



SC TECHNICAL ADVICE MEMORANDUM #89-13

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

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

DATE: May 3, 1989

SUBJECT: Light Construction Equipment - \$300 Cap
(Sales and Use Tax)

REFERENCE: S.C. Code Ann. Section 12-35-516 (Supp. 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.

Question:

Are tractors, loaders and other self-propelled equipment, used to maintain golf courses, parks and campgrounds, "light construction equipment", as used in Code Section 12-35-516?

Facts:

During a routine sales tax audit of XYZ, Inc. ("XYZ"), it was discovered the taxpayer had sold several tractors, loaders and attachments to various "non-construction" and "non-farm" businesses. The purchasers in question were golf courses, mobile home parks and campgrounds. For each of these sales, XYZ remitted \$300.00 tax, pursuant to Code Section 12-35-516. The 160 net engine horsepower requirement is not in question.

Discussion:

To answer the question at hand, it must be determined whether the use of the equipment is controlling, with respect to the application of the \$300 sales tax cap.

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

In case of the sale or lease of any.(7) self propelled light construction equipment with compatible attachments limited to a maximum of 160 net engine horsepower, the maximum tax levied by this chapter is three hundred dollars with respect to each....(emphasis added).

To resolve this issue, it is necessary to look to rules of statutory construction.

The following quotes are from 73 Am. Jur. 2d, Statutes.

Section 200. It is a general rule that the courts, in the interpretation of a statute, may not take, strike, or read anything out of a statute, or delete, subtract, or omit anything therefrom. To the contrary, it is a cardinal rule of statutory construction that significance and effect should, if possible, be accorded to every word, phrase, sentence, and part of an act.

Section 249. In the construction of statutes, the courts start with the assumption that the legislature intended to enact an effective law, and the legislature is not to be presumed to have done a vain thing in the enactment of a statute. Hence, it is a general principle that the courts should, if reasonably possible to do so interpret the statute, or the provision being construed, so as to give it efficient operation and effect as a whole. An interpretation should, if possible, be avoided, under which the statute or provision being construed is defeated, or as otherwise expressed, nullified, destroyed, emasculated, repealed, explained away, or rendered insignificant, meaningless, inoperative, or nugatory.

Section 250. In the interpretation of a statute, the legislature will be presumed to have inserted every part thereof for a purpose. A statute should not be construed in such manner as to render it partly ineffective or inefficient if another construction will make it effective. Indeed, it is a cardinal rule of statutory construction that significance and effect should, if possible, without destroying the sense or effect of the law, be accorded every part of the act, including every section, paragraph, sentence or clause, phrase, and word.

In summary, it is presumed that the legislature inserts words and phrases in statutes for a purpose; and, the courts may not delete any such words and phrases. Also, in interpreting statutes, it is necessary to consider all language contained in the statute.

Applying these rules to the question at hand, it must be presumed that the term "construction" was inserted by the legislature for a reason. Otherwise, all self-propelled equipment would qualify for the cap, and the term "construction" would not serve a purpose.

Another rule 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, 265 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).

It is 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.

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| "construction" | 1.a. The act or process of constructing. b. The condition of being constructed. c. The business or work of building.... |
| "construct" | 1. To form by assembling parts; build.... |
| "build" | 1. To form by combining materials or parts; construct.... |

Furthermore, the Supreme Court of Illinois in Prindable v. New York Central Railroad Co., 397 Ill. 247, 73 N.E. 2d 302, (1947). held:

Under the accepted terminology it cannot be said that "construct" is synonymous with "repair," "improve," or "maintain." Webster's New International Dictionary gives the following definition of "construct": "To put together the constituent parts of (something) in their proper place and order; to build; form; make; as, to construct an edifice." The accepted common meaning of the word in its everyday usage is to build. It is obvious that to build requires a capital outlay occurring but once. Only after something is fabricated or built can the words "repair", "improve", or "maintain" have any effect or usage. The building of a highway is something different from the repair or maintenance of such road after it comes into being.

Furthermore, the term "maintain" is defined, in part, as "To preserve or keep in a given existing condition, as of efficiency or repair...."

In summary, the term "construction" implies building, and is not synonymous with the terms "maintain" or "maintenance".

In addition, since the enactment of the "light construction equipment" provisions of Code Section 12-35-516, the Commission has limited the \$300 cap to equipment used to build or construct property, and has denied the cap to similar equipment used to maintain or repair property.

Administrative interpretations of statutes by the agency charged with their administration and not expressly changed by the legislative body are entitled to great weight. Marchant v. Hamilton, 279 S.C. 497, 309 S.E. 2d 781(1983). When as in this case, the construction or administrative interpretation of a statute has been applied for a number of years and has not been changed by the legislature, there is created a strong presumption that such interpretation or construction is correct. Ryder Truck Lines, Inc. v. South Carolina Tax Commission, 248 S.C. 148, 149 S.E. 2d 435 (1966) Etiwan Fertilizer Company v. South Carolina Tax Commission, 217 S.C. 354, 60 S.E.2d 682 (1950)

In summary, the use of the equipment is controlling in determining whether the \$300 sales tax cap is applicable.

Conclusion:

Tractors, loaders and other self-propelled equipment, used to maintain golf courses, parks and campgrounds, do not constitute "light construction equipment" as used in Code Section 12-35-516 and are, therefore, not entitled to the \$300 sales tax cap.