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SC TECHNICAL ADVICE MEMORANDUM #87-13

TO: Mr. Marvin Davant, Director
Field Services Division

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

DATE: October 21, 1987

SUBJECT: \$300 Sales/Use Tax Cap

REFERENCE: S.C. Code Section 12-35-516

AUTHORITY: Code Section 12-3-170
SC 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:

Does the \$300 sales tax cap on motor vehicles apply to both the truck and compactor portions of a garbage truck; or does it only apply to the truck?

Facts:

A South Carolina retailer contracts with Company A (an out-of-state vendor) to purchase a garbage truck. Company A purchases a truck from Company B and a trash compactor from Company C. The truck and compactor are then joined together to form one unit, a garbage truck. The garbage truck is delivered to the South Carolina retailer who, in turn, sells the unit to a local governmental entity.

The South Carolina retailer, on its bill of sale, shows the charges for the truck and compactor separately. The \$300 cap is applied to the total of the two (truck and compactor).

Discussion:

Code Section 12-35-516 reads, in part:

"In case of the sale or lease of any..... (2) motor vehicle, the maximum tax levied by this Chapter is three hundred dollars....."

Further, Regulation 117-171 defines "motor vehicle" as, "Every vehicle which is self-propelled and customarily used on South Carolina highways; provided, however, that the term shall not include self-propelled motor vehicles not designed or used primarily for transportation of persons or property and incidentally operated or moved over the highways, including farm tractors, road construction and maintenance machinery, ditch digging apparatus, truck cranes or mobile shovel cranes, and similar vehicles, this enumeration to be deemed partial and not to operate to exclude other such vehicles which are within the general terms of this definition."

Code Section 12-35-510 imposes a tax "upon every person engaged.....in the business of selling at retail any tangible personal property whatsoever,, an amount equal to four percent of the gross proceeds of sales of the business." Effective July 1, 1984, an additional one percent was added (Section 12-35-515).

The term "sale" is defined at Section 12-35-100 as:

"Any transfer, exchange or barter, conditional or otherwise, in any manner or by any means whatsoever, of tangible personal property for a consideration."

In State v. Byrnes, 68 S.E.2d 33, the State Supreme Court ruled, "...the sales tax is an imposition upon the privilege of the business of selling at retail and measured by the amount of business done, which is a clear case of an excise tax to which the constitutional provisions relating to property taxes are irrelevant." Black's Law Dictionary defines an "excise tax" as, "A tax imposed on the performance of an act, the engaging in an occupation, or the enjoyment of a privilege." Further, Regulation 117-174.194 (Definition of "Sale") reads, in part, "Each transaction whereby property is transferred from one owner to another constitutes a sale under the Sales Tax Law except in instances where the property is transferred as a gift."

In summary, the sales tax is imposed upon specific transactions whereby tangible personal property is transferred for a consideration. It is not imposed upon the property.

Conclusion:

Based upon the foregoing discussion, it is concluded that the term "motor vehicle" applies to the entire garbage truck (truck and compactor).

Thus, since there is only one transaction (sale of a garbage truck), the cap shall apply to the entire unit.