

SC REVENUE RULING #95-11 (TAX)

SUBJECT: Commercial Housing Of Poultry and Livestock  
(Sales and Use Tax)

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

REFERENCE: S.C. Code Ann. Section 12-36-2120(45) (Supp. 1994)

AUTHORITY: S.C. Code Ann. Section 12-4-320 (Supp. 1994)  
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 to 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 It is valid and remains in effect until superseded or modified by a change in the statute or regulations or a subsequent court decision, Revenue Ruling or Revenue Procedure.

Questions:

1. Are fencing and fencing supplies exempt from the sales and use tax under Code Section 12-36-2120(45) when used for agricultural purposes?
2. If fencing and fencing supplies are exempt from the sales and use tax under Code Section 12-36-2120(45) when used for agricultural purposes, then are watering tubs, feed troughs, and hay feeders placed within the fenced in area also exempt from the sales and use tax under Code Section 12-36-2120(45)?

Conclusions:

1. Fencing and fencing supplies are exempt from the sales and use tax under Code Section 12-36-2120(45) when used to surround an area on all sides in order to protect livestock or poultry raised or maintained for commercial purposes.

The exemption is applicable when the fencing and fencing supplies are used within a building such as a barn or a chicken house or used to surround a field that is specifically set aside and used for livestock or poultry that is raised or maintained for commercial purposes.

**Note: Fencing and fencing supplies used to surround a field where crops are grown do not qualify for exemption from the sales and use tax.**

2. Watering tubs, feed troughs, and hay feeders placed within a fenced in area specifically set aside and used for livestock or poultry are exempt from the sales and use tax under Code Section 12-36-2120(45), provided the livestock and poultry within the enclosure are being raised or maintained for commercial purposes.

Facts:

Farmers use fencing and fencing supplies (e.g. posts, gates, nails, cement, barbed wire) to protect crops, poultry, and livestock. When used to fence in poultry and livestock, a farmer may also place within the protected area such items as watering tubs, feed troughs, and hay feeders so that the animals may have water and food.

Questions have arisen as to whether sales of these items to farmers are exempt from the sales and use tax.

Discussion:

Code Section 12-36-2120(45) exempts from the sales and use tax the:

gross proceeds from the sale of building materials, supplies, fixtures, and equipment for the construction, repair, or improvement of or that become a part of a self-contained enclosure or structure specifically designed, constructed, and used for the commercial housing of poultry or livestock.

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 SC 269, 255 S.E.2d 837 (1979); Fennell v. South Carolina Tax Commission, 233 S.C. 43, 103 S.E.2d 424 (1958); Etiwan Fertilizer Co. v. South Carolina Tax Commission, 217 SC 484, 60 S.E.2d 682 (1950).

The Second College Edition of the American Heritage Dictionary defines the following words:

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| self-contained | 1. Possessing within oneself or itself all that is necessary; self-sufficient.   |
| enclosure      | 1. The act of enclosing. 2. The state of being enclosed. 3. Something that is enclosed. 4. Something that encloses.  |
| enclose        | 1. <u>To surround on all sides</u> ; close-in. 2.a. To place within a container. b. To insert in the same envelope or package. 3. <u>To fence in</u> or place an enclosure around so as to prevent common use. (Emphasis added.)                 |
| structure      | 1. Something made up of a number of parts that are held or put together in a particular way. 2. The way in which parts are arranged or put together to form a whole. 5. Something constructed, esp. a <u>building</u> or part. (Emphasis added.) |
| housing        | 1.a. Residences or dwelling places for people. b. A place to live; dwelling. 2.a. <u>Something that covers, protects, or supports</u> . (Emphasis added.)  |

Therefore, fencing and fencing supplies used to surround an area on all sides are exempt from the sales and use tax, provided that such fencing is used to protect livestock or poultry raised or maintained for commercial purposes. The exemption is applicable when the fencing and fencing supplies are used within a building such as a barn or a chicken house or used to surround a field occupied by livestock or poultry.

Fencing and fencing supplies used to surround a field where crops are grown do not qualify for exemption from the sales and use tax.

Now we must address the taxability of watering tubs, feed troughs, and hay feeders.

As a general rule, tax exemption statutes are strictly construed against the taxpayer. Owen Industrial Products, Inc. v. Sharpe, 274 S.C. 193, 262 S.E.2d 33 (1980). Hollingsworth on Wheels, Inc. v. Greenville County Treasurer, 276 S.C. 314, 278 S.E. 2d 340 (1981). This rule of strict construction simply means that constitutional and statutory language will not be strained or liberally construed in the taxpayer's favor. York County Fair Association v. S.C. Tax Commission, 249 S.C. 337, 154 S.E.2d 361 (1967).

However, the following quote from 73 Am.Jur.2d Statutes, Section 275 provides some further guidance in interpreting exemption statutes:

Although a strict construction is a narrow construction and the statute may not be extended by implication or inference, the construction should not be unduly technical, arbitrary, severe, artificial, or narrow. The words used need not be given any meaning other than their full meaning, where such construction is in harmony with the context. A strict construction permits the words to be read naturally. A statute which is subject to the rule of strict construction is nevertheless entitled to a reasonable, sensible, and fair construction. The courts should take a common sense view of the statute as a whole and should not render a statute nugatory, inoperative, or ineffectual, but should interpret it as to give it an efficient operation.

Therefore, in reading the exemption statute in a manner that is "not ... unduly technical, arbitrary, severe, artificial, or narrow", the watering tubs, feed troughs, and hay feeders do come within the exemption as "equipment for the ... improvement of ... a self-contained enclosure." However, in order for the exemption to apply, the livestock and poultry within the enclosure must be raised or maintained for commercial purposes.

SOUTH CAROLINA DEPARTMENT OF REVENUE

s/Burnet R. Maybank III  
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Columbia, South Carolina  
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