



SC PRIVATE LETTER RULING #90-5

TO: XYZ

SUBJECT: Textbooks
(Sales Tax)

REFERENCE: S.C. Code Ann. Section 12-35-510 (1976)
S.C. Code Ann. Section 12-35-550(2) (1976)

AUTHORITY: S.C. Code 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.

Question:

Are sales of textbooks to students by ABC and GHI Business College exempt from sales tax, pursuant to Code Section 12-35-550(2)?

Facts:

Subsidiaries of XYZ Corporation own and operate schools in this state, specifically, ABC Business College and GHI Business College. These schools are primarily engaged in vocational training, and subjects include: accounting, secretarial service, data processing and nursing assistance. Each school is accredited by the Association of Independent Colleges and Schools, which is recognized by the United States Commission of Education. Their operations include the sale of textbooks to students.

Discussion:

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 whatsoever, an amount equal to [five] percent of the gross proceeds of sales of the business."

Code Section 12-35-550(2) exempts from the tax "[t]he gross proceeds of the sale of textbooks used in elementary schools, high schools and institutions of higher learning." (emphasis added).

In order to determine whether sales of textbooks by XYZ's schools are exempt from the tax, a determination must be made as to whether they qualify under the broad term of an "institution of higher learning."

In Opinion of the Attorney General 78-182 (October 31, 1978), the definition of "institution" was addressed. The Opinion states:

We are advised that the Tax Commission has allowed the exemption only for textbooks used in schools, colleges and universities and other such institutions. The word "institution" has been narrowly construed in this respect. . .

. . . The statute clearly exempts textbooks used in elementary and high schools. The words "elementary and high schools" need no further construction as their meanings are clear. The word "institution" however is a broader term. Under the above rules and the rule of ejusdem generis, it should be construed to include only institutions of the class or character commonly recognized as schools. This would include technical schools, colleges and universities.

This definition is supported by Simpson v. Jones Business College, 118 So.2d 779 (1960). In this case the Supreme Court of Florida found that a nonprofit corporation which operated an educational institution developing learning and skill in the fields of business law, accounting and secretarial capacities, offering courses that substantially paralleled those offered in public educational institutions, some of which were accepted by the state Department of Education, and which was accredited by an accrediting agency recognized as such by the United States Commissioner of Education, qualified for exemption from taxation as an "educational institution".

Conclusion:

Sales of textbooks to students by ABC Business College and GHI Business College are exempt from sales tax, pursuant to Code Section 12-35-550(2).

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
February 21, _____ 1990