



SC PRIVATE LETTER RULING #94-11

TO: ABC Inc.

SUBJECT: Research and Development Machinery  
(Sales and Use Taxes)

DATE: October 19, 1994

REFERENCE: S.C. Code Ann. Section 12-36-2110 (Supp. 1993)

AUTHORITY: S.C. Code Ann. Section 12-4-320 (Supp. 1993)  
SC Revenue Procedure #94-1

SCOPE: A Private Letter Ruling is an official advisory opinion issued by the Department of Revenue to a specific person.

NOTE: A Private Letter Rulings 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.

Question:

Does the purchase of an Electron Microscope by ABC Inc., which will be used exclusively to develop new uses for membrane filters and to improve existing systems, qualify as research and development machinery subject to the \$300 maximum sales tax?

Conclusion:

Based upon the facts presented, the Electron Microscope purchased by ABC, Inc., will be used exclusively to develop new uses for membrane filters and to improve existing systems. It meets all of the requirements in Code Section 12-36-2110 to qualify as research and development machinery. **Accordingly, each item of the Electron Microscope qualifies for the \$300.00 maximum tax.**

Facts:

ABC Inc., is a research and development facility located in South Carolina. Its primary business function is to develop new uses for membrane filters, and to improve existing applications.

In order to perform its research and development function, ABC, Inc., has purchased a research grade Electron Microscope for \$307,125.

The Electron Microscope is used for imaging (i.e. examining and recording on a photograph) surface features of material in high magnification. These photographs are used to examine such things as contaminants on membrane filter surfaces, locate and evaluate defects and damage to the surfaces, such as cracks.

The equipment has no application in efficiency surveys, management studies, humanities research, economic studies, management science/operations research, consumer surveys, advertising and promotion activities, or research in connection with literary, historical, or similar projects.

The system will also be made available to other firms for aiding in their research and development efforts on a contract basis. ABC, Inc. will ensure that all users will comply with the research and development restrictions set forth in Code Section 12-36-2110.

ABC, Inc., specifically leased and equipped a building in South Carolina exclusively for research and development. In addition to the Electron Microscope and its associated equipment, the building contains: a "wet" lab for the actual membrane application tests, a "dry" lab for testing electrical/electronic systems and microscope sample preparation, a storage and mechanical room, a library, two offices and a reception area. There is no production performed in the entire facility.

Discussion:

Code Section 12-36-910(A) imposes a 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 a 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.

Code Section 12-36-2110 imposes a maximum tax on the sale of certain items and reads, in part:

(D) The maximum tax levied pursuant to this chapter on the sale or use of each item of machinery for research and development is three hundred dollars. As used in this subsection, "machinery for research and development" means machinery used directly and exclusively in research and development in the experimental or laboratory sense for new products, new uses for existing products, or for improving existing products. To be eligible for the limitation imposed by this subsection, the machinery must be located in a separate facility devoted exclusively to research and development as defined in this subsection. The limitation does not extend to machinery used in connection with

efficiency surveys, management studies, consumer surveys, economic surveys, advertising, promotion, or research in connection with literary, historical, or similar projects.

Therefore, for the 5% state sales or use tax to apply there must be a retail sale or retail purchase of tangible personal property. As provided in Code Section 12-36-2110, certain items including each item of research and development machinery are subject to the \$300 maximum tax.

In order to qualify for the maximum tax on research and development machinery, two requirements must be met:

1. The property must be used directly and exclusively in research and development, and
2. The property must be located in a separate facility devoted exclusively to research and development.

The first requirement concerns the use of the Electron Microscope. Machinery for research and development is defined in the statute as "machinery used directly and exclusively in research and development in the experimental or laboratory sense for new products, new uses for existing products, or for improving existing products".

The last sentence in the statute specifies what research and development equipment is not. Specifically, the \$300 sales tax limitation does not apply to machinery used in connection with efficiency surveys, management studies, consumer surveys, economic surveys, advertising, promotion, or research in connection with literary, historical, or similar projects.

As discussed in the facts, the Electron Microscope will be used to develop new uses for membrane filters and to improve existing products. The Electron Microscope will not be used for efficiency surveys, management studies, humanities research, economic studies, management science/operations research, consumer surveys, advertising and promotion activities, or research in connection with literary, historical, or similar projects. ABC, Inc., will ensure that all users will comply with the research and development restrictions set forth in Code Section 12-36-2110.

The second requirement concerns the location of the machinery. In order to qualify for the exemption, the machinery must be located in a separate facility devoted exclusively to research and development. As discussed in the facts, ABC, Inc.'s facility is used exclusively for research and development. Therefore, the second requirement is met. (See Commission Decision #92-61 for an interpretation of the phrase "separate facility".)

Based upon the facts presented, the Electron Microscope is being used as research and development machinery, and is located in a separate facility devoted exclusively to research and development as required by Code Section 12-36-2110.