



SC REVENUE RULING #92-15

SUBJECT: State Government and its Political Subdivisions
(Sales and Use Tax)

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EFFECTIVE DATE: Applies to all periods open under the statute.

REFERENCE: S.C. Code Ann. Section 12-36-910 (Supp. 1991)
S.C. Code Ann. Section 12-36-1310 (Supp. 1991)
S.C. Code Ann. Section 12-36-30 (Supp. 1991)
S.C. Code Ann. Section 12-36-60 (Supp. 1991)
S.C. Code Ann. Section 12-36-2120 (Supp. 1991)

AUTHORITY: S.C. Code Ann. Section 12-4-320 (Supp. 1991)
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 A Revenue Ruling is public information and remains a permanent document until superseded by a Regulation or is rescinded by a subsequent Revenue Ruling.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:

Is the State, or any of its political subdivisions, subject to sales and use taxes?

Facts:

The State of South Carolina and its various political subdivisions, in performing their governmental functions, sell tangible personal property and services to individuals, businesses and other governmental agencies.

Examples of such sales by the State and its political subdivisions include:

1. Concession and gift shop sales at parks, recreation centers, etc.
2. Sales of souvenirs by universities and colleges.

3. Sales of copies of records, such as tax returns, deeds, college transcripts and driving records.
4. Charges for accessing a computer database.
5. Sales of computer software.
6. Sales of manuals and periodicals, such as a manual of an agency's rules and regulations.
7. Charges for accommodations at campgrounds.

Also, the State and its political subdivisions purchase supplies, equipment and services necessary to carry out their governmental functions. Examples of such purchases include office supplies, furniture, computers, printers, software, and access to computer database services.

Discussion:

Code Section 12-36-910 imposes a "sales tax, equal to five percent of the gross proceeds of sales, ... upon every person engaged or continuing within this State in the business of selling tangible personal property at retail."

Code Section 12-36-1310 imposes a "use tax ... 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". The tax is imposed at a rate of five percent of the sales price of the property. The use tax is the liability of the person storing, using, and consuming the property in South Carolina.

Code Section 12-36-30 defines the term "person" to include "any individual, firm, partnership, association, corporation, receiver, trustee, any group or association acting as a unit, the State, any state agency, any instrumentality, authority, political subdivision, or municipality." (Emphasis added.)

The term "tangible personal property" has been defined in Code Section 12-36-60 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.

In summary, the sales tax is imposed upon any person, including the State and any one of its political subdivisions, who sells tangible personal property at retail. The use tax is imposed upon any person, including the State and its political subdivisions, storing, using or consuming tangible personal property that has been purchased at retail from an out of state retailer.

Now, we must review the statutory exemptions to determine if any specifically apply to sales or purchases by the State or its political subdivisions.

Code Sections 12-36-2120 and 12-36-2130 provide exemptions from the sales and use tax with respect to the following:

(1) tangible personal property or receipts of any business which the State is prohibited from taxing by the Constitution or laws of the United States of America or by the Constitution or laws of this State;

* * * *

(3) textbooks, magazines, and periodicals used as a part of a course of study in primary and secondary schools and institutions of higher learning, and all books, magazines, and periodicals sold to publicly supported state, county, or regional libraries which are open to the public without charge;

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(30) office supplies, or other commodities, and other services resold by the Division of General Services of the State Budget and Control Board to departments and agencies of the state government, if the tax was paid on the divisions original purchase;

* * * *

(46) War memorials or monuments honoring units or contingents of the Armed Forces of the United States or of the National Guard, including United States military vessels, which memorials or monuments are affixed to public property.

While there may be other exemptions under Code Sections 12-36-2120 and 12-36-2130 that could apply, the four cited above are often applicable to transactions that involve the State or its political subdivisions.

Therefore, the sales and use tax cannot be imposed upon transactions for which the General Assembly has enacted an exemption, whether the exemption is found in the sales and use tax code or elsewhere in South Carolina code of laws.

Finally, Regulation 117-174.95 concerns transfers of tangible personal property between State agencies and between State agencies and the counties and municipalities, and reads:

An agency of the State of South Carolina is not deemed to be engaged in the business of selling tangible personal property at retail when transferring tangible personal property to another agency of the State or to a county or to a municipality if the consideration for the transfer only reimburses the transferring agency for its costs and expenses in conveying the property; provided the transferring agency has paid tax on the initial purchase of the tangible personal property.

Where, however, a State agency sells tangible personal property to persons other than another State agency, county, or municipality for use or consumption, such sales shall be considered retail sales subject to the tax. The agency is required to be licensed as a retailer under the terms and provisions of the sales and use tax act.

For additional regulations regarding sales to or purchases by the State or its political subdivisions, see Regulations 117-174.92, 117-174.93, 117-174.94, 117-174.96, 117-174.97, 117-174.98, and 117-174.100.

Conclusions:

1. Sales of tangible personal property by the State, counties, municipalities and other political subdivisions of the State are subject to the sales tax, unless such sales fall within the provisions of Regulation 117-174.95 (transfers by State agencies to other agencies, counties or municipalities at cost) or are otherwise exempt. (See Code Sections 12-36-2120 and 12-36-2130 for the exemptions.)

2. Sales to, or purchases by, the State, counties, municipalities, and other local political subdivisions of tangible personal property are subject to the sales and use tax, unless such sales fall within the provisions of Regulation 117- 174.95 (transfers by State agencies to other agencies, counties or municipalities at cost) or are otherwise exempt. (See Code Sections 12-36-2120 and 12-36-2130 for the exemptions.)

Note: As stated in the Discussion, "tangible personal property" includes laundry and dry cleaning services, electricity, certain communications services (local telephone service, faxing services, database access services, paging services, 900/976 telephone services), accommodation services and certain other services that are subject to the sales and use taxes under Chapter 36 of Title 12 and the rules and regulations of the SC Tax Commission. Therefore, transactions with the State or its political subdivision involving these services are subject to the sales and use tax, unless such sales fall within the provisions of Regulation 117-174.95 (transfers by State agencies to other agencies, counties or municipalities at cost) or are otherwise exempt.

SOUTH CAROLINA TAX COMMISSION

s/A. Crawford Clarkson Jr.

A. Crawford Clarkson, Jr., Chairman

s/T. R. McConnell

T. R. McConnell, Commissioner

s/James M. Waddell Jr.

James M. Waddell, Jr., Commissioner

Columbia, South Carolina
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