



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

SC PRIVATE LETTER RULING #93-4

TO: Mr. XYZ

TAX MANAGER: John P. McCormack

SUBJECT: Sale of Oysters by Fisherman
(Sales Tax)

DATE: June 24, 1993

REFERENCES: S.C. Code Ann. Section 12-36-910 (Supp. 1992)
S.C. Code Ann. Section 12-36-1310 (Supp. 1992)
S.C. Code Ann. Section 12-36-2120 (Supp. 1992)
S.C. Code Ann. Section 46-1-10 (1987)
S.C. Code Ann. Section 50-17-310 (1992)
S.C. Code Ann. Section 50-17-330 (1992)
S.C. Code Ann. Section 50-17-340 (1992)

AUTHORITY: S.C. Code Ann. Section 12-4-320 (Supp. 1992)

SCOPE: A Private Letter Ruling is a temporary document issued to a taxpayer, upon request, and it applies to the specific facts and circumstances related in the request.

Private Letter Rulings have no precedential value and are not intended for general distribution.

Question:

Are sales at retail of oysters by Mr. XYZ, a commercial fisherman, exempt from the sales tax under Code Section 12-36-2120(23)?

Facts:

Mr. XYZ is a commercial fisherman. He applies for, and received, a shellfish culture permit (Number C-032) from the South Carolina Wildlife and Marine Resources Department

("Department"). Under this permit, Mr. XYZ has the exclusive right to commercially harvest oysters from designated property. No other person, other than the employees of Mr. XYZ, may harvest oysters for commercial purposes at this site. In addition, Mr. XYZ must plant annually per acre a minimum of one hundred twenty-five U.S. bushels of shell, cultch or seed, or its equivalent as approved by the Department, at the permitted sites.

As a shellfish culture permit holder, Mr. XYZ, like other permit holders, receives permit cards, in addition to the permit, that identify him and the members of his crew as persons authorized to harvest and sell shellfish cultivated in a permitted area.

Mr. XYZ is also required under the permit to hold a South Carolina Primary Wholesale Seafood Dealer license and maintain a shellfish sanitary certification by the Department of Health and Environmental Control ("DHEC"). Instead of the above dealer license from the Department and the certification from DHEC, Mr. XYZ can submit to the Department, and maintain current, a sworn affidavit that all shellfish harvested for sale from the permitted shellfish growing areas will be handled through properly licensed and certified seafood dealers. In addition, these dealers must report all oysters harvested for sale to the Department.

Presently, the shellfish culture permit issued to Mr. XYZ allows him to cultivate oysters in an area where wild oysters are naturally occurring. Unlike clams, it is not yet economically feasible to cultivate oysters in a hatchery. This type of cultivation in a hatchery is known as mariculture.

In cultivating his permitted areas, Mr. XYZ can transport small wild oysters (seed) from an unpermitted area to his permitted areas. In addition, Mr. XYZ can plant shells, or other material suitable for catching small wild oysters (cultch), to cultivate his permitted area.

Finally, commercial fisherman like Mr. XYZ can receive a permit to harvest oysters in an area managed by the State. These areas are cultivated by the State or others through agreement with the State. No one person holds exclusive right to harvest these areas. Also, DHEC requires every container of shellfish to be tagged with respect to its source. For example, containers of shellfish harvested from a State managed area are tagged with the letter S and a three digit number (e.g. S-123). Those harvested by a commercial fisherman with a shellfish culture permit in his permitted areas are tagged with the letter C and a three digit number (e.g. C-123). Those harvested by a commercial fisherman with a shellfish mariculture permit in his permitted areas are tagged with the letter M and a three digit number (e.g. M-123).

Discussion:

Code Section 12-36-910(a) states:

A sales tax, equal to five percent of the gross proceeds of sales, is imposed upon every person engaged or continuing within this State in the business of selling tangible personal property at retail. (Emphasis added)

Having established that the sale of tangible personal property is subject to the sales tax, we must next examine the exemption in question under Code Section 12-36-2120(28).

Code Section 12-36-2120(23) exempts from the tax:

farm, grove, vineyard, and garden products, if sold in the original state of production or preparation for sale, when sold by the producer or by members of the producers immediate family;

Now the question arises as to whether oysters are “farm products”. Chapter 1 of Title 46 contains general statutory provisions regarding agriculture in South Carolina. Code Section 46-1-10 provides various definitions that are useful in addressing our question. In addition, the Commission has consistently used these definitions when addressing similar questions regarding the various sales and use tax exemptions for the agriculture industry. This section reads:

(1) The terms “agriculture, agriculture purposes, agriculture uses, farm crops, cultivated crops” or words of similar import shall include horticulture, floriculture, and aquaculture. Words of similar import applicable to agriculture are likewise applicable to horticulture, floriculture, and aquaculture.

(2) The term “aquaculture” means the cultivation, production, or marketing of domesticated aquatic organisms.

(3) The term “domesticated aquatic organisms” means any fish, aquatic invertebrate, or aquatic plant that is spawned, produced, or marketed as a cultivated crop in the waters of this State.

Code Section 50-17-310 authorizes the issuance of the shellfish culture permit by the South Carolina Wildlife and Marine Resources Department, and reads in part:

(A) The department may grant permits to any state resident for the exclusive use of portions of the intertidal or subtidal bottoms owned or controlled by the State for shellfish culture or mariculture for commercial purposes, not exceeding an aggregate of five hundred acres to any firm or individual.

Code Section 50-17-330 further supports the permittee’s exclusive use of the designated area, and reads in part:

No other permit for shellfish culture on the bottoms delineated within a plat or permit map may be made during the term of the permit.

Code Section 50-17-340 sets forth the planting requirements of persons who have been issued a shellfish culture perm, and reads in part:

Each permittee shall plant one hundred twenty-five U.S. bushels of shell, cultch, or seed oysters annually for each acre of bottoms which is producing or capable of producing shellfish included in her permit issued under Section 50-17-310.

Based on the above, shellfish produced in a shellfish culture permitted area are domesticated aquatic organisms cultivated by the shellfish culture permittee. Therefore, such shellfish qualify as “farm products” under Code Section 12-36-2120(23).

Conclusion:

Sales at retail of oysters by Mr. XYZ, a commercial fisherman, are exempt for the sales tax under Code Section 12-36-2120(23) if such oysters were cultivated and harvested by Mr. XYZ in the areas set forth in his shellfish culture permit (Number C-032) and if the oysters are “sold [by Mr. XYZ or members of his immediate family] in the original state of production or preparation for sale”.

Sales at retail by Mr. XYZ of oysters that were harvested from other areas, such as areas managed by the State, are not exempt from the sales tax under Code Section 12-36-2120(23)