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SC TECHNICAL ADVICE MEMORANDUM #88-20

TO: Mr. Marvin N. Davant, Director
Field Services Division

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

DATE: November 23, 1988

SUBJECT: Products of the Farm, Grove, Vineyard and Garden
(Sales and Use Tax)

REFERENCE: S.C. Code Ann. Section 12-35-550(21) (1976)
S.C. Code Ann. Section 46-1-10 (1976)
Regulation 117-174.8
Regulation 117-174.15
Regulation 117-174.16
Regulation 117-174.28

AUTHORITY: S.C. Code Ann. Section 12-3-170 (1976)
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:

Do items, such as grass sod, ornamental plants, flowers, or pine straw, qualify as "products of the farm, grove, vineyard or garden" for purposes of the exemption found at Code Section 12-35-550(21)?

Facts:

Code Section 12-35-550(21) exempts from the sales and use tax "[t]he gross proceeds of the sale of products of the farm, grove, vineyard or garden when sold in the original state of production or preparation for sale and when sold by the producer thereof or by members of his immediate family."

Regulation 117-174.8, entitled "Agricultural Products - Farm, Grove, Vineyard or Garden," reads:

Sales of products of the farm, grove, vineyard or garden when sold by the producer thereof, or by members of his immediate family, in the original state of production or preparation for sale, are not subject to the tax. The foregoing has application only when such products have not been processed, except to the extent that such products are customarily processed by operators of farms, groves, vineyards or gardens in preparing such products for market.

This exemption to producers is lost where the products, prior to the sale thereof, are processed by the producer in any manner in addition to the usual and customary preparation for sale, even though such processing and selling is done by the producer or members of his immediate family. This exemption is intended to do no more than allow a farmer to sell his farm products tax free as a farmer. Where the farmer is also operating a processing plant, he cannot claim this exemption for sales of the processed products.

Regulation 117-174.15, entitled "Nursery, The Term 'Nursery' Construed," reads:

The Tax Commission made the following rule with respect to nurseries:

"The nursery is a garden within the meaning of Code Section 12-35-550(5). As such, the nursery operator may purchase free of the tax commodities specifically exempted in this Section under the conditions outlined therein."

The practical result of the ruling announced above is to exempt from payment of sales or use taxes the gross proceeds of the sale of insecticides, chemicals, or fertilizer, or soil conditioners, or seeds or seedlings or nursery stock when purchased by a nurseryman for use solely in the production for sale of products of his nursery.

This rule also operates to exempt from payment of sales or use taxes the sale of nursery products when sold in the original state of production or preparation for sale by the producer thereof or by immediate members of his family. The exemption is lost unless the nursery products are sold by the producer thereof or by members of his immediate family and the exemption cannot apply when the products are processed beyond the usual preparation for sale.

Regulation 117-174.16, entitled "Floral Product, Sales of", reads:

Persons growing plants, seedlings, nursery stock, and floral products for market and who sells [sic] such products at retail, as well as persons who purchase from others plants, seedlings, nursery stock, and floral products which they in turn sell at retail to the user or consumer thereof, are subject to the tax.

Regulation 117-174.28, entitled "Timber, Timber Products, Taxable Status Under Statute", reads:

Effective May 1, 1952, by order of the South Carolina Tax Commission, the terms "farm products" as used in Code Section 12-35-550(17); and "agricultural products" as used in Code Section 12-35-550(6), are deemed to include timber, both standing and felled, provided there is a compliance with the conditions of the respective exempt sections under which the purchaser seeks to buy tax free or the vendor seeks to sell free of the tax.

The practical result of the ruling announced above is to exempt from payment of sales or use taxes (1) the gross proceeds of the sale, or sales of insecticides, chemicals, or fertilizer, soil conditioners, or seeds or seedlings or nursery stock for use solely in the production for sale of timber or timber products; (2) the gross proceeds of the sale, or sales, of timber or timber products when sold in the original state of production or preparation for sale, and when sold by the producer thereof or by members of his immediate family; (3) the gross proceeds of the sale of animal or motor drawn or operated machinery used in the planting, cultivation or harvesting of timber; and (4) the gross proceeds of the sale, or sales, of boxes, crates, bags, bagging, ties, barrels, or other containers and the labels thereof used in preparing timber or timber products for market, when these properties are to be sold or furnished by the seller of the products contained therein to the purchaser of such products.

Discussion:

The issue in question is whether or not grass sod, ornamental plants, flowers or pine straw are "products of the farm, grove, vineyard or garden," and therefore exempt from the tax, pursuant to Code Section 12-35-550(21).

An examination of Code Section 12-35-550(21) and the above cited regulations reveals that the exemption extends only to the producer of farm, grove, vineyard or garden products. In addition, such products cannot be processed beyond the usual preparation for sale; otherwise, the exemption is lost. Regulations 117-174.15 and 117-174.28 specifically state that nursery products and timber products qualify for the exemption. However, a portion of Regulation 117-174.16 appears to conflict with the other regulations and the statute. That regulation reads, in part: "Persons growing plants, seedlings, nursery stock, and floral products for market and who sells [sic] such products at retail are subject to the tax." In order to resolve this apparent conflict, a review of various statutory rules of construction is necessary.

"It is the statute or ordinance not the regulation, which imposes the tax, and administrative regulations cannot be upheld where they are not warranted by the statute or ordinance which they purport to construe." 68 Am.Jurs. 2d Sales and Use Taxes, Section 143.

"The intention of the legislature is to be gathered from a consideration not of a single clause, sentence or section in the act, but from a consideration of the statute as a whole, including amendments, and the courts must, if possible, give effect to every word the statute contains and reconcile the terms employed therein so as to render it consistent and harmonious. Moreover, statutes are to be so construed as to make the law one uniform system, not a collection of diverse and disjointed fragments.

Where there is an apparent conflict between different sections of the same statute, the duty of the court is to reconcile them, if possible, so as to make them consistent and harmonious with one another. If they cannot be so reconciled, the one which best conforms to the legislative intent must stand." 68 Am.Jurs. 2d Sales and Use Tax, Section 14.

An administrative agency must follow its own regulations; however, where regulations conflict, such is not possible. Since a portion of Regulation 117-174.16 cannot be reconciled with the other regulations and the statute "...so as to make them harmonious with one another", a review of other code sections and the various terms used in Code Section 12-35-550(21) is required in order to determine legislative intent.

Code Section 46-1-10, reads:

1. The terms "agriculture, agricultural purposes, agricultural uses, farm crops, cultivated crops" or words of similar import shall include horticulture, floriculture, and aquaculture. Words of similar import applicable to agriculture are likewise applicable to horticulture, floriculture, aquaculture.
2. The term "aquaculture" means the cultivation, production, or marketing of domesticated aquatic organisms.
3. The term "domesticated aquatic organisms" means any fish, aquatic invertebrate, or aquatic plant that is spawned, produced, or marketed as a cultivated crop in the waters of this State. (emphasis added)

As for the meaning of certain terms in Code Section 12-35-550(21), words used in a statute should be taken in their ordinary and popular meaning, unless there is something in the statute which requires a different interpretation. Hughes v. Edwards, 265 S.C. 529, 220 S.E. 2d 231 (1975); Investors Premium Corp. v. South Carolina Tax Commission, 260 S.C. 12, 193 S.E. 2d 642 (1973). Also, where the terms of a statute are clear and unambiguous and leave no room for construction, they must be applied according to their literal meaning. Mitchell v. Mitchell, 266 S.C. 196, 222 S.E. 2d; 499 (1976); Green v. Timmerman, 269 S.C. 535, 238 S.E. 2d 323 (1977).

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. S.C. Tax Commission, 273 S.C. 269, 255 S.E. 2d 837 (1979); Fennell v. S.C. Tax Commission, 233 S.C. 43, 102 S.E. 2d 424 (1958); Etiwan Fertilizer Co. v. S.C. Tax Commission, 217 SC 354, 60 S.E. 2d 682 (1950).

The American Heritage Dictionary, Second Edition, provides the following definitions:

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| "Farm" | 1.a. <u>A tract of land cultivated for the purpose of agricultural production.</u> |
| | b. The fields, building, animals and personnel appurtenant to a farm. |

2. a. A tract of land devoted to the raising and breeding of domestic animals. b. An area of water devoted to the raising and breeding of a particular aquatic animal. (emphasis added)

"Grove" - A small wood or stand of trees lacking dense undergrowth.

"Garden" - A plot of land used for the cultivation of flowers, vegetables, or fruit. (emphasis added)

With respect to terms "horticulture" and "floriculture" as used in Code Section 46-1-10, the American Heritage Dictionary, Second Edition, provides the following definitions:

"Horticulture" - 1. The science or art of cultivating fruits, vegetables, flowers, and plants. 2. The cultivation of a garden. (emphasis added)

"Floriculture" - The cultivation of flowering plants. (emphasis added)

Conclusion:

Grass sod, ornamental plants, flowers and pine straw constitute "products of the farm, grove, vineyard or garden" and therefore qualify for the exemption under Code Section 12-35-550(21). However, such products must be "sold in the original state of production or preparation for sale and sold by the producer thereof or members of his immediate family."