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SC TECHNICAL ADVICE MEMORANDUM 88-11

TO: Mr. Marvin Davant, Director
Field Services Division

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

DATE: March 24, 1988

SUBJECT: Electric Power Tax

REFERENCE: S.C. Code Ann. Section 12-23-10 (1976)

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.

Question:

Is electricity produced and used by an electric power company in its administrative offices subject to the electric power tax?

Facts:

S.C. Code Section 12-23-10 reads,

In addition to all other taxes of every kind imposed by law:

- (1) Every person, except the State, a county, a municipality or any agency or political subdivision thereof, engaged in the business of selling electric power for resale within the State shall be subject to the payment of an excise, license or privilege tax of five tenths of one mill upon each kilowatt hour of electric power sold for resale within the State; provided, that the sales for resale of an electric cooperative to a customer whose sales are taxed under subsection (2) hereof shall not be taxed under this subsection; and

- (2) Every public utility and electric cooperative engaged in the business of selling electric power within the State to the ultimate user of such power shall be subject to the payment of an excise, license or privilege tax of five tenths of one mill upon each kilowatt hour sold within the State to the ultimate user, except upon such electric power purchased from vendors taxed under subsection (1) of this section; provided, that no tax shall be imposed by this subsection or the preceding sub-section upon electric cooperatives with respect to any kilowatt hours sold prior to January 1, 1971, but shall be imposed upon electric cooperatives with respect to one half of the kilowatt hours sold by each cooperative in the year 1971 and upon all of the kilowatt hours sold by each cooperative in the year 1972 and in each year thereafter.

To summarize, paragraph (1) imposes a tax on the sale for resale of electricity; and, paragraph (2) imposes a tax on the sale of electricity to the ultimate user. Electricity which is taxed under one paragraph is excluded from taxation under the other.

Discussion:

In order to respond to the question, it is necessary to determine if a "sale" has occurred.

Black's Law Dictionary defines "sale" as, "A contract between two parties, called, respectively, the 'seller' (or vendor) and the 'buyer' (or purchaser), by which the former, in consideration of the payment of or promise of payment of a certain price in money, transfers to the latter the title and the possession of property. Transfer of property for consideration either in money or its equivalent. Wade-Corry Co. v. Moseley, 223 Ga. 474, 156 S.E.2d 64, 65."

The term "consideration" is defined as, "[t]he inducement to a contract. The cause, motive, price, or impelling influence which induces a contracting party to enter into a contract."

Section 12-23-10 imposes the electric power tax only upon a sale for resale or to an ultimate user. It is silent as to electricity used by the producer.

It is a general rule that the courts may not, by construction, insert words or phrases in a statute,.....when applied to a subject about which nothing whatever is said, and which, to all appearances was not in the minds of the legislature at the time of the enactment of the law. Under such circumstances, new provisions or ideas may not be interpolated in a statute, or engrafted thereon.

73 Am. Jur. 2d 203

Conclusion:

Electricity produced and used by an electric power company in its administrative offices is not subject to the electric power tax. Only electricity which is sold is subject to the tax.