. 1929).

Furthermore, in Lewis v. United States, 680 F.2d 1239 (Ninth Circuit, 1982) the Ninth Circuit Court of Appeals held:

The Reserve Banks are deemed to be federal instrumentalities for purposes of immunity from state taxation. Federal Reserve Bank of Boston v. Commissioner of Corporations & Taxation, 499 F.2d 60 (1st Cir. 1974), after remand, 520 F.2d 221 (1st Cir. 1975); Federal Reserve Bank of Minneapolis v. Register of Deeds, 288

Mich. 120, 284 N.W. 667 (1939). The test for determining whether an entity is a federal instrumentality for purposes of protection from state or local action or taxation, however, is very broad: whether the entity performs an important governmental function. Federal Land Bank v.

Bismarck Lumber Co., 314 U.S. 95, 102, 62 S.Ct. 1, 5, 86 L.Ed. 65 (1941); Rust v. Johnson, 597 F.2d 174, 78 (9th Cir. 1979), cert. denied, 444 U.S. 964, 100 S.Ct. 450, 62 L.Ed. 2d 376 (1979). The Reserve Banks, which further the nation's fiscal policy, clearly perform an important governmental function.

Performance of an important governmental function, however, is but a single factor and not determinative in tort claims actions. Federal Reserve Bank of St. Louis v. Metrocentre Improvement District, 657 F.2d 183, 185 n.2(8th Cir. 1981), Cf. Pearl v. United States, 230 F.2d 243 (10th Cir. 1956). State taxation has traditionally been viewed as a greater obstacle to an entity's ability to perform federal functions than exposure to judicial process; therefore tax immunity is liberally applied. Federal Land Bank v. Priddy, 294 U.S. 229, 235, 55 S.Ct. 705, 708, 79 L.Ed. 1408(1955)

In summary, Federal Reserve Banks are federal instrumentalities for the purpose of immunity from state taxation.

Conclusion:

Sales to, or purchases by, the Columbia Office of the Federal Reserve Bank of Richmond are exempt from sales and use tax, pursuant to Code Section 12-35-550(1) and (42).

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, Commissioner

Columbia, South Carolina
January 10 _____, 1990