



SC REVENUE RULING #89-22

SUBJECT: Subscription Publications
(Sales and Use)

EFFECTIVE DATE: October 1, 1989

REFERENCE: S.C. Code Ann. Section 12-35-510 (1976)
S.C. Code Ann. Section 12-35-810 (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 A Revenue Ruling is public information and remains a permanent document until superseded by a Regulation or is rescinded by a subsequent Revenue Ruling.

Questions:

1. Are charges for subscription publications, with periodic updates, subject to the sales or use tax, pursuant to Code Sections 12-35-510, 12-35-810 and 12-35-140?
2. Are renewal charges for such publications subject to taxation?

Facts:

A company sells a publication on a one-year subscription basis. On an initial order, the customer will receive a complete publication which is contained in one or more loose-leaf binders.

The annual subscription price also includes periodic supplements. These supplements are printed in the same format as the initial publication and can be inserted in the binder(s) as replacement pages or additions.

Each year, upon payment of a renewal charge, customers will receive either a new insert for each binder or a complete publication in new binders.

Discussion:

The question is whether subscription publications constitute tangible personal property, the sale of which are subject to the tax, or whether they are nontaxable services?

South Carolina Code Section 12-35-510 imposes the sales tax, and reads, in part:

In addition to all other licenses, taxes, and charges imposed, there is levied..., upon every person engaged...within this State in the business of selling at retail any tangible personal property whatsoever, including merchandise of every kind and character...., an amount equal to [five] percent of the gross proceeds of sales of the business (emphasis added).

Code Section 12-35-810 imposes the use tax, and reads, in part:

An excise tax is imposed on the storage, use of other consumption in this State of tangible personal property purchased at retail for storage, use or other consumption in this State, at the rate of [five] percent of the sales price of such property,... (emphasis added).

A review of the above imposition sections requires a consideration of certain terms and phrases.

Code Section 12-35-140, which defines "tangible personal property", reads:

The term "tangible personal property" means personal property which may be seen, weighed, measured, felt or touched or which is in any other manner perceptible to the senses, except notes, bonds, mortgages or other evidences of debt and stocks and shall include rooms, lodgings or accommodations furnished to transients for a consideration.

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.

Code Section 12-35-30, which defines "gross proceeds of sales" (the measure of the sales tax), reads, in part:

The term "gross proceeds of sales" means the value proceeding or accruing from the sale of tangible personal property (and including the proceeds from the sale of any property handled on consignment by the taxpayer), including merchandise of any kind and character without any deduction on account of the cost of the property sold, the cost of the materials used, labor or service cost, interest paid or any other expenses whatsoever and without any deductions on account of losses;...(emphasis added).

Code Section 12-35-120, which defines "sales price" (the measure of the use tax), reads, in part:

The term "sales price" means the total amount for which tangible personal property is sold, including any services (including transportation) that are a part of the sale, valued in money or otherwise, and includes any amount for which credit is given to the purchaser by the seller, without any deduction therefrom on account of the cost of the property sold, the cost of the materials used, labor or service cost, interest charged, losses or any other expenses whatsoever; ...(emphasis added).

In summary, the sale or use, within South Carolina, of "any tangible personal property whatsoever", unless otherwise exempt or excluded, is subject to the sales or use tax.

As for determining what constitutes a sale of tangible personal property, as opposed to providing a service, we may look to the courts.

Quoting from Citizens and Southern Systems, Inc. v. South Carolina Tax Commission, 280 S.C. 138, 311 S.E. 2d 717 (1984), a South Carolina Supreme Court case concerning computer software:

The [lower court] trial judge found that the magnetic tape which delivered the information to the purchaser could be seen, weighed, measured, felt, and touched, and therefore, came within the definition of "tangible personal property", [Section] 12-35-140 of the Code.

The judge compared the sale of magnetic tapes to sale of books or phonograph records. He observed that if a professor were to convey knowledge or information to students in person, a sales tax would not be assessed upon the fees charged; however, if the professor published that knowledge or information in a book or recorded it on a phonograph disc, a sales tax would be assessed upon the sale of the book or record. Generally, the value of books and records is the matter which is contained in them, an intangible; the value is not in the paper, binding, or printer's ink.

Furthermore, concerning the above analogy, the trial judge reasoned:

What makes the book valuable is not the paper, binding, and printer's ink, but the knowledge or information contained. But, having been reduced to tangible form, the knowledge is subject to the tax (emphasis added).

The Supreme Court agreed with the trial judge in ruling:

...that the computer software was delivered to C & S in a form which could be seen, weighed, measured, felt, and touched and was therefore tangible personal property, a sale of which is subject to the State's sales and use taxes.

In Richland County v. South Carolina Tax Commission, Court of Common Pleas, Case No. 82-CP-40-2143, the court held:

In as much as the Plaintiff used the tax map sheets in South Carolina, the Defendant levied the use tax based on the sales price of the same. The Plaintiff's Complaint does not deny that it is using the sheets. Rather, it alleges that the subject taxes are improper in that they are based upon the sales price of personal services rendered by Kucera, not tangible personal property. This allegation is without merit.

In Recording Devices v. Porterfield, 283 N. E. 2d 626, 30 Ohio St. 2d 208 (1972), personal services were defined as "an act done personally by a particular individual; it is, in effect, an economic service involving either the intellectual or manual personal effort

of an individual not the saleable product of his skill". The facts before the Court indicate that the Plaintiff contracted with Kucera for the purchase of tax map sheets. These tax map sheets were thus made and delivered by Kucera. They were the "saleable product of its skill". Such facts do not lend themselves to the conclusion that their acquisition represents a personal service transaction.

In point of fact, it was the end product, the tax sheets, that the Plaintiff contracted for. This was the substance of the matter and in tax matters substance governs. Southern Weaving Co. v. Query, 206 S.C. 307, 34 S.E. 2d 51 (1945) and Beard v. South Carolina Tax Commission, 230 S.C. 357, 95 S.E. 2d 628 (1965).

The court further held that:

...although the Plaintiff has indicated that the tax map sheets are highly unique and of little value to anyone save itself, such does not preclude taxation.

"An exemption from the sales tax is never presumed but must be expressly and clearly conferred in plain terms...one who claims exemption from the sales tax must bring himself within the exemption provision and the letter of the statute..." 68 Am. Jur. 2d, Sales and Use Taxes, Section 100, p. 147.

In summary, where the object of a transaction is to transfer tangible personal property, for a consideration, then such transaction, unless otherwise exempt or excluded, is subject to the sales or use tax.

Conclusion:

1. As subscription publications are tangible personal property, as defined at Code Section 12-35-140, charges for such publications are subject to the sales or use tax, per Code Sections 12-35-510 and 12-35-810.
2. Renewal charges for such publications are, also, subject to the sales or use tax.

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
August 23, 1989