

1984 WL 249929 (S.C.A.G.)

Office of the Attorney General

State of South Carolina

July 16, 1984

***1 SUBJECT: Taxation and Revenue—Sales Tax On Mobile Phones and Paging and Answering Services.**

(1) A person who is in the business of leasing mobile phone equipment is subject to a sales tax based upon §§ 12-35-510 and 12-35-90(5).

(2) The activity of delivering messages through a paging service and an answering service constitutes the ways and means for the transmission of messages so as to be taxable within §§ 12-35-140 and 12-35-1150.

APPLICABLE LAW: §§ 12-35-90(5), 12-35-140, 12-35-510 and 12-35-1150, South Carolina Code of Laws, 1976, as amended.

Mr. C. Norwood Gayle, Jr.
Assistant Director
Sales and License Division

QUESTIONS:

(1) Is a person in the business of leasing mobile phones subject to sales tax?

(2) Is a person in the business of providing a paging service or an answering service subject to sales tax?

DISCUSSION ON QUESTION 1:

The sales tax is levied by § 12-35-510 upon every person engaged in the business of selling at retail any tangible personal property. Section 12-35-90(5) identifies in part such a person as including every person engaged in the business of renting or leasing tangible personal property. Edisto Fleets, Inc. v. South Carolina Tax Commission, 256 S. C. 350, 182 S. E. 2d 713 (1971), holds that one in the business of leasing tangible personal property is within the imposition section of § 12-35-510. Thus, the leasing of tangible personal property is subject to the sales tax as a sale by a retailer.

In the question presented, the taxpayer is identified as being in the business of leasing mobile phones. Pursuant to §§ 12-35-510 and 12-35-90(5), the taxpayer is subject to sales tax.

CONCLUSION:

A person who is in the business of leasing mobile phone equipment is subject to a sales tax based upon §§ 12-35-510 and 12-35-90(5).

DISCUSSION ON QUESTION 2:

Section 12-35-510 imposes a sales tax resulting from sales of tangible personal property as defined at § 12-35-140. Tangible personal property is defined in part at § 12-35-140 to include providing services such as communications where such activities

are specifically provided to be taxed under Chapter 35. Certain communications are specifically taxable under Chapter 35 at § 12-35-1150. Such section provides as follows:

‘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.’

To be taxable, the paging service and answering service must be the means for the transmission of the voice or messages. In construing a statute, words used should be given their ordinary and popular significance. [Investors Premium Corp. v. South Carolina Tax Commission](#), 260 S. C. 13, 193 S. E. 2d 642 (1973). Further, only when the literal application of the statute produces an absurd result will a different meaning be applied. [Southeastern Kusan, Inc. v. South Carolina Tax Commission](#), 276 S. C. 487, 280 S. E. 2d 57 (1981).

*2 Under § 12-35-1150, all charges for the ways or means for the transmission of messages are subject to the sales tax. A paging service transmits to a customer a message and likewise, an answering service transmits a message to its customer. The charges for such services are for the means used to transmit the messages and are, therefore, taxable within § 12-35-1150. See generally [Nashville Mobilphone Co., Inc. v. Woods](#), 655 S. W. 2d 934 (1983). Since the plain meaning of the statute does not give an absurd result, its literal reading requires a sales tax for the charges of a paging service and an answering service.

CONCLUSION:

The activity of delivering messages through a paging service and an answering service constitutes the ways and means for the transmission of messages so as to be taxable within §§ 12-35-140 and 12-35-1150.

Ray N. Stevens
Assistant Attorney General

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