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

SC PRIVATE LETTER RULING #98-4

TO: XYZ

SUBJECT: Propane Gas - Residential Use
(Sales and Use Tax)

DATE: December 15, 1998

REFERENCE: S. C. Code Ann. Section 12-36-2120(33) (Supp. 1997)
S. C. Code Ann. Section 12-36-2120(14) (Supp. 1997)
S. C. Code Ann. Section 12-36-120 (Supp. 1997)
SC Regulation 117-177

AUTHORITY: S. C. Code Ann. Section 12-4-320 (Supp. 1997)
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.

Questions:

Is the sale of propane gas by XYZ for use in an outdoor barbecue grill exempt from the sales and use tax under Code Section 12-36-2120(33)?

Conclusions:

The sale of propane gas by XYZ for use in an outdoor barbecue grill at a person's residence is exempt from the sales and use tax under Code Section 12-36-2120(33).

If a tank is provided by XYZ as part of the sale, then the tank (when filled with the propane that is being sold) is incidental to the sale of the propane. As such, the entire sale by XYZ of the propane gas and tank for use in an outdoor barbecue grill at a person's residence is exempt, regardless of whether or not the charge for the tank is separately stated on the bill to the customer.

The Department of Revenue provides an "Exemption Certificate," Form ST-8, that can be used by purchasers to certify to the seller, XYZ, that the propane gas will be used for "residential purposes."

Note: The sale of propane gas by XYZ for use in an outdoor barbecue grill at any location other than a residence is subject to the sales and use tax. As such, the entire sale by XYZ of the propane gas and tank for use in an outdoor barbecue grill at any location other than a residence is subject to the sales and use tax. In addition, the sale of an empty tank is subject to the tax since the tank is not being used incident to the sale and delivery of propane.

Facts:

XYZ ("XYZ") is a leading distributor of propane and related accessories, parts, and service.

XYZ will sell propane in one of three ways:

1. The customer brings his own tank to be refilled. At the present time, the sale price to the customer is approximately \$7.
2. The customer brings his own tank and exchanges the tank for another one filled with propane under a new sales program named "PPX." The PPX program is a tank exchange program, exclusively using the 20 lb. tanks commonly used in outdoor barbecue grill. At the present time, the sale price to the customer is approximately \$16.
3. The customer does not bring a tank and purchases a tank filled with propane. At the present time, the sale price to the customer is approximately \$30.

Discussion:

Code Section 12-36-2120(33) exempts from the sales and use tax the gross proceeds of sales and sales price of:

electricity, natural gas, fuel oil, kerosene, LP gas, coal, or any other combustible heating material or substance used for residential purposes. Individual sales of kerosene of twenty gallons or less by retailers are considered used for residential heating purposes;

SC Regulation 117-177 defines the term "residential purposes" to mean:

any space or area occupied by one or more individuals with the intent that such space or area serves as a residence, house, dwelling or abode.

Attorney General's Opinion #67, dated August 23, 1979, defines the term "residential purposes" as meaning "any space or area occupied by one or more individuals with the intent that such space or area serve as a residence, house, dwelling or abode (emphasis added)."

The Attorney General's Office relied upon the definition's found in Webster's New World Dictionary, 2d Ed. (1978) for "residential" and "purpose". "Residential" is defined as "of or connected with residence." "Purpose" is defined as "something one intends to get or do; intention, aim....with a specific end in view."

Furthermore, it was held that the term "residence" should be viewed as a place not used for business purposes.

SC Technical Advice Memorandum #87-5 concluded that the term "residential" pertains to not only the house in which one resides, but encompasses the entire "space or area" which is "connected with" the house.

Therefore, it is concluded that the gross proceeds of sales of propane gas for use in an outdoor barbecue grill at a person's residence is exempt from sales tax pursuant to Code Section 12-36-2120(33). The Department of Revenue provides an "Exemption Certificate," Form ST-8, that can be used by purchasers to certify to the seller that the propane gas will be used for "residential purposes."

The next issue concerns the taxability of the tanks.

With respect to containers, the law provides an exclusion and an exemption. Code Section 12-36-120 defines the terms "wholesale sale" and "sale at wholesale" to mean, in part, the sale of:

materials, containers, cores, labels, sacks, or bags used incident to the sale and delivery of tangible personal property

Code Section 12-36-2120 exempts from the tax:

(14) wrapping paper, wrapping twine, paper bags, and containers, used incident to the sale and delivery of tangible personal property.

As such, South Carolina considers the vendor to be the user or consumer of the container when such is used incident to the sale and delivery of the item being sold. Purchases of such containers by XYZ are therefore not subject to the tax.

Based on the above, XYZ is selling propane and using the tank incident to the sale and delivery of the propane. Therefore, the entire sale by XYZ of propane gas for use in an outdoor barbecue grill at a person's residence is exempt, regardless of whether or not the charge for the tank is separately stated on the bill to the customer. However, it should be noted that the sale of an empty tank by XYZ is subject to the tax since the tank is not being used incident to the sale and delivery of propane.