



SC PRIVATE LETTER RULING #90-9

TO: XYZ, Inc

SUBJECT: Freight Charges
(Use Tax)

REFERENCE: S.C. Code Ann. Section 12-35-810 (1976)
S.C. Code Ann. Section 12-35-120 (1976)

AUTHORITY: S.C. Code Ann. 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 freight charges, billed by XYZ, Inc. in the sale of coaxial cables, includable in the measure of the use tax, pursuant to Code Section 12-35-120?

Facts:

XYZ is engaged in the business of manufacturing coaxial cable, which is used in the construction of cable television systems, and by contractors in constructing homes and apartments. XYZ's manufacturing facility is located in another state.

The company is an authorized collector of this State's use tax and, in the past, has always included the freight charges in the measure of the tax. However, XYZ has recently changed its freight policies, and several customers are now questioning the inclusion of the freight in the measure of the tax.

Under the new policy, customers with shipments of 5000 pounds or more are not charged for freight, and customers with shipments of less than 5000 pounds (within the United States), are charged for freight. When XYZ charges for the freight, XYZ negotiates with the freight company and is responsible for the merchandise until received by the customer. Specifically, title to the merchandise passes at the customer's place of business.

Freight charges are separately stated on XYZ's invoices, and all shipments are made by common carrier.

Discussion:

The use tax is imposed at Code Section 12-35-810, and reads, in part:

An excise tax is imposed 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,... ..(emphasis added).

The term "sales price", the measure of the use tax, is defined at Code Section 12-35-120, in part, as:

...the total amount for which tangible personal property is sold, including any services (including transportation) that are a part of the sale...(emphasis added).

In summary, the use tax is imposed on the storage, use or consumption of property in this State, and the measure of the use tax is "sales price" which, by definition, includes transportation.

Furthermore, Regulation 117-156, entitled "Freight Charges", reads:

Whether or not freight, delivery, or transportation charges may be deducted by the seller from the selling price of tangible personal property sold for use or consumption, in computing his liability for tax under the Sales and Use Tax Law, does not depend upon the separate billing thereof, but depends upon whether or not the services rendered by the railway company or other transporting agency are rendered to such seller or to the purchaser.

If the seller contracts to deliver tangible personal property to some designated place, or is obligated under the contract to pay transportation charges to some designated place, the transportation services are rendered to the seller or user and the selling price of the tangible personal property so transported must include the amount of the transportation charges. In this event such charges are not deductible by the seller in computing his tax liability under the Law. On the other hand, if the seller contracts to sell tangible personal property f.o.b. origin, the title to the property passing at such point to the buyer and the buyer pays the transportation charges, then the transportation services are rendered to the buyer and are not a part of the selling price of the vendor. Therefore, such transportation charges should not be included by the vendor in computing his tax liability under the Law. These principles will apply irrespective of whether such charges are separately billed by the seller from the tangible personal property sold.

However, it should also be noted that Code Section 12-35-550(27) exempts from the tax:

The gross proceeds of the sale of all supplies, technical equipment, and machinery used by radio stations, television stations, and cable television systems for use in producing

programs, broadcasting, or distribution of programs. For the purpose of this Subsection, radio stations, television stations, and cable television systems are deemed to be manufacturers.

Conclusion:

Freight charges, billed by XYZ, Inc. in the sale of coaxial cables, are includable in the measure of the use tax, "sales price", pursuant to Code Section 12-35-120.

However, sales by XYZ of coaxial cables to cable television systems, for use in producing, broadcasting or distributing programs, are exempt from the tax, pursuant to Code Section 12-35-550(27).

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
March 28, _____, 1990