



SC PRIVATE LETTER RULING #91-6

TO: ABC

SUBJECT: Prefabricated Structural Components
(Sales and Use Tax)

TAX ANALYST: Steve C. Hallman

REFERENCES: S.C. Code Ann. Section 12-36-110 (Supp. 1990)
S.C. Code Ann. Section 12-36-910(A) (Supp. 1990)
S.C. Code Ann. Section 12-36-1310(A) (Supp. 1990)
Regulation 117-174.45

AUTHORITY: S.C. Code Ann. Section 12-4-320 (Enacted June 1991)
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 distribution.

Question:

What sales and use tax liability results from ABC's, activities of prefabricating and assembling structural components used in constructing real property?

Facts:

ABC has developed a facility to fabricate "building framing packages" for use in constructing buildings and houses. Rather than framing buildings and houses on site, as is customarily done by framing subcontractors, ABC precuts and prefabricates portions of buildings or houses into "building framing packages", which consist of prefabricated portions of the stud walls, floor and ceiling joists, rafters, roof trusses and other components. These packages are transported to various construction sites, where they are assembled by employees of ABC or subcontractors who are retained for this specific purpose. The "building framing packages" are fabricated to order with a specific site in mind. While it is possible that, with some modifications, these framing packages might be used in locations other than those originally contemplated, the packages are fabricated for a specific site and are being assembled at that site. None of the packages are fabricated and held by ABC as inventory or stock.

Discussion:

Code Section 12-36-910(A) reads:

A sales tax, equal to five percent of the gross proceeds of sales, is imposed upon every person engaged or continuing within this State in the business of selling tangible personal property at retail. (emphasis added)

Code Section 12-36-1310(A) reads:

A use 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 the property, regardless of whether the retailer is or is not engaged in business in this State. (emphasis added)

Thus, for the sales or use tax to be imposed, there must be a retail sale or a retail purchase of tangible personal property.

The terms "sale at retail" and "retail sale" are defined at Code Section 12-36-110 as:

...all sales of tangible personal property except those defined as wholesale sales. The quantity or sales price of goods sold is immaterial in determining if a sale is at retail.

(1) The terms include:

(a) sales of building materials to construction contractors, builders or landowners for resale or use in the form of real estate;

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(d) the use within this State of tangible personal property by its manufacturer as building materials in the performance of a construction contract. The manufacturer must pay the sales tax based on the fair market value at the time and place where used or consumed;

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The term "building materials" is defined at Regulation 117-174.45 as "tangible personal property....which becomes a part of real property."

In summary, purchases of building materials by a contractor are retail transactions and the tax is due on the material's purchase price. However, if a contractor is the manufacturer of his own building materials, the use of the materials by the contractor is a retail sale, with the tax being due on the fair market value of the materials when used. Therefore, it must be determined if ABC is a manufacturer or a contractor.

In Southern Equipment Sales Company, Inc. v. South Carolina Tax Commission, a 1962 Court of Common Pleas case concerning sales of equipment used to produce asphalt for paving roads, it was reasoned "[t]he business of Banks Construction Company is that of a road, street or highway contractor. The incidental sales of asphalt to others does not change the character of the business to that of a manufacturer". In other words, to be a manufacturer, one must be in the business of producing tangible personal property for sale to others on a regular and continuous basis.

Since the "building framing packages" are fabricated to order for use by ABC to become a part of real property at a specific site and not sold by them to others on a regular and continuous basis, ABC is not a manufacturer, but a contractor.

Our discussion would not be complete without mention of Code Section 12-36-110(2) which states:

[t]he terms ["sale at retail" and "retail sale"] do not include sales of tangible personal property to a ... construction contractor when the tangible personal property is subsequently processed, partially or completely fabricated, or manufactured in this State by the ... contractor for use in the performance of a construction contract if the property is transported to, assembled, installed, or erected at a job site outside the State and used thereafter solely outside the State.

Conclusion:

ABC is a contractor and the sales or use tax is due on its purchases of tangible personal property used to make the items in question - "building framing packages". However, those purchases meeting the requirements of Code Section 12-36-110(2) are excluded from being taxed.