



SC REVENUE RULING #89-14

- SUBJECT:** Communications
(Sales and Use Tax)
- EFFECTIVE DATE:** Applies to all periods open under statute.
- SUPERSEDES:** All previous documents and any oral directives in conflict herewith.
- REFERENCE:** S.C. Code Ann. Section 12-35-1150 (1976)
S.C. Code Ann. Section 12-35-140 (1976)
- AUTHORITY:** S.C. Code Ann. Section 12-3-170 (1976)
SC Revenue Procedure #87-3
- 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 A Revenue Ruling is public information and remains a permanent document until superseded by a Regulation or is rescinded by a subsequent Revenue Ruling.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:

Are the communication services, listed in Exhibit "A", subject to the sales and use tax, pursuant to Code Section 12-35-1150?

Facts:

Modern technology has developed many forms and methods of communications, including telephone, telegraph, facsimile transmissions, database access, electronic mail, etc.

Code Section 12-35-1150 provides a special tax imposition which reads:

Notwithstanding any other provision of law, the gross proceeds accruing or proceeding from the charges for the ways or means for the transmission of the voice or of messages, including the charges for use of equipment furnished by the seller or supplier of the ways or means for the transmission of the voice or of messages, are subject to the license, sales or use tax, as provided by this chapter.

The term "tangible personal property", as used in Chapter 35 is defined at Code Section 12-35-140, in part, as "personal property which may be seen, weighed, measured, felt or touched or

which is in any other manner perceptible to the senses,..." The last paragraph of that Section reads:

For the purposes of this Chapter the term 'tangible personal property' shall be interchangeable with and apply with equal force and effect to services, accommodations and intangibles including communications, as are specifically provided for in this chapter. (emphasis added)

In addition, the term "retailer" as defined at Code Section 12-35-90(7) includes "...every person engaged in the business of selling or furnishing the ways or means for the transmission of the voice or of messages between persons in this State for a consideration."

Code Section 12-35-550(10) provides the only exemption for the charges taxed at Section 12-35-1150 . That section exempts "[t]he gross proceeds from the toll charges for the transmission of voice or messages between telephone exchanges and telegraph messages, and carrier access charges and customers access line charges established by the Federal Communications Commission or the South Carolina Public Service Commission."

Discussion:

One of the primary rules of statutory construction is that words used in a statute should be taken in their ordinary and popular meaning, unless there is something in the statute which requires a different interpretation. Hughes v. Edwards, 265 S.C. 529, 220 S.E. 2d 231(1975); Investors Premium Corp. v. South Carolina Tax Commission, 260 S.C. 13, 193 SE 2d 642(1973). Also, where the terms of a statute are clear and unambiguous and leave no room for construction, they must be applied according to their literal meaning. Mitchell v. Mitchell 266 S.C. 196, 222 S.E. 2d 217 (1976); Green v. Zimmerman, 269 S.C. 535, 238 S.E. 2d 232 (1977).

The Code does not provide definitions for various terms or phrases found in Section 12-35-1150; therefore, it is necessary to determine their "ordinary and popular meaning."

It is an accepted practice in South Carolina to resort to the dictionary to determine the literal meaning of words used in statutes. For cases where this has been done, see Hay v. South Carolina Tax Commission, 273 S.C. 269, 255 S.E. 2d 837 (1979); Fennell v. South Carolina Tax Commission, 233 S.C. 43, 102 S.E. 2d 424 (1958); Etiwan Fertilizer co. v. South Carolina Tax Commission, 217 S.C. 354, 60 S.E. 2d 682 (1950).

The Second College Edition of the American Heritage Dictionary provides the following definitions:

- | | |
|-------------------|--------------------------------------------------------------------------------|
| "Notwithstanding" | - In spite of |
| "Gross" | - Exclusive of deductions; total |
| "Proceeds" | - The amount of money derived from a commercial or fund-raising venture; yield |

- "Way" - A manner of doing something
- "Means" - A method, course of action, or instrument by which an act can be accomplished or some end achieved.
- "Transmission" - The act or process of transmitting; The state of being transmitted; Something transmitted, as a voice or message
 "Transmit" Electronics: To send (a signal) as by wire or radio

Substituting the above definitions for terms found in Section 12-35-1150, the literal meaning becomes - In spite of any other provisions of law, the total amount of money derived, exclusive of deductions, from a commercial venture and accruing or proceeding from charges for the manner, method or instruments for sending a signal of the voice or of messages is subject to the license, sales or use taxes.

The definition of tangible personal property, as defined in Code Section 12-35-140, includes services and intangibles "specifically provided for" in Chapter 35. A service or intangible "specifically provided for" in that section is "communications." The Second College Edition of the American Heritage Dictionary defines "communication", in part, as "[t]he exchange of thoughts, messages or information, as by speech, signals or writing". "Communications" is defined, in part, as, "a means of communicating esp.: a system of sending and receiving messages, such as mail, telephone and television".

Furthermore, the Commission, in a Decision dated June 6, 1989 concerning a company which transmitted stock quotes and other financial information via leased telephone lines, held that the charges accruing from the providing of information were subject to the tax.

The Commission held that:

[I]t is established that intangibles "including communications" are within the meaning of tangible personal property where as here another provision of the sales tax law, Section 12-35-1150, taxes such communication. The question of what is being sold is answered by reading Sections 12-35-140 and 12-35-1150 together. Those statutes identify the sale of communication as being taxable. Since words in a tax statute are to be understood in their ordinary and popular meaning, it is appropriate to determine the general usage of the word "communication." Beach v. Livingston, 248 S.C. 135, 149 S.E.2d 328 (1966). Communication has been generally defined as the act of communicating, transmission, the exchange of thoughts, messages or the like, as by speech, signals or writing. Thus, the act of transmitting messages cannot be incidental to the information transmitted where by definition communication includes both the transmission and the message. The message and the transmission are integral and indivisible parts of communication and hence neither is incidental to the other. Since extensive use of the ways and means of transmitting communication is sold by [XYZ] the value proceeding from the sale of such is within the meaning of gross proceeds and is subject to tax.

In summary, charges taxable under Code Section 12-35-1150 include, not only the charge for sending a message, but, also charges for the information (message) itself. One cannot be separated from the other.

Furthermore, in 1982 Op. Att'y Gen. No. 82-41, which concluded that charges for cable television services are taxable, it was stated:

...,the question becomes one of statutory construction. Where a statute is expressed in broad and general terms and words of present or future tense are used, it will be applied, not only to situations existing and known at the time of the enactment, but also prospectively to things and conditions that come into existence thereafter.
82 CJS, Statutes, [Section]319

In addition, [section] 2-7-30 provides further guidance as to the construction of statutes. It states 'words importing present tense shall apply to the future also'. Hence, the South Carolina Code of Laws specifically calls for such prospective or expansive treatment where applicable.

In other words, the language of Code Section 12-35-1150 is such that it may be applied to technologies not in existence at the time the Section was enacted.

Conclusion:

The communication services, listed in Exhibit "A", are within the provisions of Code Section 12-35-1150 and, therefore, subject to the sales and use tax.

However, it should be noted that Exhibit "A" is not all inclusive and that other services, whether existing presently or in the future, may be subject to the tax.

NOTE: If there is a question as to the taxability, under Code Section 12-35-1150, of services not listed in Exhibit "A", a written determination can be requested, pursuant to Revenue Procedure #87-3.

SOUTH CAROLINA TAX COMMISSION

s/S. Hunter Howard Jr.

S. Hunter Howard, Jr., Chairman

s/A. Crawford Clarkson Jr.

A. Crawford Clarkson, Jr., Commissioner

Columbia, South Carolina
July _____, 1989

Exhibit "A"

Communication Services

Facsimile:

Process of transmitting exact copies of written, printed and pictorial material over telephone lines (or optical fiber cables). Images are converted by photoelectric cells, which read the amount of light reflected from or transmitted through a document, into electric signals, which are sent through the transmission network. Signals are picked up by a facsimile receiver, which reproduces the original document by the reverse process.

Database Access Transmission:

Transmission of computer database information and programs by and through a modem and telephone lines, whether automatically transmitted or transmitted as a result of a subscriber accessing a computer. Charges may be based on the amount of time the transmission is utilized.

Electronic Mail:

Messages that are transmitted from computer to computer over telephone lines under the direction of an intermediate service. This service is a "host" computer that receives messages, holds them and sends them to the proper destination. Users need a microcomputer, or any computer, a modem, a printer, a telephone line and an electronic mail service.

Credit Reporting:

Transmission of credit data using electronic means and/or computers, communication networks, CRT's and printers.

Voice Messaging:

Process of recording messages for a particular person or firm into a central computer database and activating the message to that person or firm when the computer is accessed for the messages.