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SC TECHNICAL ADVICE MEMORANDUM #89-9

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

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

DATE: March 1, 1989

SUBJECT: Freight and Installation Charges
(Sales and Use Tax)

REFERENCE: S.C. Code Ann. Section 12-35-30 (1976)
Regulation 117-174.214
Regulation 117-174.204
Regulation 117-174.259
Regulation 117-174.215

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) Are the charges for factory-to-customer transportation provided by ABC, Inc., includable in "gross proceeds of sales" and subject to the sales tax?
- 2) Are the charges for installation includable in "gross proceeds of sales" and subject to the sales tax?

Facts:

ABC, Inc. (ABC) is a retailer of furniture and like items in South Carolina. ABC maintains a display center/catalogue showroom in Conway, where orders for goods are solicited. ABC does not maintain an inventory or a warehouse in this State.

The customer selects an item or items from the showroom or catalogue and is billed, based on a price list. All sales are F.O.B. factory, which entitles the customer to take possession of the goods at the factory. The customer is free to use his own vehicle or a common carrier to transport the goods from the factory to his business or residence. However, for an additional charge, ABC will provide transportation to the customer's business or residence and installation, per the customer's request. At no time is furniture delivered to or from the display center in Conway.

It is questionable as to who is making delivery for ABC. ABC has entered into an agreement with XYZ, Inc. of Conway, South Carolina (XYZ), whereby XYZ agrees to lease trucks to ABC for \$350.00 per month, plus 65 cents per mile. Trailers are furnished at no charge. However, ABC contends that the lease has never been in effect and exists merely to meet requirements of the Interstate Commerce Commission.

In addition, a review of the corporate returns of XYZ indicates that XYZ has not paid any wages or salaries during the years in question. The income tax wage statements, W-2s, are issued by ABC for the truckers who make the deliveries; however, ABC contends the truckers are paid from the payroll account of another corporation, Frank and Sons Trucking Company (Trucking Company). According to ABC, the Trucking Company is an inactive corporation; however, it files a fuel tax return with the State. XYZ does not file a fuel tax return with the State. ABC contends XYZ is making the deliveries.

ABC provides other services, which are part of the sale of the furniture. Such services include the unloading of furniture, placing it in rooms, attaching headboards to walls, installing security locks on pictures and television sets (pictures and televisions are secured to dressers and bureaus in hotel and condominium units), hanging mirrors, and installing wall and ceiling lamps, window blinds, curtains and other accessories.

Discussion:

The first issue is whether or not the factory-to-customer freight charges are includable in the measure of the tax.

South Carolina Code Section 12-35-30 defines the term "gross proceeds of sales" and reads, in part:

The term "gross proceeds of sales" means the value proceeding or accruing from the sale of tangible personal property (and including the proceeds from the sale of any property handled on consignment by the taxpayer), including merchandise of any kind and character

without any deduction on account of the cost of the property sold, the cost of the materials used, labor or service cost, interest paid or any other expenses whatsoever and without any deductions on account of losses;....

In determining whether or not the freight charges are includable in "gross proceeds of sales" we must review several regulations.

Regulation 117-174.214(c) reads:

If the sale is made f.o.b. point of origin, the delivery of the goods to the carrier is generally construed as equivalent to the delivery of the goods to the buyer, and the gross proceeds of sale in such case would not include the freight, whether the freight is by agreement of the parties advanced or prepaid by the seller for the buyer or whether such freight is paid at destination by the buyer. In such cases, the "gross proceeds of sale" only include the agreed sales price of the goods. Any freight so advanced, billed as a separate item, is not included as proceeds of the sale, but upon payment is properly treated as a reimbursable expense paid by the seller at the instance and request of the buyer.

However, item (d) of that regulation reads:

No practice of invoicing or billing will entitle the seller to deduct from gross proceeds of sale any cost or expense, actual or estimated, in cases where the seller, by use of his own means of transportation, effects such delivery (emphasis added).

In summary, if ABC is in fact leasing trucks to deliver property, then delivery is "by use of his own means of transportation..." and the freight charges are includable in "gross proceeds of sales".

Furthermore, the fact that XYZ is not paying any wages or salaries and has entered into an agreement to lease trucks (without drivers) to ABC, would appear to indicate that XYZ is not making deliveries for ABC. ABC is also issuing the W-2 statements to the drivers.

If the deliveries are being made by XYZ or the Trucking Company, then a review of Regulation 117-174.215 is required. That regulation reads:

In no event may a seller deduct costs of bringing property to his place of business or costs of delivering property from [the] factory to his customer when such factory-to-customer transportation is paid by the seller either to a transportation company, the manufacturer, or by way of credit to his customer for transportation costs paid by the customer and deducted from [the] seller's invoice.

In summary, "factory-to-customer transportation", when paid by the seller and charged to the customer, are includable in "gross proceeds of sales" and subject to the tax.

The second issue concerns whether or not certain services constitute installation, the charges for which are not includable in the measure of the tax.

Regulation 117-174.204 reads:

Not subject to the sales or use tax are charges for installation incident to the sale of tangible personal property when such charges are separately stated from the sales price of the property on billing to customers and provided the seller's books and records of account show the reasonableness of such labor in relation to the sales price of the property.

Regulation 117-174.259 reads:

Interior decorators are generally engaged in the business of selling home or office furnishings of which many, such as portieres, curtains, draperies and seat and slip covers, are made to customers' specifications. The total charge for such made-to-order merchandise is subject to the tax without any deduction for fabrication labor whether such labor is performed by the decorator or by others for the decorator's account.

It is frequently necessary to repair, renovate or re-upholster furniture. Sublet repairs are taxable on the total charge to the customer when the repair materials are sold or furnished by the decorator.

It may also be necessary to remodel interiors such as by painting or papering walls, hanging mirrors, pictures and lighting fixtures or other accessories, or replacing floor coverings. Labor for these purposes is not subject to the tax provided it is separately shown from the sales price of tangible personal property on the invoice to the customer. Other exempt charges when separately invoiced to the customer are consultation fees and reimbursement for travel expenses.

In summary, charges for such services as hanging mirrors, pictures and lighting fixtures constitute installation charges not includable in "gross proceeds of sales", when separately stated on the customer's bill and reasonable, in relation to the sales price of the property. Charges for attaching headboards to walls and installing security locks on pictures and televisions are also considered charges for installation.

Charges for unloading the furniture from the trucks and placing it in a business or residence are considered charges for delivery and not for installation.

Conclusions:

- 1) The charges for factory-to-customer transportation provided by Frank and Sons Co., Inc. on the sale of tangible personal property, whether or not provided through XYZ Trucking Co., Inc. or Frank and Sons Trucking Co., Inc., are includable in "gross proceeds of sales" and subject to the sales tax.
- 2) The charges for installation labor provided by Frank and Sons Co., Inc. are not includable in "gross proceeds of sales" and, therefore, not subject to the sales tax. However, to enjoy such status, the charges must be separately stated and ABC' books and records must substantiate that such charges are reasonable, in relationship to the sales price of their products.