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SC REVENUE RULING #89-5

SUBJECT: Electricity Used for Residential Purposes at Charleston Air Force Base
(Sales 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 12-35-510 (1976)
S.C. Code Ann. Section 12-35-550(37) (Supp. 1988)
S.C. Code Ann. Section 12-35-550(42) (Supp. 1988)
S.C. Code Ann. Section 12-35-810 (1976)
S.C. Code Ann. Section 12-35-1140 (1976)

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 A Revenue Ruling is public information and remains a permanent document until superseded by a Regulation or is rescinded by a subsequent Revenue Ruling.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 purchases of electricity by Charleston Air Force Base (CAFB), for use in on-base family housing and a trailer park, exempt from taxation, pursuant to Code Section 12-35-550(37)?

Facts:

Code Section 12-35-510 imposes "upon every person engaged or continuing within this State in the business of selling at retail any tangible personal property...an amount equal to [five] percent of the gross proceeds of sales of the business" (emphasis added).

Code Section 12-35-550(42), effective July 1, 1984, exempts from the sales tax:

The gross proceeds of the sale of tangible personal property to the Federal Government, not including gross proceeds subject to the tax under [Section] 12-35-1140 and [Section] 12-35-1150 of the 1976 Code.

Code Section 12-35-1140 imposes the tax on "the sale or use of electricity" and Code Section 12-35-1150 imposes the tax on "the gross proceeds accruing or proceeding from the charges for the ways or means for the transmission of the voice or of messages".

Code Section 12-35-550(37), however, provides an exemption for:

The gross proceeds of the sale of electricity...used for residential purposes.(emphasis added).

In summary, pursuant to Section 12-35-550(42), sales of electricity to the Federal Government are subject to the sales tax. However, Section 12-35-550(37) provides an exemption for electricity "used for residential purposes."

Discussion:

In order to address this question, it must be determined if the subject electricity is being used for "residential purposes".

Regulation 117-177 defines the term "residential purposes" as "...any space or area occupied by one or more individuals with the intention that such space or area serves as a residence, house, dwelling or abode. Included in the exemption are single family houses, duplexes, condominium units, apartments and mobile homes of a permanent type used by a person or persons as a place of residence, house dwelling or abode. All sales to such locations would be exempt".

Also, Attorney General's Opinion #67, dated August 23, 1979, defines the phrase "residential purposes". Quoting from that opinion:

One of the primary rules of statutory construction is that words used in a statute should be taken in their ordinary and popular significance unless there is something in the statute which requires a different interpretation. Hughes v. Edwards, 265 S.C. 529, 220 S.E. 2d231 (1975); Investors Premium Corp. v. South Carolina Tax Commission, 260 S.C. 13, 193 S.E. 2d642 (1973). 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 (1978); Green v. Zimmerman, 269 S.C. 535, 238 S.E. 2d323 (1977). Also, it is accepted practice in South Carolina to resort to the dictionary to determine the literal meaning of words used in statutes and the meanings which these words embrace. For cases where this has been done, see Hay v. South Carolina Tax Commission, ___S.C.___, 255 S.E. 2d837 (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).

"Residential" is defined in Webster's New World Dictionary, 2d Ed. (1978) to mean:

"Of or connected with residence."

Webster's defines "residence" as:

"The act or fact of residing...The place in which a person or thing resides; dwelling place; abode; esp., a house."

Webster's defines "reside" to mean:

"To dwell for a long time; have one's residence; live (in or at)."

"Purpose" is defined in Webster's as:

"Something one intends to get or do; intention, aim...with a specific end in view."

Judicially, "residential" has been defined as used, serving or designed as a residence. Johnson v. Guarino, 168 A. 2d 171. It has also been held that the word "residence" in a restrictive covenant is equivalent to "residential" and is used in contradistinction to "business", and that if a building is used as a place of abode and no business carried on, it would be used for "residence purposes" only, whether occupied by one family or a number of families. Jernigan v. Capps, 187 Va. 73, 45 S.E. 2d886. Also, the terms "residence purposes" and "residences" require use of the property for living purposes as distinguished from uses for business or commercial purposes. MacDonald v. Painter, Texas, 441 S.W. 2d179.

We, therefore, apply the literal meaning to the term "residential purposes".

The Attorney General's Office concluded that the phrase "residential purposes" means "any space or area occupied by one or more individuals with the intent that such space or area serve as a residence, house, dwelling or abode".

Family housing and the trailer park, located on CAFB, fall within the definition of "residential purposes", as used in Code Section 12-35-550(37), as such facilities are intended to be used as places for persons to live or reside.

Conclusion:

Purchases of electricity by Charleston Air Force Base, for use in on-base family housing and a trailer park, are exempt from the sales tax, pursuant to Code Section 12-35-550(37).

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
April 10, _____, 1989