



SC PRIVATE LETTER RULING #88-21

TO: ABC Company

SUBJECT: Catalogs Printed in South Carolina
(Sales and Use Tax)

REFERENCE: S.C. Code Ann. Section 12-35-30 (1976)
S.C. Code Ann. Section 12-35-70 (1976)
S.C. Code Ann. Section 12-35-100 (1976)
S.C. Code Ann. Section 12-35-140 (1976)
S.C. Code Ann. Section 12-35-550(40) (Supp. 1987)
S.C. Regulation 117-174.214(a)

AUTHORITY: S.C. Code Section 12-3-170(1976)
SC Revenue Procedure #87-3

SCOPE: A Private Letter Ruling is a temporary document issued to a taxpayer, upon request, and it applies only to the specific facts or circumstances related in the request. Private Letter Rulings have no precedential value and are not intended for general distribution.

Questions:

1. Are catalogs, manufactured by ABC Company for an out-of-state retailer and subsequently mailed to South Carolina residents, subject to the State's sales tax as a sale at retail?
2. Are catalogs that are mailed to residents of other states subject to the South Carolina sales tax?
3. If such transactions are taxable, what is the measure of the tax?

Facts:

ABC Company, located in South Carolina, has been selected by an out-of-state retail merchandising company ("retailer") to print its catalogs.

The retailer does not have any offices, personnel, real estate or finished goods inventory in South Carolina. The retailer may provide paper, film, inserts or other printing supplies to ABC in connection with the printing of the catalogs. Personnel of the retailer will make occasional visits (several days in duration each) to the printing facility to inspect proofs to ensure that the product meets the criteria established in the contract.

ABC will print the catalogs and prepare them for mailing through the U.S. Postal System. All catalogs will be mailed by ABC from a postal facility at the printing plant in South Carolina. Some catalogs remain in South Carolina, but the bulk of the catalogs will be delivered to residents of other states.

Discussion:

The issue is whether or not the delivery of catalogs, manufactured by ABC, to the customers of an out-of-state retailer constitutes a sale of tangible personal property subject to the tax.

South Carolina Code Section 12-35-30 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 materials used, labor or service cost, interest paid or any other expenses whatsoever and without any deductions on account of losses;....(emphasis added)

Code Section 12-35-100 defines the term "sale", in part as: "[a]ny transfer, exchange or barter, conditional or otherwise, in any manner or by any means whatsoever, of tangible personal property for a consideration" (emphasis added).

Code Section 12-35-140 reads, in part:

The term "tangible personal property" means personal property which may be seen, weighed, measured, felt or touched or which is in any other manner perceptible to the senses, except notes, bonds, mortgages or other evidences of debt and stocks and shall include rooms, lodgings or accommodations furnished to transients for a consideration.

In Edisto Fleets, Inc. v. South Carolina Tax Commission, 256 S.C. 350, 182 S.E. 2d. 713 (1971) the South Carolina Supreme Court held that "[t]he terms "sale" and "purchase" are inextricably related and bound together and must be so construed...."

It is therefore necessary to review the statutory definition of "purchase".

Code Section 12-35-70 reads:

The term "purchase" means acquired for a consideration, whether (a) such acquisition was effected by a transfer of title or of possession, or of both, or a license to use or consume, (b) such transfer shall have been absolute or conditional and by whatever means it shall have been effected and (c) such consideration be a price or rental in money or by way of exchange or barter. (emphasis added)

As stated in the "facts" section, the catalogs are delivered to the out- of-state retailer's customers, both within and without South Carolina, by ABC through the U.S. Postal Service.

Code Section 12-35-550(40) exempts from the sales and use tax "[t]he gross proceeds of the sales of tangible personal property where the seller by contract of sale is obligated to deliver to

the buyer or an agent of the buyer or to a donee of the buyer at a point outside of the State or to deliver it to a carrier or to the mails for transportation to the buyer, to an agent of the buyer or to a donee of the buyer at a point outside this State."

The issue of delivery charges has been previously addressed in Decision S-D-152, dated March 10, 1983. The Commission reviewed a business which printed personalized checks for use by bank customers. The taxpayer contended that the delivery charges (postage) should not be subject to the tax. The Division contended the postage was part of the taxable gross proceeds of sales. The Commission, in citing Regulation 117-174.214 (a), held that the postage was part of gross proceeds of sales.

Furthermore, Regulation 117-174.214(a), reads:

If the sale is made f.o.b. point of destination or place of business of the buyer, for a lump sum price or a price per unit, in such manner as to indicate that the cost of transportation is a cost to be borne by the seller, the total amount received by the seller constitutes "gross proceeds of sale," within the meaning of the Sales Tax Act. In such case, the seller is not permitted to separate the cost of the goods from the cost of the transportation nor may the seller deduct any estimated or actual cost of transportation from such gross proceeds in making returns under the Sales Tax Act.

Conclusions:

1. The transfer of catalogs by ABC to in-state donees of the retailer, constitutes a sale of tangible personal property subject to sales tax. Such transfers do not qualify for the exemption under Code Section 12-35-550(40) as they are not delivered to a donee outside the state or to a carrier or the mails for delivery to an out-of-state donee.
2. Catalogs mailed to residents of other states are exempt from the tax, pursuant to Code Section 12-35-550(40). Pursuant to the contract of sale, ABC is "obligated to deliver [the catalogs]...to the mails for transportation...to a donee of the buyer at a point outside" South Carolina.
3. The measure of the tax for catalogs mailed to South Carolina residents is gross proceeds of sales, as defined at Code Section 12-35-30. The measure being the total amount ABC charges the out-of-state retailer for such catalogs, including delivery charges.

SOUTH CAROLINA TAX COMMISSION

s/S. Hunter Howard Jr. _____
S. Hunter Howard, Jr., Chairman

s/A. Crawford Clarkson Jr. _____
A. Crawford Clarkson, Jr., Commissioner

Columbia, South Carolina
October 26, 1988