



SC PRIVATE LETTER RULING #92-10

TO: ABC, Inc.

TAX MANAGER: John P. McCormack

SUBJECT: Manufacturing Machine - Sale/Leaseback
(Sales and Use Tax)

DATE: December 29, 1992

REFERENCE: S.C. Code Ann. Section 12-36-2120 (Supp. 1991)

AUTHORITY: S.C. Code Ann. Section 12-4-320 (Supp. 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 general distribution.

Questions:

1. Is the sale of the machines, as described in the Facts, by ABC to the Lessor subject to South Carolina sales and use tax?
2. Is the lease of the machines, as described in the Facts, by the Lessor to ABC subject to South Carolina sales and use tax?

Facts:

ABC Inc. is a wholly owned subsidiary of XYZ. ABC owns a manufacturing facility in South Carolina. The taxpayer's products are manufactured at this facility.

Prior to 1992, XYZ purchased machines for use in the manufacture of its products for sale. Most of these machines are located in the South Carolina plant. However, some are located in another plant in another state and are being transferred to the plant in South Carolina.

The taxpayer's products are the end product of a process using various materials. These materials are fed in the form of small pellets into an automated material delivery system separating them by types. Color concentrates are added at certain stages in the delivery process to determine product color.

The materials are then fed automatically to each machine for processing. Inside the machine, the materials are melted in order to form the product.

After the product has cooled enough to hold its shape, the items are removed. The product then falls onto a conveyor and is conveyed away from the machine.

No sales or use tax was paid upon the purchase of these machines on the basis that these machines are used in the manufacture of tangible personal property for sale and are exempt under Code Section 12-36-2120(17) and similar provisions under the other state's law.

In late 1992, ABC will sell these machines in exchange for preferred stock and/or debt to a company ("Lessor") controlled by X. Also on this date, pursuant to a lease arrangement ("lease"), the Lessor will lease these machines back to ABC for a lease term in exchange for periodic lease payments to be made by ABC. The Lease will be considered to be a true lease for federal income tax purposes.

Discussion:

The issue with respect to ABC is whether the machines in question fall within the exemption under Code Section 12-36-2120(17). That section reads, in part:

Exempted from the [sales and use] taxes imposed by this chapter are the gross proceeds of sales, or sales price of:

* * * *

(17) machines used in manufacturing, processing, compounding, mining, or quarrying tangible personal property for sale.

The determination as to whether a particular machine falls within the above exemption is based on the use of the machine. The ownership does not determine if the sale, lease, or use of a machine is taxable. If a machine is "used in manufacturing ...tangible personal property for sale", then the sale, lease, or use of that machine is exempt from the tax, regardless of whether the machine is owned by the person manufacturing the property for sale or owned by some other person. See *Hercules Contractors and Engineers, Inc. v. South Carolina Tax Commission*, 280 S.C. 426, 313 S.E. 2d 300 (S.C. App. 1984) and *Southeastern Kusan v. South Carolina Tax Commission*, 276 S.C. 487, 280 S.E. 2d 57 (1981).

Based on the above, and the explanation of the machines as set forth in the Facts, the machines in question fall within the provisions of Code Section 12-36-2120(17). Therefore, the sale, lease or use of these machines are exempt from sales and use taxes.

Conclusion:

Since the machines, as described in the Facts, are, and will be, used by ABC in manufacturing products for sale, it is not necessary to determine if the transactions in question constitute a sale/leaseback or a financing arrangement. Pursuant to Code Section 12-36-2120(17), the sale, lease or use of these machines are not subject to the South Carolina sales and use tax.