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SC private letter ruling #21-2

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STATE OF SOUTH CAROLINA
DEPARTMENT OF REVENUE

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SC PRIVATE LETTER RULING #21-2

SUBJECT: Delivery of Manufactured Property to a Point Outside South Carolina
(Sales and Use Tax)

REFERENCES: S.C. Code Ann. Section 12-36-2120(36) (2014)

AUTHORITY: S.C. Code Ann. Section 12-4-320 (2014)
S.C. Code Ann. Section 1-23-10(4) (2005)
SC Revenue Procedure #09-3

SCOPE: A Private Letter Ruling is an advisory opinion issued to a specific taxpayer by the Department to apply principles of law to a specific set of facts or a particular tax situation. It is the Department's opinion limited to the specific facts set forth, and is binding on agency personnel only with respect to the person to whom it was issued and only until superseded or modified by a change in statute, regulation, court decision, or another Departmental advisory opinion, providing the representations made in the request reflect an accurate statement of the material facts and the transaction was carried out as proposed.

QUESTION

Are charges by ABC, Inc. to XYZ Company for production and delivery of cables, as described in the facts, subject to sales tax in South Carolina?

CONCLUSION

The production and delivery of the cables by ABC Inc. to XYZ Company is exempt from sales tax pursuant to Code Section 12-36-2120(36) because ABC Inc. has contracted to deliver the cables to a point outside South Carolina.

FACTS

ABC Inc. (“ABC”) operates a manufacturing facility in South Carolina. XYZ Company (“XYZ”) is a construction contractor serving as the general contractor for a construction project outside the United States. Both entities are indirectly 100% owned by the same ultimate parent company; however, both are regarded as separate entities for South Carolina tax purposes.¹ Although the two parties to the transactions described in this advisory opinion are related entities, all transactions described herein are arms-length transactions.

XYZ has contracted with ABC to produce certain building materials (“Cables”) that XYZ will use in performing its construction contract outside the United States.

Upon completion of the Cables, the contract between the parties requires ABC to deliver the Cables to XYZ at a point outside the United States for use in a construction project. Because of the size and nature of the Cables, they must be delivered on a specialized transportation vessel. Therefore, ABC will lease a specialized transportation vessel, load the Cables onto the vessel and ship the cables to XYZ.

Few vessels are capable of transporting the particular Cables in question. The only vessels available to deliver ABC’s product are either owned by subsidiaries of XYZ or are competitors of XYZ. Therefore, ABC will lease a vessel owned by a subsidiary of XYZ to deliver the Cables to XYZ. As stated above, the lease of the vessel is an arms-length transaction. XYZ and its subsidiary are both separately regarded entities for South Carolina tax purposes.

LAW AND DISCUSSION

Code Section 12-36-2120(36) exempts from sales tax the gross proceeds of sales of:

tangible personal property where the seller, by contract of sale, is obligated to deliver to the buyer ... at a point outside this State[.]

As described in the facts, ABC, the seller, has a contractual obligation to deliver the Cables to XYZ, the buyer, at a point outside South Carolina. ABC meets its delivery obligation by leasing a vessel to ship the Cables to the buyer outside South Carolina. Therefore, ABC has brought itself squarely within the statute authorizing the exemption.²

¹ See Code Section 12-2-25(B).

² Exemptions are a matter of legislative grace, and a person asserting an exemption must bring itself squarely within the statute authorizing the exemption. See *Southern Weaving Co. v. Query*, 34 S.E.2d 51, 206 S.C. 307 (1945).

Based on the above, the production and delivery of the cables by ABC to XYZ is exempt from sales tax pursuant to Code Section 12-36-2120(36) because ABC has contracted to deliver the cables to a point outside South Carolina.

SOUTH CAROLINA DEPARTMENT OF REVENUE

s/W. Hartley Powell

W. Hartley Powell, Director

December 2 _____, 2021
Columbia, South Carolina

CAVEAT: This advisory opinion is issued to the taxpayer requesting it on the assumption that the taxpayer's facts and circumstances, as stated, are correct. If the facts and circumstances given are not correct, or if they change, then the taxpayer requesting the advisory opinion may not rely on it. If the taxpayer relies on this advisory opinion, and the Department discovers, upon examination, that the facts and circumstances are different in any material respect from the facts and circumstances given in this advisory opinion, then the advisory opinion will not afford the taxpayer any protection. It should be noted that subsequent to the publication of this advisory opinion, changes in a statute, a regulation, or case law could void the advisory opinion.