
State of South Carolina
Department of Revenue
301 Gervais Street, P. O. Box 125, Columbia, South Carolina 29214

SC PRIVATE LETTER RULING #97-6

TO: Estate of Mr. XYZ
c/o Mr. ZXY
ABC Bank
Trust - Real Estate

SUBJECT: Sale of ABC Mobile Home Park
(Sales and Use)

DATE: October 21, 1997

REFERENCE: S. C. Code Ann. Section 12-36-910(A) (Supp. 1996)

AUTHORITY: S. C. Code Ann. Section 12-4-320 (Supp. 1996)
SC Revenue Procedure #97-8

SCOPE: A Private Letter Ruling is an official advisory opinion 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.

Question:

Will sales tax be due on sales of the mobile homes located in ABC Mobile Home Park?

Conclusion:

Sales tax will not be due on sales of the mobile homes located in ABC Mobile Home Park.

Facts:

The Estate of Mr. ZXY is selling ABC Mobile Home Park (“the park”). The park consists of 2.59 acres of land; a brick duplex; a single family home; and 29 mobile homes which are affixed to the land. The mobile homes have had their wheels removed and have been placed on permanent foundations. They are also attached to utility services; the area around the homes has been landscaped; and many have porches and other additions. The duplex, single family home and the mobile homes are currently being leased to tenants. The contract of sale provides that the aforementioned structures are to be sold with the land.

The Estate has asked if the sales tax will be due on the portion of the sales price attributable to the mobile homes.

Discussion:

Code Section 12-36-910, which imposes the South Carolina sales tax, provides:

(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 other words, the sales tax is imposed on retail sales of tangible personal property. It is not imposed on sales of real property.

For guidance in this matter, we refer to City of North Charleston v. Claxton, 431 S.E.2d 610 (S.C. 1993). While that case dealt with the value of property in a condemnation proceeding, it also addressed the issue of real (fixtures) versus personal property.

Quoting from that case:

Criteria for determining whether an item remains personalty or becomes a fixture when affixed to realty includes: (1) the mode of attachment; (2) the character of the structure of the article; (3) the intent of parties making the annexation; and, (4) the relationship of the parties. Creative Displays, 272 S.C. at 72, 248 S.E.2d at 918.

Mobile homes have been held to be both fixtures and personal property. [Footnote omitted.] In this case, the record reflects that the Claxtons' trailers were connected to utility services. There is no evidence, however, that the trailers had other significant attachments to the property such as permanent foundations or additions. Based on these facts, we hold that the Claxtons' mobile homes are not fixtures....[i.e. not real property]

The Court, in Claxton, referenced Rebel Manufacturing and Marketing Corporation, 54 B.R. 674 (Bankr.D.S.C. 1985). In that case, a bank argued that the sale of a mobile home was subject to a mortgage on the realty because it was a fixture. The mobile home was underpinned, anchored, and connected to sewerage, water and electric lines. Also, the home had a screened porch attached and was adjacent to several large trees.

In ruling for the bank, the Court reasoned:

The various substantial structures and trees surrounding the mobile home would be severely damaged, if not destroyed, should the mobile home be removed.

It seems clear that the debtor's positioning the mobile homes among the trees, and adding the construction [the porch] warrants the inference that the intent of the debtor was for the mobile home to become a part of the realty.

The above is supported by Attorney General Opinion No. 1955, dated December 14, 1965, which states:

It has been ruled by the Tax Commission that house trailers from which wheels have been removed and which have been placed on permanent foundations are no longer vehicles subject to taxation as personal property. Atty. Gen. Ltr. to Hon. Robert S. Floyd, dtd. Oct. 8, 1964.

Having viewed the mobile homes in question, it is concluded that they are attached to the realty in such a way so as to indicate they are intended to be a part of the realty. They have had their wheels removed; are attached to utilities; and are on permanent foundations. Also, many have porches and other additions that would be severely damaged or destroyed if the mobile homes were removed from the property. Further, the surrounding landscaping would be materially disturbed. Based on these facts, the mobile homes are real property. Therefore, the sale of the mobile homes, along with the other real property (i.e. the brick duplex; the single family home; and the land), is not subject to the sales tax.