



S.C. PRIVATE LETTER RULING #90-4

TO: XYZ

SUBJECT: Law Firm - Telecopying
(Sales and Use)

REFERENCE: S.C. Code Ann. Section 12-35-1150 (1976)
SC Revenue Ruling #89-14

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:

Are charges for telecopying services, billed to a client by the law firm of XYZ, subject to sales tax, pursuant to Code Section 12-35-1150?

Facts:

XYZ is a law firm which provides legal services in South Carolina. Pursuant to the rendering of legal services, XYZ transmits correspondence, documents and other writings (the "documents") to various parties in South Carolina, other states, and other countries. Documents transmitted by way of telecopy are charged to the applicable client, at the rate of \$2.00 per page if the document is telecopied to a location in the United States, and at the rate of \$10.00 per page, if the Document is telecopied elsewhere.

Code Section 12-35-1150 provides a special tax imposition, which reads:

Notwithstanding any other provision of law, the gross proceeds accruing or proceeding from the charges for the ways or means for the transmission of the voice or of messages, including the charges for use of equipment furnished by the seller or supplier of the ways or means for the transmission of the voice or of messages, are subject to the license, sales or use tax, as provided by this chapter.

In Revenue Ruling #89-14, the Commission determined that certain communication services fell within the provisions of Code Section 12-35-1150, for sales and use tax purposes. One of the services held subject to the tax was "facsimile" transmissions, which the Commission defined as:

Process of transmitting exact copies of written, printed and pictorial material over telephone lines (or optical fiber cables). Images are converted by photoelectric cells, which read the amount of light reflected from or transmitted through a document, into electric signals, which are sent through the transmission network. Signals are picked up by a facsimile receiver, which reproduces the original document by the reverse process.

Discussion:

The issue is whether facsimile charges by the firm are subject to the sales and use tax.

Regulation 117-174.158, entitled "Professional Services", reads:

Receipts from the performance of professional services are not subject to the sales tax.

The property used incidental to the performance of such services by licensed medical doctors, dentists, doctors of veterinary medicine, oculists, optometrists, lawyers, accountants, civil engineers, and other licensed [professionals] is subject to tax on its sale to such persons.

Note, however, that a doctor, etc., may in addition to rendering a service, also be in the business of making sales of tangible personal property. For instance, a doctor may sell medicines.

In those cases where [professionals] are regularly engaged in the business of selling tangible personal property at retail, they must obtain a retail license from the Sales and Use Tax Division and remit to the Tax Commission the taxes due on such sales.

In addition, the term "retailer" as defined at Code Section 12-35-90(7) includes "...every person engaged in the business of selling or furnishing the ways or means for the transmission of the voice or of messages between persons in this State for a consideration".

Conclusion:

Charges for telecopying services, billed to a client by the law firm of XYZ, are not subject to the sales and use tax, as such services are incidental to the rendering of legal services.

However, if the law firm telecopies documents for a fee, that are not in conjunction with the rendering of legal services, such charges would be subject to the tax, pursuant to Code Section 12-35-1150.

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
February 21, 1990