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

SC PRIVATE REVENUE OPINION #00-1

SUBJECT: Federal Facility
(Sales & Use Tax)

REFERENCES: S. C. Code Ann. Section 12-36-2120(2) (Supp. 1999)
S. C. Code Ann. Section 12-36-2510 (Supp. 1999)
S. C. Code Ann. Section 12-2-25(B) (Supp. 1999)
SC Private Letter Ruling #92-3

AUTHORITY: S. C. Code Ann. Section 12-4-320 (Supp. 1999)
S. C. Code Ann. Section 1-23-10(4) (Supp. 1999)
SC Revenue Procedure #99-4

SCOPE: A Private Revenue Opinion is a written statement issued to a specific taxpayer by the Department to apply principles of law to a specific set of facts or a particular tax situation. **A Private Revenue Opinion does not have the force and effect of law, and is not binding on the person who requested it or the public.** It is, however, the Department's opinion limited to the specific facts set forth, and is binding on agency personnel only with respect to the person to whom it was issued and only until superseded or modified by a change in statute, regulation, court decision, or advisory opinion, providing the representations made in the request reflect an accurate statement of the material facts and the transaction was carried out as proposed.

Questions:

1. Are purchases of tangible personal property by ABC, LLC, as the "alter ego" of the federal government as described in this document, exempt from the South Carolina sales and use taxes under Code Section 12-36-2120(2)?
2. If the subject purchases are exempt, should X Corporation d/b/a ABC, LLC apply for an exemption certificate under Code Section 12-36-2510?

Conclusions:

1. It is the department's opinion that purchases of tangible personal property by ABC, LLC, as the "alter ego" of the federal government as described in this document, are exempt from the sales and use taxes under Code Section 12-36-2120(2).

NOTE: This document does not address purchases of tangible personal property by subcontractors and other entities performing work at the Federal Facility. Whether such purchases are taxable must be determined on a case-by-case basis.

2. While the department cannot require X Corporation d/b/a ABC, LLC to apply for an exemption certificate, by not giving a certificate to its suppliers, liability for the sales tax does not transfer from the suppliers to ABC, LLC. Therefore, if it is discovered that sales tax should have been charged on a particular purchase, the retailer will remain liable for the tax.

Facts:

ABC, LLC is a successor to ABC, Inc. and was formed for the exclusive purpose of continuing the contract awarded to ABC, Inc. The existing employees of ABC, Inc. became employees of ABC, LLC, effective April 1, 1999.

On August 6, 1996, ABC, LLC entered into a contract with the United States Government to perform management and operations services at a Federal Facility in South Carolina. This was a continuation of services performed by ABC, Inc. under its contract with the federal government. Transfer of rights and responsibilities under the previous contract with ABC, Inc. transferred to ABC, LLC on June 15, 1999.

ABC, LLC is a single-member limited liability company which is disregarded for income tax purposes. Therefore, under Code Section 12-2-25(B), ABC, LLC is “ignored for all South Carolina tax purposes.” The single member of ABC, LLC is XYZ Company, LLC, which is also a single-member limited liability company disregarded for income tax purposes. The single member of XYZ Company, LLC is X Corporation.

Previously, the department issued SC Private Letter Ruling #92-3 to ABC, Inc. In that document, the Department took the position that certain purchases made by ABC, Inc. under its contract with the federal government were exempt from the sales and use taxes under Code Section 12-36-2120(2). That section exempts sales of “tangible personal property to the federal government.”

X Corporation is now asking the department to determine if purchases by ABC, LLC - the successor to ABC, Inc. - are also exempt under Code Section 12-36-2120(2).

In addition, if the subject purchases are exempt, X Corporation has asked if it is necessary to apply for an exemption certificate to be used by ABC, LLC in making purchases under the subject contract.

Discussion:

We first address whether purchases under the subject contract are exempt as sales to the federal government under Code Section 12-36-2120(2). That section exempts sales of “tangible personal property to the federal government.”

The department based its decision in Private Letter Ruling #92-3 on a federal court case. In that case, the court ruled that sales of tangible personal property to ABC, Inc's predecessor for use in operating the Federal Facility were exempt from the South Carolina sales and use taxes, as that company was acting as the "alter ego" of the federal government and contracts entered into by the company were "entered into...by or on behalf of the United States."

In arriving at its decision in that case, the court pointed to the following facts:

[The company's] credit was not to be advanced or risked. Its disclosures in its requests for quotation and its purchase orders that the goods were being procured for the United States, to whom title would directly pass, and its imposition of the terms required of public contracts with the United States, negated [demonstrated against] any individual liability of its own. What obligations did arise from the purchase orders were discharged by drawing directly upon public funds.

* * * *

It is clear that [the company's] procurement activities were authorized, and were openly on behalf of the United States....

In light of the court case, ABC, Inc.'s contract with the federal government and other information, the department concluded that ABC, Inc., just like its predecessor, was the "alter ego" of the federal government. ABC, Inc.'s credit was not advanced or risked. ABC, Inc.'s purchase orders disclosed certain purchases were made on behalf of the federal government. Title to property acquired by ABC, Inc. passed directly to the federal government. Vendors were paid directly from the federal government's special checking account.

A review of the current contract between the federal government and ABC, LLC reveals that the same elements contained in the previous contract with ABC, Inc. are in the current contract.

ABC, LLC issues purchase orders in its name and references that the purchases are made under a U.S. Prime Contract. Article A.6 of the General Provisions of the purchase orders specify that title passes to the Government. Article 8 of the General Terms and Conditions for Commercial Items also specifies that title passes to the Government. All payments are made from the federal government's special checking account.

ABC, LLC is assuming an existing contract awarded to its predecessor, ABC, Inc. The predecessor's previous contract contained substantially similar terms and conditions as the current contract, and the department issued a favorable private letter ruling (#92-3) to the predecessor on May 1, 1992.

In addition, the credit of ABC, LLC is not advanced or risked.

Because the above contractual provisions are the same as those in the predecessor contract with ABC, Inc., it is the department's opinion that purchases made by ABC, LLC, as the "alter ego" of the federal government, are exempt from the sales and use taxes under Code Section 12-36-2120(2).

As for whether ABC, LLC should apply for an exemption certificate, there is nothing in the sales and use tax law that requires a retailer to obtain an exemption certificate, or any other document, from a purchaser for a sale to be exempt nor is there a requirement that a purchaser must apply for an exemption certificate. However, by not obtaining an exemption certificate from the purchaser, the retailer will be held liable for the tax if it is later determined the sales tax should have been charged to the purchaser.

The authority for the department to issue exemption certificates is provided in Code Section 12-36-2510, which reads:

Notwithstanding other provisions of this chapter, when, in the opinion of the [department], the nature of a taxpayer's business renders it impracticable for the taxpayer to account for the sales and use taxes, as imposed by this chapter, at the time of purchase, the commission may issue its certificate to the taxpayer authorizing the purchase at wholesale and the taxpayer is liable for the taxes imposed by this chapter with respect to gross proceeds of sale, or sales price, of the property withdrawn, used or consumed by the taxpayer within this State.

Enclosed is SC Form ST-10, which must be completed and filed with the department if X Corporation d/b/a ABC, LLC decides to apply for an exemption certificate.

CAVEAT: This advisory opinion is issued to the taxpayer requesting it on the assumption that the taxpayer's facts and circumstances, as stated, are correct. If the facts and circumstances given are not correct, or if they change, then the taxpayer requesting the advisory opinion may not rely on it. If the taxpayer relies on this advisory opinion, and the department discovers, upon examination, that the facts and circumstances are different in any material respect from the facts and circumstances given in this advisory opinion, then the advisory opinion will not afford the taxpayer any protection.

It should be noted that subsequent to the publication of this advisory opinion, changes in a statute, a regulation, or case law could void the advisory opinion.

SOUTH CAROLINA DEPARTMENT OF REVENUE

s/Elizabeth Carpentier
Elizabeth Carpentier, Director

April 4 _____, 2000
Columbia, South Carolina