



301 Gervais Street, P.O. Box 125, Columbia, South Carolina 29214

SC PRIVATE LETTER RULING #93-1

TO: ABC, Inc.

SUBJECT: The XYZ Shopper – Advertising Publication
(Sales Tax)

TAX ANALYST: Deana West

DATE: April 6, 1993

REFERENCES: S. C. Code Ann. Section 12-36-110 (Supp. 1992)
S. C. Code Ann. Section 12-36-2120 (Supp. 1992)

AUTHORITY: S. C. Code Ann. Section 12-4-320 (Supp. 1992)
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:

Is the sale of certain components used to produce, print and distribute The XYZ Shopper exempt from the sales and use tax?

Facts:

ABC, Inc., publishes newspapers and other advertising products in South Carolina. The 123 Gazette is a daily newspaper distributed throughout the Beaufort, South Carolina area and qualifies as a tax exempt newspaper under Code Section 12-36-2120(8). The 123 Gazette also produces, prints and distributes The XYZ Shopper, a separate weekly advertising publication.

East Coast Newspaper, Inc. has provided the following facts with regard to its ruling request. The XYZ Shopper is not a newspaper. The advertising publication is distributed free of charge to residents in the Beaufort area. East Coast Newspaper, Inc., is not paid by a third party to create and distribute The XYZ Shopper. Any profit is derived by selling advertising space to local merchants.

The following costs make up The XYZ Shopper:

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|-----------------------|------------------------------|
| 1. newsprint | 6. direct and indirect labor |
| 2. ink | 7. electricity, water, phone |
| 3. composing supplies | 8. rental of real estate |
| 4. press plates | 9. delivery costs |
| 5. photo negatives | 10. profit |

A brief explanation has been provided regarding the function of the press plates and photo negatives.

Press Plates – sheets of metal, plastic or composite material which are converted into a printing surface and attached to the press for printing. The plates are essentially a replica of a newspaper page. The plates contact the ink and are then “rolled” against blank newsprint to form a printed page. The plates are consumed in the manufacturing process and cannot be reused.

Photo negatives – a “photo” is taken of the page layout and the negative is used to produce the press plate. The photo negative is consumed in the printing process and cannot be reused.

The 123 Gazette and The XYZ Shopper make use of the same press machinery in their manufacturing operations.

Discussion:

In accordance with Code Section 12-36-910(A):

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.

In accordance with Code Section 12-36-1310(A):

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.

Code Section 12-36-100 defines the terms “sale” and “purchase”, in part, as:

...any transfer, exchange, or barter, conditional or otherwise, of tangible personal property for a consideration...

The terms “sale at retail: and “retail sale” are defined in Code Section 12-36-110 to mean:

...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.

The terms “wholesale sale” and “sale at wholesale” are defined in Code Section 12-36-120 to mean:

(1) tangible personal property to a licensed retail merchant...for resale, and do not include sales to users or consumers;

Code Section 12-36-60 defines the term tangible personal property and reads, in part:

“Tangible personal property” means personal property which may be seen, weighed, measured, felt, touched, or which is in any other manner perceptible to the senses. It also includes services and intangible, including communications...and sales of electricity, the sale or use of which is subject to tax under this chapter...

Therefore, for the sales or use tax to be imposed there must be a retail sale or a retail purchase of tangible personal property. A retail sale or retail purchase includes all sales or purchases of tangible personal property except wholesale sales or wholesale tangible personal property except wholesale sales or wholesale purchases of tangible personal property that will be resold. In accordance with code Section 12-36-910(B), the sales and use tax applies to certain communication services such as telephone, facsimile and database services, and also applies to electricity. (See SC Revenue Ruling #89-14 and SC Information Letter #89-28 for additional information regarding communication services.) Since The XYZ Shopper is not sold, sales to and purchases by ABC, Inc. are retail sales and purchases of tangible personal property subject to sales and use tax.

The next issue to consider is whether the taxpayer qualifies for any of the sales and use tax exemptions. The exemption for newsprint, machine attachments, electricity, long distance calls, and water will be addressed.

Code Section 12-36-2120(8) provides an exemption for newsprint paper. Regulation 117-174.167 defines the term newsprint paper as “...only that paper on which news is printed by a newspaper. This property is specifically exempted when so used”. ABC, Inc. states that The XYZ Shopper does not qualify as a newspaper. Accordingly, the newsprint paper does not qualify for the sales tax exemption.

Code Section 12-36-2120(17) provides an exemption for machines used in manufacturing tangible personal property for sale. This statute further explains that the term ‘machines’ include the parts of machines, attachments, and replacements used, or manufactured for use, on or in the operation of the machines and are customarily so used. As stated in the facts, 123, Inc. is not manufacturing The XYZ Shopper for sale, therefore, the press plates used to produce The XYZ Shopper are not machine parts or machine attachments that are used to manufacture tangible personal property for sale. Accordingly, the press plates used to produce The XYZ Shopper are subject to the sales and use tax.

An exemption is provided in Code Section 12-36-2120(19) for electricity used by manufacturers to manufacture tangible personal property for sale. Accordingly, electricity used to produce The XYZ Shopper is subject to the sales and use tax since The XYZ Shopper is not produced for sale. However, electricity used to manufacture The 123 Gazette is exempt from sales and use tax since it is manufactured for sale. Furthermore, the electricity used in the office area, reception area, warehouse, etc. is subject to sales and use tax.

Code Section 12-36-2120(11) provides an exemption for long distance charges. The sales tax on telephone services applies to local service and not long distance calls.

Finally, an exemption is provided in Code Section 12-36-2120(12) for water sold by public utilities, if rates and charges are determined by the Public Service Commission or water sold by nonprofit corporations organized pursuant to Code Sections 33-35-10 to 33-35-170.

Our discussion would not be complete without addressing the applicability, if any, of Code Section 12-36-910(B)(4) to the question at hand.

Code Section 12-36-910(B)(4) provides that the sales tax applies to the “fair market value of tangible personal property manufactured within this State, and used and consumed within this State by the manufacturer”.

In determining whether Code Section 12-36-910(B)(4) applies to tangible personal property manufactured for sale as well as tangible personal property not manufactured for sale, we must look at the sales and use tax statute in its entirety. More specifically, we must look at the relationship between Code Section 12-36-910(B)(4) and Code Section 12-36-120(2). Code Section 12-36-120(2) provides that a wholesale sale is a sale of “tangible personal property to a manufacturer...as an ingredient or component part of the tangible personal property or products manufactured...for sale”. (Emphasis added).

Although Code Section 12-36-910(B)(4) does not contain the words “for sale” as Code Section 12-36-120(2) does, when the sections are read together, it appears to be the purpose and intent of the statute to apply to tangible personal property manufactured for sale. Otherwise, ABC, Inc., could be taxed on the component parts of The XYZ Shopper as well as the fair market value of The XYZ Shopper. “While we do not believe double taxation is prohibited such taxation is not favored and is to be avoided where possible.” 71 Am.Jur.2d, State and Local Taxation, Section 33. Further, the interpretation that Code Section 12-36-910(B)(4) only applies to tangible personal property manufactured for sale is consistent with the reasoning in the Court of Common

Pleas decision in Southern Equipment Sales Company, Inc., v. South Carolina Tax Commission (Richland County, July 27, 1962).

Conclusion:

TAXABLE ITEMS

The following components of The XYZ Shopper are subject to the sales and use tax under Code Section 12-36-910(A) since they are retail sales to or retail purchases of tangible personal property by ABC, Inc.:

1. newsprint
2. ink
3. composing supplies
4. press plates
5. photo negatives

In addition, electricity used in manufacturing The XYZ Shopper is subject to the sales and use tax since it is not used to manufacture tangible personal property for sale and does not qualify for the exemption under Code Section 12-36-2120(19). Further, local telephone service is subject to the sales and use tax pursuant to Code Section 12-36-60 and 12-36-910(B)(3).

NON-TAXABLE ITEMS

The following components of The XYZ Shopper are not subject to the sales and use tax since they are not retail sales or purchases of tangible personal property:

1. Direct and indirect labor
2. Rental of Real Estate
3. Delivery costs, excluding rental of tangible personal property
4. Profit

Water is exempt for the sales and use tax since it qualifies for the exemption provided in Code Section 12-36-2120(12). Additionally, long-distance telephone calls are exempt for the sales and use tax pursuant to Code Section 12-36-2120(11).