

4623 Lubyay

THE STATE OF SOUTH CAROLINA
OFFICE OF THE ATTORNEY GENERAL
COLUMBIA

OPINION NO. _____

July 30, 1991

SUBJECT: Taxation and Revenue - Local Option Sales Tax
- Delivery Into Another County Or State.

SYLLABUS: The retail sale of tangible personal property is not subject to local option sales tax when the seller located within a county that imposes the tax is required to deliver the property to the purchaser outside of that county.

TO: Honorable Glenn F. McConnell
Senator, Senate District 41

Honorable Ernie Passailaigue
Senator, District No. 43

FROM: Joe L. Allen, Jr. *JLA*
Chief Deputy Attorney General

QUESTION: A county, by ordinance, adopted the local option sales tax. A retailer situate within that county sells tangible personal property to a purchaser situate outside the county. The retailer, however, is required to deliver the property to the purchaser outside the county. The delivery is into another county that may or may not impose a similar tax. The question is whether the sales tax is required to be paid by the seller to the county in which the seller is situate.

APPLICABLE LAW: Chapter 10 of Title 4 (Supp. 1990); S.C. Code Ann. §§ 12-36-90, 12-36-100, 12-36-1310 and 12-36-2130 (Supp. 1990).

DISCUSSION:

S.C. Code Ann. § 4-10-20 provides in part that:

A county . . . may levy a sales and use tax of one percent on the gross proceeds of sales within the county area . . .

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Gross proceeds of sales is defined by § 12-36-90 to mean:

Gross proceeds of sales, or any similar term, means the value proceeding or accruing from the sale, lease, or rental of tangible personal property.

The section further defines the term, however, such is not pertinent to the question presented.

A county is therefore authorized to levy a sales and use tax on the gross proceeds of the sale of tangible personal property, provided the sale takes place "within the county area."

"County area" is defined as

. . . a county and all municipalities within its geographical boundaries."

Section 4-10-10.

The question is thus narrowed. Is a sale of tangible personal property in which the seller is required to deliver the property outside the county area a sale within the "county area?"

Section 12-36-100 defines a "sale" and "purchase" to mean:

. . . any transfer, exchange, or barter, conditional or otherwise, of tangible personal property for a consideration including:

(4) a transfer of title or possession, or both.

The South Carolina Supreme Court in International Harvester Co. v. Wasson, 281 S.C. 458, 316 S.E.2d 378 (1984), treated a similar question as it related to different states. The Court there held:

The final criteria for being a taxable sale is that the sale must be a sale within South Carolina. Section 12-35-100 defines a sale as any transfer of tangible personal property for a consideration. Thus, if the transfer of the trucks, i.e., delivery, took

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place in South Carolina, the sale would take place in this State. The trucks were manufactured in Indiana and delivered to the purchaser in Greenville, South Carolina, by a common carrier hired and paid by the plaintiff. Further, the Bill of Lading for each truck shows that delivery was made to the purchaser in Greenville, South Carolina. . . . Based on the foregoing factual support, it is concluded that the sales took place in South Carolina.

The Court thus held the word "transfer" to be synonymous with the word "delivery." The Uniform Commercial Code further provides:

(2) Unless otherwise explicitly agreed title passes to the buyer at the time and place at which the seller completes his performance with reference to the physical delivery of the goods, despite any reservation of a security interest and even though a document of title is to be delivered at a different time or place and in particular and despite any reservation of a security interest by the bill of lading

(b) if the contract requires delivery at destination, title passes on tender there.

S.C. Code Ann. § 36-2-401(2)(b) (1976).

The definition of the word "sale" therefore contemplates the completion of the sale by delivery of the property within the geographical area of the county which levies the tax.

Further support for this conclusion is found in § 4-10-20, wherein the tax can only be levied on the gross proceeds of sales "within the county area." "Within" as the term is used in this statute, means "inside or not beyond." Webster's Ninth New Collegiate Dictionary. For cases see 46 Words and Phrases, word "within."

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Additionally, if doubt exists in § 4-10-20, such is to be resolved against the tax and in favor of the taxpayer. For cases see 17 S.C.D., Statutes, Key 245.

CONCLUSION:

The retail sale of tangible personal property is not subject to local option sales tax when the seller located within a county that imposes the tax is required to deliver the property to the purchaser outside of that county.¹

JLAJr:wcg

¹This opinion does not treat the question of whether the seller is required to collect the use tax when the property is delivered into another county that also imposes the local option sales and use tax. Such is dependent upon the controlling facts and the extent of the seller's activity within that county. Such a sale, however, would be subject to the local option use tax in the county wherein the sale was consummated by delivery.