

1983 WL 182068 (S.C.A.G.)

Office of the Attorney General

State of South Carolina

November 29, 1983

***1 SUBJECT: Taxation and Revenue—Sales tax upon judicially ordered bankruptcy sales.**

Except for Chapter 7 liquidation sales, sales made by bankruptcy trustees, Chapter 11 debtors in possession or their agents are subject to sales taxes even when conducted pursuant to judicial order.

Mr. Steven W. Romig
Estate Administrator
United States Bankruptcy Court

QUESTION:

Are sales made by bankruptcy trustees, Chapter 11 debtors in possession or their agents subject to sales taxes when conducted pursuant to a judicial order?

APPLICABLE LAW:

[28 U.S.C.A. § 960](#), §§ 12-35-20, 12-35-170, 12-35-510 and 12-35-550, 1976 South Carolina Code of Laws, and Tax [Regulation 117-154](#).

DISCUSSION:

The question presented is whether sales made by bankruptcy trustees, Chapter 11 debtors in possession or their agents are subject to South Carolina's sales tax. To resolve this issue reference must first be made to the Bankruptcy Act itself. Upon reviewing the same, it is evident that the act contains no specific provisions precluding such taxation. Furthermore, the fact that these sales may be conducted pursuant to a judicial order does not absolve them from tax consequences. As is stated in [28 U.S.C.A. § 960](#): 'Any officers and agents conducting any business under authority of a United States court shall be subject to all Federal, State and local taxes applicable to such business to the same extent as if it were conducted by an individual or corporation.

In the past, the Bankruptcy Act has been construed so as to imply a sales tax exemption on Chapter 7 liquidation sales. [California State Board of Equalization v. Goggin](#), 191 F.2d 726 (1951) and [California State Board of Equalization v. Goggin](#), 245, F.2d 44 (1957). However, the more current authorities refute such a construction. [In Re Hatfield Construction Company](#), 494 F.2d 1179 (1974) and [In Re: Bankruptcy of Hubs Repair Shop, Inc., et al.](#), 28 B.R. 858 (1983).

Having determined that there is nothing in the Bankruptcy Act that would preclude such taxation, reference must next be directed to South Carolina's Sales Tax Act. That act levies a 4% sales tax on the gross proceeds of sales upon:

'* * * every person engaged or continuing within this State in the business of selling at retail any tangible personal property whatsoever, * * *.' § 12-35-510

The above language and the statutory definitions found in Chapter 35 of Title 12 of the 1976 South Carolina Code are sufficiently broad enough to encompass the subject sales. Exception must, however, be made for liquidations conducted pursuant to Chapter 7 of the Bankruptcy Act. As stated in § 12-35-510, South Carolina's sales tax is levied on persons engaged in business. 'Business' has been defined at § 12-35-20 to mean:

'* * * all activities engaged in, or caused to be engaged in, with the object of gain, profit benefit or advantage, either direct or indirect, * * *.'

*2 Inasmuch as Chapter 7 liquidation sales are for the purpose of marshaling assets rather than gain, profit or advantage, they are outside the parameters of § 12-35-510.

It should also be noted that those sales that are not Chapter 7 liquidation sales may on occasion be nontaxable as exempted sales, wholesale sales or casual and isolated sales.¹ Any such determination on this matter would, however, have to be made on a case by case basis.

CONCLUSION:

Except for Chapter 7 liquidation sales, sales made by bankruptcy trustees, Chapter 11 debtors in possession or their agents are subject to sales taxes even when conducted pursuant to judicial order.

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Footnotes

¹ See §§ 12-35-550, 12-35-170 and Tax [Regulation 117-154](#).

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