

1984 S.C. Op. Atty. Gen. 229 (S.C.A.G.), 1984 S.C. Op. Atty. Gen. No. 84-96, 1984 WL 159903

Office of the Attorney General

State of South Carolina

Opinion No. 84-96

August 9, 1984

***1 SUBJECT: Taxation and Revenue—Sales and Use Tax Exemption—Sales to the National Guard.**

Sales to the Federal Government upon requisition or order of the South Carolina National Guard, payment for which is from the Federal Treasury upon order of Federal officers, are exempt from the South Carolina sales and use tax. Other sales of tangible personal property to the Guard, however, would be taxable.

TO: Honorable T. Eston Marchant
The Adjutant General

QUESTION:

Are purchases by the South Carolina National Guard that are paid from Federal funds exempt from the South Carolina sales and use tax?

APPLICABLE LAW:

Section 8 of the Permanent Provisions of the 1984–85 Appropriation Act.

DISCUSSION:

The South Carolina sales tax is imposed upon the privilege of engaging in the business of selling tangible personal property at retail. Section 12–35–510. It is a vendor's tax. [Southeastern Steel Co., Inc. v. Burton Block & Concrete Co., Inc.](#), 273 S.C. 634, 258 S.E.2d 888. Sales to the National Guard are taxable under the statute to the vendor unless otherwise exempt.

The General Assembly in Section 8 of the 1984–85 Appropriation Act provided an exemption of sales to the Federal Government. The specific language is that:

‘The gross proceeds of the sale of tangible personal property to the Federal Government, not including gross proceeds subject to the tax under § 12–35–1140 and [§ 12–35–1150 of the 1976 Code](#).’

The exemption thus applies only to sales to the Federal Government. The United States Supreme Court in [United States v. New Mexico](#), 102 S.Ct. 1373 (1982), quoted from [Kern-Limerick, Inc. v. Scurlock](#), 347 U.S. 126, 74 S.Ct. 403, as follows:

‘In the case of a sales tax, however, it is arguable that an entity serving as a federal procurement agent can be so closely associated with the government, * * *, as to make the sale—in both a real and symbolic sense—a sale to the United States, even though the purchasing agent has not otherwise been incorporated into the government structure.’

There, the contractor identified itself as a Federal procurement agent. Title to the purchases passed immediately to the Federal Government, the purchase order declared the purchase to be by the Federal Government, the Government was liable for the sale and specific government approval was required for the purchase. All of these elements are applicable to the purchases

here considered, however, there is an even closer relationship. Congress set forth the nation's policy relating to the National Guard as follows:

'In accordance with the traditional policy of the United States, it is essential that the strength and organization of the Army National Guard and the Air National Guard as an integral part of the first line defenses of the United States be maintained and assured at all times. * * *.' [32 U.S.C.A. 102](#).

The property is purchased by the Federal Government upon requisition or order of the South Carolina National Guard. The funds are appropriated by Congress and paid directly from the Federal Treasury to the vendor. The State at no time has custody or the right to disburse the funds. The property is carried in inventory of the Federal Government or when expendable is accounted to the Federal Government. The purchase is by contract with the Federal Government, under specification of the Federal Government.

*2 Department of Defense order form 1155 is used for the purchases. It provides, among other things, that acceptance of the purchase is by the Federal Government after inspection at the destination. As the matter relates to fast payment procedure, title to the property passes to the Federal Government upon transfer to a post office or common carrier for delivery to the specified destination.

Section [32 U.S.C.A. 708](#) requires that the Governor appoint, designate or detail, subject to the approval of the Secretary of the Army or Air Force, a commissioned officer to be the property and fiscal officer of the State. Among his duties is to: 'receipt and account for funds and property of the United States in the possession of the National Guard * * *.'

[Section 25-1-1390 of the South Carolina Code](#) likewise requires the appointment of the 'United States property and fiscal officer'. Section 25-1-1400 prescribes similar duties as provided by the Federal statutes.

Section [32 U.S.C.A. 710](#) provides in part that:

'(a) All military property issued by the United States to the National Guard remains the property of the United States.'

The Section further provides for the accountability, replacement and disposition of the property when necessary.

Section [32 U.S.C.A. 106](#) provides that:

'Sums will be appropriated annually, out of any money in the Treasury not otherwise appropriated, for the support of the * * * guard, including the issue of arms, ordnance stores, quartermaster stores, camp equipage, and other military supplies, and for the payment of other expenses authorized by law.'

As seen, the relationship in the purchase and use of the property between the Guard and the United States is inextricably bound together. The purpose of the Federal expenditure is to maintain the efficiency and effectiveness of the Guard as a part of the nation's defense. The purchase and ownership of the property is by and in the Federal Government although the use of the property is by the Guard. The exemption provision therefore is applicable and such sales are not subject to the tax.

CONCLUSION:

Sales to the Federal Government upon requisition or order of the South Carolina National Guard, payment for which is from the Federal Treasury upon order of Federal officers, are exempt from the South Carolina sales and use tax. Other sales of tangible personal property to the Guard, however, would be taxable.

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