



SC TECHNICAL ADVICE MEMORANDUM #88-4

TO: Mr. Marvin Davant, Director
Field Services Division

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

SUBJECT: Farm Sales
(Use Tax)

REFERENCE: S.C. Code Ann. Section 12-35-550(21) (1976)
S.C. Code Ann. Section 12-35-820(2) (1976)

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

Is sod sold by a corporation exempt from the use tax pursuant to Code Sections 12-35-550(21) and 12-35-820(2)?

Facts:

The taxpayer, ABC, Inc. sells grass sod to consumers in several states and is located in ABC, Georgia. Most sod is delivered into South Carolina by independent carriers; however, the taxpayer also owns a truck, which is used to deliver into this State.

Code Sections 12-35-550(21) and 12-35-820(2) provide an exemption for "[t]he gross proceeds of the sale of products of the farm, when sold by the producer thereof or by members of his immediate family" (emphasis added).

Discussion:

As for the meaning of the phrase..."the producer thereof or by members of his immediate family", as used 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 College Edition, defines "producer" in part, as "[o]ne who produces, esp. a person or organization that grows or manufactures goods or services for sale." Black's Law Dictionary, Fifth Edition, defines "organization" to include a corporation, government or governmental subdivision or agency, business trust, estate, trust, partnership or association, two or more persons having a joint or common interest, or any other legal or commercial entity." (emphasis added).

Conclusion:

The phrase "...the producer thereof", as used in Code Section 12-35-550(21), includes corporations as well as individual proprietor-ships. The exemption also applies to sales made by members of a sole proprietor's immediate family.