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SC TECHNICAL ADVICE MEMORANDUM #89-1

TO: Mr. William F. Bray, Director
Office Services Division

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

DATE: January 4, 1989

SUBJECT: Artists and Craftsmen - Retail License
(Sales and Use Tax)

REFERENCE: S.C. Code Ann. Section 12-35-320 (as amended June 8, 1988)

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.

Questions:

1. What is meant by the terms "artists" and "craftsmen", as used in Code Section 12-35-320?
2. May artists and craftsmen, who operate as corporations or partnerships, obtain a twenty dollar license, as provided for in Code Section 12-35-320?
3. Does the term "assembled," as used in Code Section 12-35-320, refer only to products artists and craftsmen manufacture and assemble, or does it also refer to kits they purchase and assemble?

Facts:

Act. No. 658 of 1988 (Section 30 of Part II, Permanent Provisions) amended S.C. Code Section 12-35-320, effective June 8, 1988. That Section now reads:

Every person who engages in any business as a retailer, as a condition precedent to engaging in the business, shall obtain from the commission a retail license for each branch, establishment, or agency conducted by him and, in addition to all other license fees charged, shall pay a license tax in the amount of fifty dollars for each branch, establishment, or agency of the retailer situated or located in this State. The provisions of this section do not apply to persons using a stall or other facility at a flea market or conducting a yard sale not more than once a quarter unless the persons engage in flea markets or yard sales as a regular business, nor do they apply to organizations conducting concession sales at festivals if the gross proceeds of the sales are exempt from sales tax pursuant to Section 12-35-550. Any transient retailer who makes retail sales in this State for a period not exceeding thirty days may obtain a temporary retail license at a cost of fifty dollars. The license issued must state the period of time for which it may be used. Artists and craftsmen selling at arts and crafts shows or festival products that they have created or assembled may obtain a retail license at a fee of twenty dollars.

The underlined portion is the provision in question.

Discussion:

Code Section 12-35-320, with respect to artists and craftsmen, provides three conditions which must be met in order to qualify for a twenty dollar retail license. The statute requires:

1. The person making the retail sales must be an artist or craftsman.
2. The products for sale must have been created or assembled by the artist or craftsman selling them, and
3. Such products must be sold at arts or crafts shows, or at festivals.

A discussion of this section requires a review of the terms "artists" and "craftsmen."

One of the primary rules of statutory construction is that 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, 26 S.C. 529, 220 S.E. 2d 231 (1975); Investors Premium Corp. v. South Carolina Tax Commission, 260 S.C. 13, 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 217 (1976); Green v. Zimmerman, 269 S.C. 535, 238 S.E. 2d 323 (1977).

The Code does not provide definitions for various terms found in Section 12-35-320; therefore, it is necessary to determine their ordinary and popular meaning.

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. South Carolina Tax Commission, 273 SC 269, 255 S.E. 2d 837 (1979); Fennell v. South Carolina Tax Commission, 233

S.C. 43, 103 S.E. 2d 424 (1958); Etiwan Fertilizer Co. v. South Carolina Tax Commission, 217 SC 484, 60 S.E. 2d 682 (1950).

The Second College Edition of the American Heritage Dictionary provides the following definitions:

- "Artist":
1. One that creates works of art, esp. a painter, sculptor, or musician.
2. Any person who performs his work as if it were an art. 3. An artiste.
- "Craftsman": A skilled worker who practices a craft.
- "Craft":
1. Skill or ability in something, esp. in handwork or the arts, expertness.
2. An occupation or trade, esp. one requiring manual dexterity.
- "Assemble": To fit or join together the parts of.

Notice that the definitions for "artist" and "craftsman" use terms which pertain to individuals - for example, "one", "person", and "worker".

However, "[t]he 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." 68 Am. Jurs. 2d Sales and Use Tax, Section 14.

As for the form of business entity (sole proprietorships, partnerships or corporations) used by artists and craftsmen, we must also review Code Section 12-35-60. That section defines the terms "person" and "company", and reads:

The word "person" or the word "company," used in this chapter interchangeably, include any individual, firm, copartnership, association, corporation, receiver, trustee or any other group or combination acting as a unit and the State or any agency or instrumentality, authority or political subdivision thereof, including municipalities, unless the intention to give a more limited meaning is disclosed by the context.

In summary, we must not look to one term or phrase when determining the intention of the legislature, but we must look at the sales and use tax statute as a whole. Therefore, we must consider the statutory definition of the term "person", as well as, the ordinary and popular meanings of the terms "artists" and "craftsmen".

Conclusions:

1. The terms "artists" and "craftsmen", found in Code Section 12-35-320, refer to skilled individuals who create and assemble products, which they sell at arts and crafts shows or festivals.

2. The form of business entity, i.e. sole proprietorship, partnership, or corporation, is not controlling as to whether or not artists and craftsmen qualify for the twenty dollar retail license.
3. The term "assembled", as used in Code Section 12-35-320, refers to products artists and craftsmen manufacture and assemble, as well as to kits which are purchased and assembled.