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SC TECHNICAL ADVICE MEMORANDUM #87-11

TO: Mr. Marvin Davant, Director
Field Services Division

FROM: Jerry B. Knight, Manager
Tax Policy and Procedures Department

DATE: October 7, 1987

SUBJECT: Sales/Use Tax Exemption

REFERENCE: S.C. Code Sections 12-35-550 and 12-35-820
Regulation 117-174.60

AUTHORITY: S.C. Code Section 12-3-170
S.C. Revenue Procedure #87-3

SCOPE: A Technical Advice Memorandum is a temporary document issued to an individual within the Commission, upon request, and it applies only to the specific facts or circumstances related in the request. Technical Advice Memoranda have no precedential value and are not intended for general distribution.

Question:

Are sales to or purchases by a nonprofit organization of tangible personal property subject to the sales or use taxes?

Facts:

The organization is a nonprofit, non-funded, state chartered organization which is currently managing a research and development project funded by the federal government. The organization purchases materials for five contractors who are working on the project. Some of the tangible personal property purchased such as computer hardware and software will eventually become the property of the federal government.

Discussion:

South Carolina Code Sections 12-35-550 and 12-35-820 provide exemptions for certain transactions from the State's sales and use taxes. The statute does not provide an exemption for sales to or purchases by a non-profit organization. In addition, Regulation 117-174.60 states:

"Charitable and nonprofit organizations and institutions have no special exemptions from the sales and use taxes. Further, they are required to comply with all provisions of these laws relating to the filing of returns, making payment of taxes, etc."

As for taxing transactions involving the federal government, the United States Supreme Court in Alabama v. King & Boozer 314 U.S. 1, 86 L. Ed 3, 62 S.Ct. 43, 140 ALR 615 (1941) stated:

"We think, as the Supreme Court of Alabama held, that the legal effect of the transaction which we have detailed was to obligate the contractors to pay for the lumber. The lumber was sold and delivered on the orders of the contractors which stipulated that the Government should not be bound to pay for it. It was in fact paid for by the contractors who were reimbursed by the Government pursuant to their contract with it."

The contractors were held to be liable for the tax since the legal incidence of the tax did not fall on the government.

Based upon information supplied by the organization, it appears the present case is analogous to Alabama v. King & Boozer. The tangible personal property is purchased by the organization with their own funds. It is responsible to the vendor for payment, not the federal government. The federal government only reimburses the organization.

Conclusion:

Sales to or purchases by the organization of tangible personal property are not exempt from the sales or use taxes.