

SC PRIVATE REVENUE OPINION #02-3

SUBJECT: Textbooks - Software
(Sales and Use Tax)

REFERENCES: S. C. Code Ann. Section 12-36-2120(3) (2000)

AUTHORITY: S. C. Code Ann. Section 12-4-320 (2000)
S. C. Code Ann. Section 1-23-10(4) (2000)
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set forth, and is binding on agency personnel only with respect to the person to whom it was issued and only until superseded or modified by a change in statute, regulation, court decision, or advisory opinion, providing the representations made in the request reflect an accurate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.

Question:

Are the following software programs sold by ABC, Inc. and described in the Facts exempt from the sales and use tax under Code Section 12-36-2120(3)?

1. Program A
2. Program B
3. Program C
4. Program D
5. Program E
6. Program F
7. Program G and H
8. Program I
9. Program J

Conclusion:

The following software programs sold by ABC, Inc. and described in the Facts are **not** exempt from the sales and use tax under Code Section 12-36-2120(3).

1. Program A

2. Program B
3. Program C
4. Program D
5. Program E
6. Program F
7. Program I
8. Program J

Note: In accordance with SC Revenue Ruling #96-4, computer software sold and delivered by electronic means is **not** subject to sales and use tax. (No portion of the computer software can be delivered on computer disks, magnetic tapes or in some other tangible form.)

The Program G and Program H software program sold by ABC, Inc. and described in the Facts is exempt from the sales and use tax under Code Section 12-36-2120(3) when “used in a course of study in primary and secondary schools and institutions of higher learning or for students' use in the school library of these schools and institutions.”

Facts:

ABC, Inc. is a provider of Learning Information Systems to kindergarten through senior high schools. Learning Information Systems consist of “canned” computer software and related training designed to improve academic performance.

The following is a brief description of each type of software in question as provided by ABC, Inc.:

Program A: Program A is a “canned” software program used to help educators monitor all reading activities in their classroom and works in this way: (1) A student chooses their own books and reads them at their own pace. (2) The student then takes a short quiz on the book they have read, using the Program A software. (3) Program A then provides reports for the student and teacher that give individualized feedback used to direct ongoing reading practice. Program A is an assessment tool that provides accurate, actionable information on the student’s reading progress.

Program B: Program B is a “canned” software program that manages and monitors student mathematics learning from Grade 1 through Calculus. Students do their work on paper and use the Program B program briefly to score their work and print the results along with a new practice assignment. Program B is an assessment tool that automatically keeps records of their work and gives the educator and student current diagnostic information each day. This software is packaged and sold as 1 of 5 different library groups:

(1) Regular Program B Libraries: Each library includes the math typically covered during one grade level or math course in the United States.

(2) State Standards – Tagged Libraries: These tags enable the teacher to see how individual students or student groups are progressing towards mastery of the objectives linked to their state’s standards.

(3) State Standards – Aligned Libraries: These libraries, which are available in California and Texas, include math objectives that align directly with the Mathematics Content Standards for California Public Schools or the Texas Essential Knowledge and Skills.

(4) Textbooks – Aligned Libraries: These specialized libraries follow the organization of the text chapter-by-chapter.

(5) Extended Response Libraries: These libraries include 100 open-ended (multifaceted) assignments that integrate the application of multiple math skills.

Program C: Program C is a “canned” software program that helps prepare students for state standardized tests. Program C is an assessment tool that helps the student focus on his individual weaknesses before the state standardized testing to ensure he performs to his highest potential.

Program D: Program D is a “canned” software program used as an assessment tool for educator to easily identify a pre-K through third grade student’s command of phonics awareness, phonics, and other basic literacy skills.

Program E: Program E is a “canned” software program used as an assessment toll, “nationally normed,” that helps educators determine the appropriate books for their students. It provides objective information to help educators monitor progress and compare students to national norms. Program E works in this way: (1) The student takes a test in the Program E program. (2) When testing is complete, Program E provides reports to help the teacher instantly place new students and identify those who need individual help. (3) The teacher matches the student with appropriate books.

Program F: Program F is a “canned” software program used to help the teacher determine grade equivalents, percentile ranks, and normal curve equivalents. This program is an assessment tool, “nationally normed,” that helps the teacher determine placement levels for all students, and accurately forecast outcomes on high-stakes tests. It provides objective information to help the educator monitor progress and compare students to national norms. Program F works in this way: (1) The student takes the test using the Program F software. (2) When testing is complete, Program F provides reports to help the teacher place new students and identify those who need individual help. (3) The teacher matches her instruction to individual student levels and monitors growth throughout the year.

Program G and Program H: Program G and Program H are “canned” software programs that give students practice locating and correcting the most common grammar, punctuation, and usage errors. Program G and Program H work in this way: (1) Students edit articles or adaptive passages in the program that have been sprinkled with grammar, punctuation, and usage mistakes. (2) Program G provides detailed reports for the teacher and student on success and areas that need improvement. (3) The teacher uses the reports to monitor each student’s progress, and intervene if necessary.

Program I: Program I is a “canned” software program that enables the educator to create assessment reports that combine data from Program A, Program E, Program B, and other learning information systems.

Program J: Program J is a “canned” software program that enables the school to align the Program A quizzes and literacy skill tests they need with the books the school owns. This program also develops custom reading lists for individual students or the entire class based on criteria such as author, interest level, point value, and more.

Discussion:

Code Section 12-36-2120(3) exempts from the sales and use tax:

(a) textbooks, books, magazines, periodicals, newspapers, and access to on-line information systems used in a course of study in primary and secondary schools and institutions of higher learning or for students' use in the school library of these schools and institutions;

(b) books, magazines, periodicals, newspapers, and access to on-line information systems sold to publicly supported state, county, or regional libraries;

Items in this category may be in any form, including microfilm, microfiche, and CD ROM; however, transactions subject to tax under Sections 12-36-910(B)(3) and 12-36-1310(B)(3) do not fall within this exemption;

SC Regulation 117-174.213 states:

There is exempted from the measure of the tax levied, assessed, or payable, “The gross proceeds of the sale of textbooks used in elementary schools, high schools and institutions of higher learning.”

The term “textbook” is construed to include only books purchased for and used in elementary schools, high schools and institutions of higher learning. Included within the definition of textbooks are school library books, encyclopedias and dictionaries. Also deemed textbooks when part of a prescribed course of study are workbooks, band and sheet music, plays, filmstrips, transparencies, motion picture films, audio tapes and records, recorded music and periodicals.

Examples of sales subject to the tax are magazines subscriptions, reader guides (this is in connection with magazine subscriptions), test sheets, answer sheets, evaluation criteria, games, albums, pupil cumulative records, guide pamphlets, yearbooks, award certificates, diplomas, writing materials, art supplies, drafting supplies, easels, projectors, projector lamps and bulbs, projection screens and equipment carts or tables, magboards, flannel boards, laboratory supplies and equipment, biological supplies incidental to classroom instruction, athletic equipment, shop supplies and equipment, record players, recorders, computer

instructional equipment, manipulated devices, charts, maps (including globes), map stands, raw film, blank tapes, and any and all other items of tangible personal property used in the classroom or office which do not qualify as “textbooks” as hereinabove defined.

Based on the above, the term “textbook” includes tapes, recordings, filmstrips, software, and similar items, as well as printed matter, when used in a course of study. In other words, tapes, recordings, filmstrips, software, printed material, and other items must be educational sources for information that contain information being taught to students just as a “typical” textbook. The term “textbook” does **not** peripheral equipment and tools used for extracting the information from the source as well as items that aid the educational process such as test sheets, answer sheets, and evaluation criteria.

With the exception of the Program G and Program H software, the software programs sold by ABC Inc., and described in the Facts, are assessment, diagnostic, reporting and other tools used to aid the educational process. In some ways, these software programs are the modern technological equivalent of test sheets, answer sheets and evaluation criteria. As such, they are not textbooks used in a course of study and are, therefore, not exempt from the tax under Code Section 12-36-2120(3).

The Program G and Program H software is similar to a workbook, in that, it allows students to practice locating and correcting the most common grammar, punctuation, and usage errors. As such, it is a textbook used in a course of study and is, therefore, exempt from the tax under Code Section 12-36-2120(3) when “used in a course of study in primary and secondary schools and institutions of higher learning or for students' use in the school library of these schools and institutions.”

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 15, 2002
Columbia, South Carolina