



301 Gervais Street, P.O. Box 125, Columbia, South Carolina 29214

SC REVENUE RULING #89-12

**SUBJECT:** Special Registration Program for Nonresident Retailers

**EFFECTIVE DATES:** June 8, 1989 through July 31, 1989

**SUPERSEDES:** All previous documents and any oral directives in conflict herewith.

**REFERENCE:** S.C. Code Ann. Section 12-35-95 (Supp. 1988)  
Section 80 of Part II - 1989-90 Appropriations Bill

**AUTHORITY:** S.C. Code Ann. Section 12-3-170 (1976)  
SC Revenue Procedure #89-3

**SCOPE:** A Revenue Ruling is the Commission's official interpretation of how tax law is to be applied to a specific set of facts. A Revenue Ruling is public information and remains a permanent document until superseded by a Regulation or is rescinded by a subsequent Revenue Ruling.

Question:

Does Section 80 of Part II of the 1989-90 Appropriations Bill apply to sales tax or use tax?

Facts:

The 1989-90 Appropriations Bill, Section 80 of Part II, provides a special registration program for nonresident retailers. That section reads:

For an unregistered nonresident retailer as defined in Section 12-35-95 of the 1976 Code who first applies before August 1, 1989, to the South Carolina Tax Commission for the purpose of registering to collect and pay the South Carolina sales tax, the liability for collecting and paying the tax begins on the date the nonresident retailer files the application.

Code Section 12-35-95, which defines "nonresident retailers", reads:

"Retailer", as defined in Section 12-35-90, includes a "nonresident retailer" as defined in this section. A nonresident retailer means and includes every person who does not maintain an office or location in this State but who solicits business either by direct representatives, indirect representatives, or manufacturers' agents, or by distribution of catalogs or other advertising matter or by any other means whatsoever and by reason thereof receives orders for tangible personal property from consumers for use, consumption, distribution, and storage for use or consumption in this State. This nonresident retailer shall collect the tax imposed by this chapter from the purchaser, and no action either in law or in equity on a sale or transaction as provided by the terms of this chapter may be had in this State by a nonresident retailer unless it is affirmatively shown that the provisions of this chapter have been fully complied with.

A nonresident retailer also shall obtain a retail license required by this chapter and, in obtaining this license, he is considered to have one branch or location in this State.

The provisions of Section 80 of Part II of the Appropriations Bill only makes reference to sales tax; however, a nonresident retailer is a retailer without a retail location in South Carolina. In other words, a nonresident retailer is an out-of-state seller who is required to collect and remit the South Carolina use tax.

#### Discussion:

The question at hand is: Do the special registration provisions established in the Appropriations Bill apply to sales tax or use tax?

The statute creates an interesting dilemma since a nonresident retailer collects and remits the use tax, but the statute makes reference to the sales tax. Such an ambiguity appears to make the statute a nullity.

However, the following quotes from 73 Am. Jur. 2d, Statutes, provide some guidance.

#### Section 145

...a construction adopted should not be such as to nullify, destroy, or defeat the intention of the legislature.

#### Section 249

In the construction of statutes, the courts start with the assumption that the legislature intended to enact an effective law, and the legislature is not to be presumed to have done a vain thing in the enactment of a statute. Hence, it is a general principle that the courts should, if reasonably possible to do so interpret the statute, or the provision being construed, so as to give it efficient operation and effect as a whole. An interpretation should, if possible, be avoided, under which the statute or provision being construed is defeated, or as otherwise expressed, nullified, destroyed, emasculated, repealed, explained away, or rendered insignificant, meaningless, inoperative, or nugatory.

## Section 254

In the absence of a showing to the contrary, all laws are presumed to be consistent with each other. Where it is possible to do so, it is the duty of the courts, in the construction of statutes, to harmonize and reconcile laws, and to adopt that construction of a statutory provision which harmonizes and reconciles it with other statutory provisions. These rules are particularly applicable to statutes passed at or about the same time, or at the same session of the legislature, since it is not to be presumed that the same body of men would pass conflicting and incongruous acts.

Likewise the various provisions of a single act should be so read that all may, if possible, have effect without repugnancy or inconsistency, so as to render the statute a consistent and harmonious whole.

Although the courts cannot add to, take from, or change, the language of a statute to give effect to any supposed intention of the legislature, words and phrases may be altered and supplied when that is necessary to obviate repugnancy and inconsistency and to give effect to the manifest intention of the legislature.

In summary, the statute in question should not be interpreted so as to make it ineffectual. The statute is entitled to a reasonable construction, harmonious with the intent of the legislature and consistent with other statutory provisions.

Furthermore, since the statute forgives, upon proper application, an indebtedness to the State for taxes which the applicant was required to collect and remit, it may be viewed as one which should be strictly construed. However, there are limitations upon the strictness of construction. The following is quoted from 73 Am. Jur. 2d, Statutes, Section 275:

Although a strict construction is a narrow construction and the statute may not be extended by implication or inference, the construction should not be unduly technical, arbitrary, severe, artificial, or narrow. The words used need not be given any meaning other than their full meaning, where such construction is in harmony with the context. A strict construction permits the words to be read naturally. A statute which is subject to the rule of strict construction is nevertheless entitled to a reasonable, sensible, and fair construction. The courts should take a common sense view of the statute as a whole and should not render a statute nugatory, inoperative, or ineffectual, but should interpret it as to give it an efficient operation(emphasis added).

In summary, "the rule of strict construction [of a statute] is nevertheless entitled to a reasonable, sensible, and fair construction."

### Conclusion:

Section 80 of Part II of the 1989-90 Appropriations Bill, the Special Registration Program for Nonresident Retailers, applies to use tax; otherwise, the statute will be rendered ineffectual and inconsistent with the provisions of Code Section 12-35-95.  
SC Revenue Ruling #89-12

SC Revenue Ruling #89-12

SOUTH CAROLINA TAX COMMISSION

s/S. Hunter Howard Jr.  
S. Hunter Howard, Jr., Chairman

s/A. Crawford Clarkson Jr.  
A. Crawford Clarkson, Jr., Commissioner

s/T. R. McConnell  
T. R. McConnell, Commissioner

Columbia, South Carolina  
June 7, 1989