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SC REVENUE RULING #94-11 (TAX)

SUBJECT: School and Library Books - Printed Form or Alternative Forms
(Sales and Use Taxes)

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

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

REFERENCES: S. C. Code Ann. Section 12-36-2120 (Supp. 1993)

AUTHORITY: S. C. Code Ann. Section 12-4-320 (Supp. 1993)
SC Revenue Procedure #94-1

SCOPE: A Revenue Ruling is the Department of Revenue's official advisory opinion of how laws administered by the Department are to be applied to a specific issue or a specific set of facts, and is provided as guidance for all persons or a particular group. It is valid and remains in effect until superseded or modified by a change in the statute or regulations or a subsequent court decision, Revenue Ruling or Revenue Procedure.

Question:

Are sales of textbooks, books, magazines, periodicals and newspapers to schools and publicly supported state, county, or regional libraries open to the public without charge in printed form or alternative forms, such as audio tape, video tape, CD ROM, microfilm and microfiche, exempt from sales and use taxes under Code Section 12-36-2120?

Conclusion:

Sales to Public and Private Schools

The following sales to public or private schools are **exempt** from sales and use taxes under Code Section 12-36-2120, whether in printed form or in alternative forms, such as audio tape, video tape, CD ROM, microfilm and microfiche:

1. Textbooks, books, magazines and periodicals, used as part of a prescribed course of study;
2. School library books;
3. Encyclopedias and dictionaries; and,
4. Newspapers.

All textbooks, books, magazines and periodicals not falling in the above categories are subject to South Carolina sales and use taxes.

Sales to Public Libraries -

Sales of books, magazines, periodicals and newspapers to publicly supported state, county, or regional libraries in printed form or in alternative forms, such as audio tape, video tape, CD ROM, microfilm and microfiche, are **exempt** from sales and use taxes under Code Section 12-36-2120 providing the library is a publicly supported state, county or regional library that is open to the public without charge.

This document does not address the sales and use tax implications of database access services. It is our understanding that legislation may be introduced on this topic next year.

Facts:

In today's advanced technological environment, public and private schools, and publicly supported state, county, or regional libraries that are open to the public without charge are purchasing books, magazines, periodicals and newspapers in forms other than in traditional print versions. Some of the most common alternative methods have been microfilm and microfiche. Recently, CD ROM has gained widespread usage as a means of providing books, magazines, periodicals and newspapers for library and school use. Many libraries are also purchasing books on audio and video tape.

Discussion:

PRINTED TEXTBOOKS, BOOKS, MAGAZINES AND PERIODICALS USED IN PUBLIC OR PRIVATE SCHOOLS

Code Section 12-36-2120(3) provides an exemption from the sales tax for the gross proceeds of sales or sales price of:

textbooks, magazines, and periodicals used as a part of a course of study in primary and secondary schools and institutions of higher learning...

Regulation 117-174.213 further explains this exemption for textbooks used in public and private schools, colleges and universities and reads:

There is exempted from the measure of the tax levied, assessed, or payable, "The gross proceeds of the sale of textbooks used in elementary schools, high schools and institutions of higher learning."

The term "textbook" is construed to include only books purchased for and used in elementary schools, high schools and institutions of higher learning. **Included within the definition of textbooks are school library books, encyclopedias and dictionaries. Also deemed textbooks when part of a prescribed course of study are workbooks, band and sheet music, plays, filmstrips, transparencies, motion picture films, audio tapes and records, recorded music and periodicals.**

Examples of sales subject to the tax are magazine subscriptions, reader guides (this is in connection with magazine subscriptions), test sheets, answer sheets, evaluation criteria, games, albums, pupil cumulative records, guide pamphlets, yearbooks, award certificates, diplomas, writing materials, art supplies, drafting supplies, easels, projectors, projector lamps and bulbs, projection screens and equipment carts or tables, magboards, flannel boards, laboratory supplies and equipment, biological supplies incidental to classroom instruction, athletic equipment, shop supplies and equipment, record players, recorders, computer instructional equipment, manipulated devices, charts, maps (including globes), map stands, raw film, blank tapes, and any and all other items of tangible personal property used in the classroom or office which do not qualify as "textbooks" as hereinabove defined. (Emphasis added).

Therefore, textbooks, magazines, and periodicals sold to public or private schools, colleges or universities for use as part of a prescribed course of study are **not** subject to the state sales and use taxes, pursuant to Code Section 12-36-2120(3). The exemption is further defined in Regulation 117-174.213 to include school library books, encyclopedias and dictionaries. Also included in the definition of "textbook", and therefore **not** subject to the state sales and use taxes, are filmstrips, audio tapes and records, recorded music and periodicals used as part of a prescribed course of study. This statute, however, does not exempt magazines and periodicals that are **not** used as part of a prescribed course of study.

PRINTED BOOKS, MAGAZINES AND PERIODICALS USED IN PUBLICLY SUPPORTED STATE, COUNTY OR REGIONAL LIBRARIES OPEN TO THE PUBLIC WITHOUT CHARGE

Code Section 12-36-2120(3) provides an exemption from the sales tax for the gross proceeds of sales or sales price of:

...all books, magazines, and periodicals sold to publicly supported state, county, or regional libraries which are open to the public without charge;

Regulation 117-174.251 further explains this exemption for books used in publicly supported state, county or regional libraries and reads, in part:

Included in Part III, Permanent Provisions of the 1968 General Appropriation Bill is an amendment to [Section 12-36-2120] of the 1976 South Carolina Code of Laws, as amended. The amendment reads that there is exempted from the measure of the tax levied, assessed or payable "The gross proceeds of the sale of all books sold to legally established, public supported State, County and/or Regional libraries which are open to the public without charge."

The term "books" is construed to include filmstrips of a type in general use by elementary schools, high schools, and institutions of higher learning.

Subject to the tax when purchased by libraries are all other properties such as furniture, fixtures, typewriters, projectors, turntables, globes, stationery, index cards, files, shelving, and visual aids. (Emphasis added.)

Therefore, books, magazines, and periodicals sold to publicly supported state, county, or regional libraries that are open to the public free of charge are not subject to the state sales and use taxes. Additionally, the exemption for library books is defined in the regulation to include filmstrips.

ALTERNATIVE FORMS OF TEXTBOOKS, BOOKS, MAGAZINES AND PERIODICALS

Now we must consider whether the legislature intended to exempt alternative forms of books, magazines, and periodicals that are not addressed in the above regulations. The general rule is statutes are not confined in application to contemporary instances and their principles are to be extended to embrace new factual situations and new technological developments. Smith v. Pan Air Corp., 684 F.2d 1102 (5th Cir. 1982). Naturally, though, any such extension must be in accord with legislative intent. See Commission Decision #90-39.

In Technical Advice Memorandum #90-6 the Commission concluded that certain software purchased by a school district and used as a required part of a prescribed course of study is deemed to be a textbook and thus qualifies for the exemption provided at Code Section [12-36-2120(3)].

Based upon the above analysis, alternative forms of the traditional printed textbooks, library books, magazines and periodicals, such as microfilm, microfiche, and CD ROM, are new technological developments for the same use, and are included in the exemption provided in Code Section 12-36-2120(3). The exemption does not include alternative forms that are used by the library to store or present information, such as a card catalog on CD ROM.

ALTERNATIVE FORMS OF NEWSPAPERS

Code Section 12-36-2120(8) provides that gross proceeds of sales of printed newspapers are exempted from sales tax. We must now determine whether newspapers purchased by schools and libraries on CD ROM or microfiche are exempt from sales and use taxes. Newspapers are not specifically included in the definition of "textbook" set forth in Regulation 117-174.213 or in the definition of "book" set forth in Regulation 117-174.251, however, as discussed in the above section, it appears the legislative intent is to exempt newspapers used by public and private schools, colleges and universities, as well as, newspapers used by publicly supported state, county or regional libraries that are open to the public, whether printed or on an alternative format such as microfiche or CD ROM.

Based on the above, newspapers on alternative forms sold to schools and libraries are exempt from sales and use taxes under Code Section 12-36-2120(3) as a "book". Only newspapers printed on newsprint paper that meet the requirements of Regulation 117-174.166 qualify for the exemption as a "newspaper" under Code Section 12-36-2120(8).

SOUTH CAROLINA DEPARTMENT OF REVENUE

S/A. Crawford Clarkson, Jr.

A. Crawford Clarkson, Jr., Chairman

s/James M. Waddell Jr.

James M. Waddell, Jr., Commissioner

Columbia, South Carolina
December 6 _____, 1994