



SC TECHNICAL ADVICE MEMORANDUM #87-5

TO: Mr. Marvin Davant, Director
Field Services Division

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

DATE: April 29, 1987

SUBJECT: Residential Area Lights-Sales Tax

REFERENCE: S.C. Code Section 12-35-550(37)
Regulation 117-170
Attorney General's Opinion #79-105

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 Memorandums have no precedential value and are intended for internal use only.

Question:

Is the sale of electricity used for home area lights subject to taxation under Code Section 12-35-510, or exempt pursuant to Code Section 12-35-550(37)?

Facts:

Some individuals choose to have installed, on a power pole, a street light, which is sometimes referred to as an "area light." Such lighting is for security purposes, typically, and is not involved with the electricity consumed for heating or in-house use. A fixed amount is billed and such electricity is not metered. Usually, there is an initial charge for installing, and another for disconnecting the light.

Discussion:

Code Section 12-35-550(37)(D) reads, "Notwithstanding any other provision of law, beginning April 1, 1984, no sales tax may be assessed on the gross proceeds of the sale of electricity, natural gas, fuel oil, LP gas, coal, or any other such combustible heating material or substance used for residential purposes (emphasis added)."

Regulation 117-177 defines the term "residential purposes" as "...any space or area occupied by one or more individuals with the intention that such space or area serves as a residence, house, dwelling or abode. Included in the exemption are single family houses, duplexes, condominium units, apartments and mobile homes of a permanent type used by a person or persons as a place of residence, house dwelling or abode. All sales to such locations would be exempt."

Attorney General's Opinion #79-105, dated August 23, 1979, defines the term "residential purposes" as meaning "any space or area occupied by one or more individuals with the intent that such space or area serve as a residence, house, dwelling or abode (emphasis added)."

The Attorney General's Office relied upon the definition's found in Webster's New World Dictionary, 2d Ed. (1978) for "residential" and "purpose". "Residential" is defined as "of or connected with residence (emphasis added)." "Purpose" is defined as "something one intends to get or do; intention, aim....with a specific end in view."

Furthermore, it was held that the term "residence" should be viewed as a place not used for business purposes.

Conclusion:

Based upon the foregoing discussion, it is concluded that the term "residential" pertains to not only the house in which one resides, but encompasses the entire "space or area" which is "connected with" the house.

Therefore, it is concluded that the gross proceeds of sales of electricity used to illuminate an area light located on a lot upon which a personal home is situated is exempt from sales tax pursuant to S.C. Code Section 12-31-550(37).