

1984 WL 249975 (S.C.A.G.)

Office of the Attorney General

State of South Carolina

September 6, 1984

**\*1 SUBJECT: Taxation and Revenue—Exemption of Sales to the Federal Government from the South Carolina Sales Tax.**

(1) Sales of tangible personal property purchased by the Morale Welfare and Recreation Non-Appropriated Fund and used to improve, repair or equip areas for recreation and social activities for use by personnel of the Myrtle Beach Air Force Base are exempt from the South Carolina sales tax.

(2) The charge made for base housing of transient personnel by the Myrtle Beach Air Force Base is not subject to the South Carolina sales tax.

(3) The sale of meals to school children attending classes in a school building situate on the Myrtle Beach Air Force Base is not subject to the South Carolina sales tax.

Honorable John I. Rogers, III  
Member  
House of Representatives

QUESTIONS:

1. Are purchases by the Morale Welfare and Recreation Non-Appropriated Fund of the Myrtle Beach Air Force Base exempt from the South Carolina sales tax?
2. Is the sale of sleeping accommodations (billeting) by the base subject to tax?
3. Are school lunches purchased and consumed by school children on the base subject to the tax?

APPLICABLE LAW: Section 8 of the permanent provisions of the 1984-85 South Carolina Appropriation Act; [4 U.S.C.A. § 107\(a\)](#); [§ 12-35-550\(9\), Code of Laws of South Carolina](#), 1976.

DISCUSSION:

The South Carolina sales tax is imposed upon the vendor for the privilege of selling tangible personal property at retail. § 12-35-510. It is the liability of the seller. [Southeastern Steel Co., Inc. v. Burton Block & Concrete Co., Inc.](#), 273 S.C. 634, 258 S.E.2d 888. Sales to the Federal Government are thus taxable unless exempted therefrom. [United States v. New Mexico](#), 102 S.Ct. 1373 (1982).

The section of the Appropriation Act provides for an exemption of sales to the Federal Government. Excluded therefrom are sales of electricity and voice or message transmission. The specific language is that there is exempt from the tax:

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

Question 1. The issue here is whether the purchases are by the Federal Government. As understood, the non-appropriated fund is the profit realized from the business of certain Federal instrumentalities; in example, the officers' clubs, package store, bowling alley and swimming pool.

'\* \* \* post exchanges and similar facilities are instrumentalities of the United States: 'it is clear that the ship's stores, officers' clubs and post exchanges 'as now operated are arms of the government deemed by it essential for the performance of governmental functions . . . and partake of whatever immunities it may have under the constitution and federal statutes.'" (Citations omitted).' [United States v. State Tax Commission of Mississippi](#), 421 U.S. 599, 44 L.Ed.2d 404, 95 S.Ct. 1872 (1975).

\*2 All of the instrumentalities are operated by the Federal Government and the profit is retained by the base finance officer. The fund is primarily expended for the repair, improvement and equipping of recreational and/or social areas on Federal property and on occasion for social activities. Examples are the remodeling of the officers' club or other like facilities, the purchase of television sets or pool tables for use by base personnel and the funding of some social activities for base personnel.

While no case on point has been found, there is little doubt that such activities are necessary to an adequate system of defense. The recreation and social needs of the personnel are important functions of the government.

We are further advised that when an improvement or repair is made, or a television set or pool table purchased, the same is the property of the Federal Government. Under such circumstances it would be illogical to conclude that the sale of the property so used was not to the Federal Government.

CONCLUSION:

Sales of tangible personal property purchased by the Morale Welfare and Recreation Non-Appropriated Fund and used to improve, repair or equip areas on Federal property for recreation and social activities of personnel of the base are exempt from the South Carolina sales tax.

Question 2. As understood, the charge is made by the Air Force for housing furnished transient personnel. While such may be a sale of tangible personal property under the South Carolina statute, the same is nonetheless not subject to the South Carolina sales tax. 4 U.S.C.A. § 105 waives the immunity so that the states may impose a sales tax on transactions occurring in a Federal area. 4 U.S.C.A. § 107(a), however, precludes the waiver for sales made by the United States.

CONCLUSION:

The charge made for base housing of transient personnel by the Myrtle Beach Air Force Base is not subject to the South Carolina sales tax.

Question 3. It is assumed that the charge is that made for furnishing school lunches at schools operated upon the base. [Section 12-35-550\(9\)](#) exempts from the tax:

'\* \* \* the gross proceeds of the sale of meals to school children when such sales are made within school buildings and are not for profit.'

Under such circumstances the sale of the meals would not be taxable. Notwithstanding, if the sale of the meal is by the Federal Government, the tax would be precluded by 4 U.S.C.A. § 107(a).

CONCLUSION:

The sale of meals to school children attending classes in a school building situate on the Myrtle Beach Air Force Base is not subject to the South Carolina sales tax.

Joe L. Allen, Jr.  
Chief Deputy Attorney General

1984 WL 249975 (S.C.A.G.)

---

End of Document

© 2015 Thomson Reuters. No claim to original U.S. Government Works.