



SC REVENUE RULING #91-4

**SUBJECT:** Sales of Electric Power by Joint Agencies  
(Electric Power Tax)

**TAX MANAGER:** John P. McCormack

**EFFECTIVE DATE:** July 1, 1991

**REFERENCE:** S.C. Code Ann. Section 6-23-20 (Supp. 1990)  
S.C. Code Ann. Section 6-23-40 (Supp. 1990)  
S.C. Code Ann. Section 6-23-90 (Supp. 1990)  
S.C. Code Ann. Section 6-23-250 (Supp. 1990)  
S.C. Code Ann. Section 12-23-10 (1976)

**AUTHORITY:** S.C. Code Ann. Section 12-3-170 (1976)  
S.C. 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 A Revenue Ruling is public information and remains a permanent document until superseded by a Regulation or rescinded by a subsequent Revenue Ruling.

Question:

Are sales of electric power by "joint agencies" subject to the electric power tax?

Facts:

Chapter 23 of Title 6 of the South Carolina Code of Laws entitled "Joint Municipal Electric Power and Energy Act" allows municipalities to form "joint agencies" in order to better supply electric power to their citizens. Such joint agencies may be formed with municipalities of other states, as well as municipalities of South Carolina.

Discussion:

S.C. Code Section 6-23-20 defines a joint agency as "a public body and body corporate and politic organized in accordance with the provisions of this chapter." Section 6-23-40(a) states, in part,

The governing body of two or more municipalities may by resolution or ordinance determine that it is in the best interest of the respective municipalities and their electric customers. . .to create a joint agency for the purpose of undertaking the planning, financing, development, acquisition, purchase, construction, reconstruction, improvement, enlargement, ownership, operation and maintenance of a project or projects to supply electric power and energy for such municipalities' present and future needs...

Code Section 6-23-90 establishes the rights and powers of a joint agency, and reads, in part:

Each joint agency shall have all the rights and powers necessary or convenient to carry out and effectuate the purposes and provisions of this chapter, including, but not limited to, the rights and powers:

\* \* \* \* \*

(o) To generate, produce, transmit, deliver, exchange, purchase or sell for resale only, electric power or energy. . .(emphasis added).

In addition, Code Section 6-23-250 reads:

A project owned by a joint agency shall not be exempt from property taxes or other taxes if applied to the sale of energy; provided, however, that if all or any portion of the joint agency is declared exempt from property taxation then the joint agency shall, in lieu of property taxes, pay to any governmental body authorized to levy property taxes the amount which would be assessed as taxes on real and personal property of a project if such project were subject to valuation and assessment by the respective governmental body authorized to levy property taxes the amount which would be assessed as taxes on real and personal property of a project if such project were subject to valuation and assessment by the respective governmental body. Such payments in lieu of taxes shall be due and shall bear interest if unpaid, as are added to taxes on taxable property in the governmental body. Payments in lieu of taxes if made hereunder shall be treated in the same manner as taxes for purposes of all procedural and substantive provisions of law.

Power and energy sold by a joint agency shall be subject to taxes (emphasis added).

However, Code Section 12-23-10, which imposes the electric power tax, reads:

(1) Every person, except the State, a county, a municipality or any agency or political subdivision thereof, engaged in the business of selling electric power for resale within the State shall be subject to the payment of an excise, license or privilege tax of five tenths of one mill upon each kilowatt hour of electric power sold for resale within the State; provided, that the sales for resale of an electric cooperative to a customer whose sales are taxed under subsection (2) hereof shall not be taxed under this subsection; and

(2) Every public utility and electric cooperative engaged in the business of selling electric power within the State to the ultimate user of such power shall be subject to the payment of an excise, license or privilege tax of five tenths of one mill upon each kilowatt hour sold within the State to the ultimate answer, except upon such electric power purchased from vendors taxed under subsection (1) of this section, provided, that no tax shall be imposed by this section or the preceding subsection upon electric cooperatives with respect to any kilowatt hours sold prior to January 1, 1971, but shall be imposed upon electric cooperatives with respect to one-half of the kilowatt hours sold by each cooperative in the year 1971 and upon all of the kilowatt hours sold by each cooperative in the year 1972 and in each year thereafter.

It therefore appears as if Code Section 12-23-10(1), which provides an exception for political subdivisions of this State, and Code Section 6-23-250, which subjects joint agencies to taxes on power and energy sold, are in conflict.

The issue then is which of the two statutes is controlling in the instant case. The South Carolina Supreme Court said in Jolly v. Atlantic Greyhound Corporation, et al., 207 S.C. 1, S.E. 2d 42 (1945), that where two sections of a statute are irreconcilable, the subsequent section, or the "last legislative expression," prevails over the prior one. With respect to the issue at hand, Code Section 6-23-350 constitutes the "last legislative expression."

Conclusion:

Joint agencies are specifically subject to taxation on power or energy sold, even as a political subdivision of this State, pursuant to Code Section 6-23-250.

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  
February 19 \_\_\_\_\_, 1991