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SC REVENUE RULING #91-20

SUBJECT: Charges for Electronic Filing of Returns
(Sales Tax)

TAX ANALYST: Steve C. Hallman

EFFECTIVE DATE: May 1, 1992

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

REFERENCE: S.C. Code Ann. Section 12-36-60 (Supp. 1990)
S.C. Code Ann. Section 12-36-100 (Supp. 1990)
S.C. Code Ann. Section 12-36-910 (Supp. 1990)
S.C. Code Ann. Section 12-36-1310 (Supp. 1990)

AUTHORITY: S.C. Code Ann. Section 12-4-320 (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 A Revenue Ruling is public information and remains a permanent document until superseded by a Regulation or is rescinded by a subsequent Revenue Ruling.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 charges for the electronic filing of tax returns subject to sales tax, pursuant to Code Section 12-36-910?

Facts:

As a result of technological advancements, some tax return preparers have the capability of filing certain tax returns via electronic means. Such preparers may electronically file tax returns which they have prepared and they may also file returns which were prepared by others or the taxpayer.

Discussion:

Code Section 12-36-910(A) imposes a sales tax and reads:

A sales tax, equal to five percent of the gross proceeds of sales, is imposed upon every person engaged or continuing within this State in the business of selling tangible personal property at retail. (Emphasis added.)

Code Section 12-36-1310(A) imposes a use tax and reads:

A use tax is imposed on the storage, use, or 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 the property, regardless of whether the retailer is or is not engaged in business in this State. (Emphasis added.)

Code Section 12-36-60 defines the term "tangible personal property" to mean:

personal property which may be seen, weighed, measured, felt, touched, or which is in any other manner perceptible to the senses. It also includes services and intangibles, including communications, laundry and related services, furnishing of accommodations and sales of electricity, the sale or use of which is subject to tax under this chapter and does not include stocks, notes, bonds, mortgages, or other evidences of debt. (Emphasis added.)

The "sale or use of [communications] is subject to tax under [Chapter 36]" pursuant to Code Sections 12-36-910(B)(3) and 12-36-1310(B)(3), which impose the tax on the:

gross proceeds accruing or proceeding from the charges for the ways or means for the transmission of the voice or 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 messages;
...

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 S.E. 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 Sections 12-36-910(B)(3) and 12-36-1310(B)(3); 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:

- "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" - To send from one person, thing or place to another; convey; ...

In addition, the Second Edition of the American Heritage Dictionary defines "communications," in part, as "a means of communicating, esp.: a system for sending and receiving messages, such as mail, telephone or television."

In summary, the statute imposes the sales and use tax on the gross proceeds accruing and proceeding from the charges for the manner, methods and instruments for sending a voice or message.

Next, it is important to review the statute again to fully understand, specifically, what is taxed when imposing the tax on the charges for the manner, methods and instruments for sending a voice or message. The statute specifically includes, as taxable, "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; . . ."

The following quote is from 73 Am Jur 2d, Statutes, Section 250:

In the interpretation of a statute, the legislature will be presumed to have inserted every part thereof for a purpose.... A statute should not be construed in such manner as to render it partly ineffective or inefficient if another construction will make it effective. Indeed, it is a cardinal rule of statutory construction that significance and effect should, if possible, without destroying the sense or effect of the law, be accorded every part of the act, including every section, paragraph, sentence or clause, phrase, and word....

Applying this rule to the question at hand, it must be presumed that the phrase "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" was inserted in Code Sections 12-36-910(B)(3) and 12-36-1310(B)(3) by the Legislature for a special reason, as such charges were already subject to the tax pursuant to Code Sections 12-36-910(A) and 12-36-1310(A). Therefore, "charges for the ways or means for the transmission of the voice or messages" imposes the tax upon something more than merely communications equipment. If the Legislature had intended to tax only charges for use of the equipment, then Code Sections 12-36-910(B)(3) and 12-36-1310(B)(3) would have been unnecessary, as such charges were already taxable.

Therefore, based on the above discussion, it is reasonable to conclude that charges for the ways or means of communication must be charges for access to, or use of, a communication system, whether this charge is based on a fee per a specific time period or per transmission. This is further supported by the definition of the terms "sale" and "purchase", which are defined in Code Section 12-36-100 to include "a license to use or consume."

Furthermore, this interpretation is consistent with the Commission's past policy of imposing the tax on communications on telephone services, computer database access services (*i.e.*, legal research, stock quotes, credit reporting), electronic mail services, voice mail services, facsimile transmission services, cable television, paging services and electronic answering services (See SC Revenue Ruling #89-14, SC Information Letter #89-28 and Commission Decision #89-77 dated June 6, 1989). All of these services constitute communication systems, both large and small, that the purchaser pays to access or use.

In addition, 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 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 prospective or expansive treatment where applicable....

In other words, the language of the statute is such that it may be applied to technologies not in existence at the time the statute was enacted.

Therefore, charges for electronically filing returns are charges subject to the sales tax. Now it must be determined if the preparers are providing one nontaxable service (preparing and filing returns) or providing both a nontaxable service (preparing returns) and a taxable service (providing the ways and means for the transmission of the voice or messages).

Quoting from 68 Am Jur 2d, Sales and Use Taxes, Section 76:

...The delivery of tangible personal property [communications] is not a sale at retail...if it is merely incidental to a special service performed for the purchaser.[footnote omitted]...

The Second Edition of the American Heritage Dictionary defines the term "incidental" as "[o]f a minor, casual, or subordinate nature".

Regulation 117-174.158 entitled "Professional Services" states:

Receipts from the performance of professional services are not subject to the sales tax.

The property used incidental to the performance of such services by licensed medical doctors, dentists, doctors of veterinary medicine, oculists, optometrists, lawyers, accountants, civil engineers, and other licensed professional men is subject to tax on its sale to such persons.

Note however, that a doctor, etc., may in addition to rendering a service, also be in the business of making sales of tangible personal property. For instance, a doctor may sell medicines.

In those cases where professional men are regularly engaged in the business of selling tangible personal property at retail, they must obtain a retail license from the Sales and Use Tax Division and remit to the Tax Commission the taxes due on such sales.

Based upon the above, in those instances when a preparer both prepares and electronically files a return for a client, the filing is merely "incidental" to the preparing of the return and, therefore, not a retail sale of tangible personal property.

Conclusion:

When a preparer both prepares and electronically files a return, charges for preparing and filing the return are not subject to the sales tax. However, if a preparer electronically files a return prepared by any other person, then charges for filing the return are subject to the sales tax, as filing the return would not be "incidental to a special service [preparing the return]". It would be a sale of tangible personal property (communications).

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
November 14 _____, 1991