



301 Gervais Street, P.O. Box 125, Columbia, South Carolina 29214

SC PRIVATE LETTER RULING #89-9

TO: XYZ, Inc.

SUBJECT: Nonresident Military Tax Exemption Certificates
Form ST-178
(Sales and Use Tax)

REFERENCE: S.C. Code Ann. Section 12-35-550(25) (Supp. 1988)

AUTHORITY: S.C. Code Ann. 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.

Question:

Pursuant to Code Section 12-35-550(25), are so-called "Nonresident Military Tax Exemption Certificates" acceptable if dated within the 10-day period prior to the sale date, or does the 10-day period apply only to the 10 days after the sale date?

Facts:

XYZ, Inc. is a motor vehicle dealership located in South Carolina. From time to time, military customers will present Nonresident Military Tax Exemption Certificates (Form ST-178) which have been signed and dated by an appropriate officer prior to the date of sale. This situation commonly arises when an individual is purchasing an automobile on the weekend or holiday. The taxpayer is concerned that, upon audit, such predated certificates will be disallowed.

Code Section 12-35-550(25), which concerns sales of automobiles to non-resident military personnel, exempts from the tax:

The gross proceeds of the sale of automobiles or motor bikes to a person domiciled in or resident of another state, who is located within South Carolina by reason of orders of the Armed Forces of the United States. This claim for exemption is allowed only if within ten days of the sale or purchase a statement is furnished the vendor from a commissioned

officer of the Armed Forces of a higher rank than the purchaser certifying that the person claiming the exemption is a member of the Armed Forces on active duty and is domiciled in or a resident of another state (emphasis added).

The underlined portion of the code section is in question.

Discussion:

To answer the question at hand, the meaning of the word "within" must be determined.

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, 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 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).

Black's Law Dictionary, Fifth Edition, defines "within", in part, as:

When used relative to time, [within] has been defined variously as meaning any time before; at or before, at the end of; before the expiration of; not beyond; not exceeding; not later than. Glenn v. Garrett, Tex. Cir. App., 84 S.W.2d 515, 516.

To determine which meaning is applicable, in this instance, other rules of statutory construction must also be considered.

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

Section 258. It is generally regarded as permissible to consider the consequences of a proposed interpretation of a statute, where the act is ambiguous in terms and fairly susceptible of two constructions. Under such circumstances, it is presumed that undesirable consequences were not intended; to the contrary, it is presumed that the statute was intended to have the most beneficial operation that the language permits. It is accordingly a reasonable and safe rule of construction to resolve any ambiguity in a statute in favor of a beneficial operation of the law, and a construction of which the statute is fairly susceptible is favored, which will avoid all objectionable, mischievous, indefensible, wrongful, evil, and injurious consequences.

Section 262. It is not to be presumed that the legislature intended to establish a rule attended with inconvenience, and where a statute is ambiguous and susceptible of two constructions, convenience may be taken into consideration in the interpretation thereof. Moreover, a construction of an ambiguous statute so as to produce convenient results is favored.

Section 265. A statute subject to interpretation is presumed not to have been intended to produce absurd consequences, but to have the most reasonable operation that its language permits. If possible, doubtful provisions should be given a reasonable, rational, sensible, and intelligent construction. These rules prevail where they are not restrained by the clear language of the statute. Under this rule, general terms in a statute should be so limited in their application as not to lead to absurd consequences.

Conclusion:

"Nonresident Military Tax Exemption Certificates" (ST-178's) may be dated the sale date, within the 10-day period prior to the sale date, or within the 10-day period after the sale date.

SOUTH CAROLINA TAX COMMISSION

s/S. Hunter Howard, Jr.

S. Hunter Howard, Jr., Chairman

s/A. Crawford Clarkson Jr.

A. Crawford Clarkson, Jr., Commissioner

s/T. R. McConnell

T. R. McConnell, Commissioner

Columbia, South Carolina
May 3, 1989