



SC PRIVATE LETTER RULING #94-1 (TAX)

TO: ABC Company

SUBJECT: Property Shipped Overseas
(Sales and Property Taxes)

DATE: January 14, 1994

REFERENCE: S. C. Code Ann. Section 12-36-910 (Supp. 1992)
S. C. Code Ann. Section 12-36-1310 (Supp. 1992)
S. C. Code Ann. Section 12-36-110 (Supp. 1992)
S. C. Code Ann. Section 12-36-120 (Supp. 1992)
S. C. Code Ann. Section 12-37-220 (Supp. 1992)
S. C. Code Ann. Section 12-37-450 (Supp. 1992)

AUTHORITY: S. C. Code Ann. Section 12-4-320 (Supp. 1992)
SC Revenue Procedure #93-6

SCOPE: A Private Letter Ruling is a document issued by the Department of Revenue to a specific person.

NOTE: A Private Letter Ruling may only be relied upon by the person to whom it is issued and only for the transaction or transactions to which it relates. A Private Letter Ruling has no precedential value.

Questions:

1. Is the ABC Company, as seller, liable for the sales and use tax with respect to the sale and storage of the equipment as described in the facts?
2. Is the ABC Company, as seller, liable for the property tax with respect to the sale and storage of the equipment as described in the facts?

Conclusions:

1. The ABC Company, as seller, is not liable for the sales and use tax with respect to the sale and storage of the equipment as described in the facts. The equipment will be sold by ABC for the purposes of resale by the foreign company; therefore, the transaction is not subject to the sales and use tax pursuant to Code Section 12-36-120.

2. The ABC Company, as seller, is not liable for the property tax with respect to the sale and storage of the equipment as described in the facts. Such equipment is inventory while it is in South Carolina and is exempt from the property tax under Code Section 12-37-220B(30).

Facts:

ABC Company is a large United States corporation with a facility in South Carolina. ABC is qualified to do business in South Carolina.

ABC has contracted to sell two very large pieces of equipment to a foreign company. While the components of the equipment were manufactured by ABC outside of South Carolina, the equipment itself has been or will be manufactured or assembled in South Carolina. Ancillary equipment manufactured or purchased outside of South Carolina will be sold along with the two large pieces of equipment. The value of the equipment will be between \$80,000,000.00 and \$100,000,000.00 and the equipment will weigh approximately 1,200,000 pounds.

The terms of the contract include the following:

- 1) For equipment manufactured by ABC in South Carolina, title will pass to the foreign company at ABC's South Carolina factory. Transportation and delivery will be made freight along side vessel ("FAS") at the port of export - Charleston, South Carolina. The risk of loss will also pass FAS port of export.
- 2) For equipment manufactured by ABC outside of South Carolina, title will pass at the out of state manufacturing location. Transportation and delivery will be made freight along side vessel ("FAS") at the port of export - Charleston, South Carolina. The risk of loss will also pass FAS port of export.
- 3) For equipment purchased by ABC outside of South Carolina, the equipment will be resold to the foreign company at the supplier's location. Title will pass at the out of state supplier's location. Transportation and delivery will be made freight along side vessel ("FAS") at the port of export -Charleston, South Carolina. The risk of loss will also pass FAS port of export.

In all cases, ABC will pay the transportation costs.

The foreign company is not qualified to do business in South Carolina. The equipment will be resold by the foreign company with the sale expected to take place in a different foreign country.

ABC will sell the equipment to the foreign company prior to December 31, 1993; however, the equipment manufactured in South Carolina will be temporarily stored at ABC's manufacturing facility in South Carolina until March, 1994. At that time it will be transported to the port in Charleston for delivery in accordance with the above terms. While the equipment is stored at ABC's facility, ABC will routinely inspect it.

Other than instructing ABC to temporarily store the equipment, the foreign company will exercise no use of the equipment while it is in storage.

Discussion:

SALES AND USE TAX

Code Section 12-36-910(A) imposes the South Carolina sales tax and reads, in part:

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.

Code Section 12-36-1310(A) imposes the South Carolina use tax and reads, in part:

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.

Therefore, for the 5% sales and use tax to apply, there must be a retail sale or purchase of tangible personal property.

Code Section 12-36-110 defines the terms "retail sale" and "sale at retail" to mean "all sales of tangible personal property except those defined as wholesale sales."

Code Section 12-36-120 reads in part:

"Wholesale sale" and "sale at wholesale" mean a sale of:

- (1) tangible personal property to licensed retail merchants, jobbers, dealers, or wholesalers for resale, and do not include sales to users or consumers not for resale;

Therefore, as a wholesale sale, the sale of the equipment in question by ABC to the foreign company is not subject to the State sales and use tax since only retail sales are subject to the tax.

PROPERTY TAX

Code Section 12-37-220B(30) exempts from property taxes "all inventories".

While Code Section 12-37-220A(6) exempts "all inventories of manufacturers, except manufactured articles which have been offered for sale at retail or which have been available for sale at retail" (including certain specifically listed fuels for use by a public utility), Code Section 12-37-220B(30) exempts all inventories.

In addition, Code Section 12-37-450 exempts one hundred percent of the "inventory of business establishments ... for the 1987 and subsequent tax years ..."

"Where is it possible to do so, it is the duty of the courts, in the construction of statutes to harmonize and reconcile laws, and to adopt that construction of a statutory provision which harmonizes and reconciles it with other statutory provisions." 73 Am. Jur. 2d, Statutes, Section 254.

As such, all inventories of manufacturers, not just those articles manufactured for sale at wholesale; all inventories of business establishments; and certain fuels listed in Code Section 12-37-220A(6) for use by a public utility are exempt from the property taxation.

In SC Revenue Ruling #91-7, the Commissioners defined "inventory", as:

Merchandise purchased for resale is "inventory" for purposes of the business inventory tax exemption (Section 12-37-450) and South Carolina income taxation. The purpose for which merchandise was bought and held governs in determining whether it is inventory, not the fact that it may subsequently be resold. Equipment which is rented out by rental businesses and material and supplies used in a business are examples of property which are not inventory, and therefore, not exempt from property taxation under Code Section[s] 12-37-450 and 12-37-220(B)(30).

In continuing to exempt certain fuels used by public utilities, the ruling further notes:

This ruling is not intended to change the items deemed to be inventories of manufacturers in S.C. Code Ann. Section 12-37-220(A)(6).

Based on the above, ABC, as seller, is not liable for the property tax with respect to the sale and storage of the equipment as described in the facts.

For questions concerning the shipment of property out of South Carolina, contact Research and Review at (803) 737-4744 or John McCormack at (803) 737-4438 with respect to sales and use tax issues and Kin Purvis at (803) 737-4468 with respect to property tax issues.