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S.C. SUPREME COURT

THE STATE OF SOUTH CAROLINA
In The Supreme Court

APPEAL FROM THE ADMINISTRATIVE LAW COURT
Ralph King Anderson, III, Chief Administrative Law Judge

Appellate Case No. 2019-001706

Trial Court Case No. 17-ALJ-17-0238-CC

Amazon Services, LLC, ... Appellant,

v.

South Carolina Department of Revenue, ... Respondent.

APPENDIX - VOLUME VI of VII

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**The Honorable Nikki R. Haley, Governor
Rick Reames, III, Director**

**Hearing
Exhibit
215**

Introduction

The purpose of this sales and use tax manual is to provide businesses, Department of Revenue employees and tax professionals a central summary of information concerning South Carolina's sales and use tax law and regulations. To that end, the manual references specific authority, including the law, regulations, court cases, Attorney General Opinions, and Department advisory opinions¹.

While it is not possible to discuss every issue, this manual strives to deal with a variety of issues. In addition, due to changes in tax law as well as new court decisions, this manual is a constant "work-in-progress." With that in mind, your suggestions for improvements and areas of discussion for future editions are welcomed.

Disclaimer

This publication is written in general terms for widest possible use and may not contain all the specific requirements or provisions of authority. It is intended as a guide only, and the application of its contents to specific situations will depend on the particular circumstances involved. This publication does not constitute tax, legal, or other advice and may not be relied on as a substitute for obtaining professional advice or for researching up to date original sources of authority. Nothing in this publication supersedes, alters, or otherwise changes provisions of the South Carolina code, regulations, or Department advisory opinions. This publication does not represent official Department policy. The Department would appreciate any comments or notification of any errors. Such comments should be sent to:

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References

Department Website. This publication cites many South Carolina code sections, regulations, attorney general opinions, and Department advisory opinions (Revenue Procedures, Revenue Rulings, etc.) The full text of these references is available through the Department's website at: www.dor.sc.gov.

¹ Department advisory opinions include revenue rulings, revenue procedures, private letter rulings, technical advice memorandums and information letters.

Advisory Opinions by E-Mail. The Department has an “Advisory Opinion E-Mail Subscription Service.” Persons who sign up for this free service will automatically receive draft, temporary, and final Revenue Rulings and Revenue Procedures, and final Private Letter Rulings and Information Letters by e-mail. These statements provide guidance concerning the application of laws administered by the Department. To sign up, go to the Department’s website and click on “Department Advisory Opinions” and “Advisory Opinion E-Mail Subscription Service.”

Advisory Opinion Index. Advisory opinions issued by the Department are available on the Department’s website and are indexed by both tax type and calendar year. To view an alphabetical index listing all advisory opinions by tax type, click on “Alphabetical Index of Advisory Opinions.” To view a chronological index of advisory opinions issued during the calendar year, click on “Calendar Year Index of Advisory Opinions.”

Other Sites. Also available through the Department’s website are Administrative Law Court decisions and proposed legislation at the General Assembly. These sites can be accessed from the Department’s website by clicking on “Links to Other Sites.”

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We would like to thank Rick Reames, III, Director, and Joe S. Dusenbury Jr., General Counsel, of the South Carolina Department of Revenue.

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General Overview

Chapter 1

General Overview

A. History

The state sales and use tax was first imposed in South Carolina in 1951. The imposition of the tax was upheld by the State Supreme Court in *State ex rel. Roddey v. Byrnes*, 219 S.C. 485, 66 S.E.2d 33 (1951). Over the years, the state tax rate has increased as follows:

1951 – 3%¹

1969 – 4%²

1984 – 5%³

2007 – 6%⁴

As enacted in 1951, the original state sales and use tax law contained 19 exemptions. Today, there are 78 exemptions; and several of these 78 “exemption provisions” are in fact multiple exemptions. In addition, there are other sales and use tax exemptions contained in other areas of the South Carolina Code of Laws.

The original sales and use tax law established a maximum tax of \$75.00 on any single item. This was repealed in 1955.⁵ From 1984 through 1986 various maximum tax provisions were enacted for specific items, such as motor vehicles, boats, aircraft, self-propelled light construction equipment, certain trailers, manufactured homes, musical instruments and office equipment sold to a religious organization, and certain research and development machinery.⁶

Over the years, the imposition of the sales and use tax has been expanded to include various services and intangibles such as sleeping accommodations, communication services, laundry and drycleaning services, and electricity.

In 1991, the first local sales and use tax to be administered and collected by the Department of Revenue was authorized by the General Assembly. Today, the Department of Revenue administers and collects on behalf of local jurisdictions several types of local sales and use tax as well as the Catawba Tribal Sales Tax.

¹ Act No. 379 of 1951.

² Act No. 274 of 1969.

³ Act No. 512 of 1984.

⁴ Act No. 388 of 2006.

⁵ Act No. 234 of 1955.

⁶ The maximum tax for certain research and development machinery was later repealed and replaced by a full exemption for such machinery.

These provisions, as well as many others found in the present sales and use tax law, will be discussed in this publication.

The “South Carolina Sales and Use Tax Act” can be found in Chapter 36 of Title 12.

B. Rates and Impositions

South Carolina imposes a 6% sales tax⁷ on the gross proceeds of sales of every person engaged in the business of selling tangible personal property at retail. The retailer is liable for the tax. The sales tax is also imposed on the fair market value of items originally purchased at wholesale that are withdrawn for use by the business or by any person withdrawing the property.⁸

South Carolina imposes a complementary 6% use tax⁹ on the sales price of tangible personal property purchased at retail for storage, use, or other consumption in South Carolina, regardless of whether the retailer is engaged in business in South Carolina. The use tax is the liability of the purchaser.¹⁰ If the purchaser; however, has a receipt from a seller required or authorized to collect the state use tax showing the seller has collected the tax from the purchaser, the purchaser is relieved of the liability for the tax.¹¹ South Carolina allows a credit against the use tax due in South Carolina for the state and local sales or use tax due and paid in another state on purchases of tangible personal property.

In addition to applying to the sale or use of tangible personal property (*e.g.*, furniture, clothing, computers, etc.), the sales and use taxes also apply to:

- (1) certain communication services,¹²
- (2) laundry and dry cleaning services,¹³
- (3) electricity,¹⁴
- (4) the fair market value of tangible personal property manufactured within South Carolina or brought into South Carolina by its manufacturer for storage, use, or consumption in South Carolina by the manufacturer,¹⁵
- (5) transient construction property,¹⁶ and
- (6) the furnishing of accommodations.¹⁷

⁷ South Carolina Code §§12-36-910(A) and 12-36-1110.

⁸ South Carolina Code §12-36-110(c)(1).

⁹ South Carolina Code §§12-36-1310(A) and 12-36-1110.

¹⁰ South Carolina Code §12-36-1310(A).

¹¹ South Carolina Code §12-36-1330. See also South Carolina Code §12-36-2130(1) and *McJunkin v. City of Orangeburg* 238 F.2d. 528 (1956).

¹² South Carolina Code §§12-36-910(B)(3), 12-36-910(B)(5), 12-36-1310(B)(3), 12-36-1310(B)(5), and 12-36-2645.

¹³ South Carolina Code §§12-36-910(B)(1) and 12-36-1310(B)(1).

¹⁴ South Carolina Code §§12-36-910(B)(2) and 12-36-1310(B)(2).

¹⁵ South Carolina Code §§12-36-910(B)(4) and 12-36-1310(B)(4).

¹⁶ South Carolina Code §12-36-1320.

¹⁷ South Carolina Code §12-36-920.

South Carolina imposes a 7% sales tax¹⁸ on charges for any rooms, lodgings, or sleeping accommodations for less than 90 days to the same person and a 6% sales tax¹⁹ on “additional guest charges” added to the guest’s room charge for a specific amenity or service.

C. Local Sales and Use Taxes

Local governments have limited authority to levy local taxes and fees. A local governing body may not impose a new tax unless specifically authorized by the General Assembly. As explained below, local sales and use taxes may be imposed for various purposes. The majority of these are administered and collected by the Department in the same manner as the state sales and use taxes. Below is a brief description of the local taxes.

D. Local Taxes Administered by the Department

General Property Tax Relief. Counties have the option of increasing the sales, use, and accommodations tax rate by 1% to provide additional revenue for local governments and a property tax rollback.²⁰ The tax must be approved by voter referendum and is typically referred to as the “local option sales tax.”

Local Sales and Use Tax for Transportation Facilities. A governing body of a county may raise revenue for a transportation project by either imposing a sales and use tax up to 1% or by authorizing a transportation authority created by the county governing body to impose tolls.²¹ The increase is imposed by enacting an ordinance, subject to approval by voter referendum, and must be for a specific period of time to collect a limited amount of money. At no time may any portion of the county area be subject to both the local sales and use tax for transportation facilities and the capital project sales tax (discussed below).

Capital Project Sales Tax. A governing body of a county may impose a 1% sales and use tax to defray the debt service on bonds issued to pay for authorized capital projects.²² The increase is imposed by enacting an ordinance, subject to approval by voter referendum. At no time may any portion of the county area be subject to both the capital project sales tax and the local sales and use tax for transportation facilities (discussed above). It may not be imposed for more than 8 years for newly imposed taxes or 7 years for reimposed taxes.

¹⁸ South Carolina Code §12-36-920(A).

¹⁹ South Carolina Code §§12-36-920(B) and 12-36-1110.

²⁰ South Carolina Code §4-10-20.

²¹ South Carolina Code §4-37-30.

²² South Carolina Code §4-10-300.

Personal Property Tax Relief. The county council may impose, by referendum, a local sales and use tax in lieu of the personal property tax imposed on private passenger motor vehicles, motorcycles, general aviation aircraft, boats, and boat motors.²³ The tax may not exceed the lesser of 2% or the amount necessary to replace the property tax on these items in the most recently completed fiscal year. Currently, this tax is not being imposed.

School District Taxes. The General Assembly has authorized certain school districts to impose a sales and use tax within the county. These taxes are generally imposed to pay debt service on general obligation bonds and/or the cost of capital improvements for school districts. Most of these taxes are imposed at a rate of 1%. Currently, only 8 of the 20 school district taxes that have been authorized by the General Assembly are being imposed.

Catawba Tribal Sales and Use Tax. The Catawba Indian Reservation is located in Lancaster and York counties. South Carolina Code §27-16-130(H) contains the specific sales and use tax provisions relating to the Catawba Tribal Sales and Use Tax. The tribal sales tax is administered and collected by the Department and the tribal use tax is administered and collected by the tribe.²⁴ For more information concerning the Catawba Tribal Sales and Use Tax, see Chapter 18 of this manual.

Local Option Sales and Use Tax for Local Property Tax Credit. The governing body of the county, by a county council ordinance or by an initiated ordinance submitted to the governing body of the county by a petition signed by at least 7% of the qualified electors of the county, may impose a sales and use tax in increments of one-tenth of 1%, not to exceed 1%, subject to referendum approval.²⁵ The tax provides a credit against property tax imposed by a political subdivision. Currently, this tax is not being imposed.

Education Capital Improvements Sales and Use Tax. The General Assembly has authorized a school district or school districts within a county to impose a 1% sales and use tax within the county for specific education capital improvements for the school district for not more than 15 years.²⁶ The tax must be approved by a referendum open to all qualified electors residing in the county. Pursuant to a memorandum of agreement, a portion of the revenue may be shared with the area commission (governing body of a technical college) or higher education board of trustees (governing body of a public institution of higher learning) or both, for specific education capital improvements on the campus of the recipient located in the county listed in the referendum. This tax may only be imposed in counties that have collected at least \$7 million in state accommodations taxes in the most recent fiscal year for which data is available. Once the threshold is met, a county remains eligible to impose this tax. This tax may not be imposed in a county that is imposing or is scheduled to impose a local sales and use tax for public school capital improvements.

²³ South Carolina Code §4-10-540.

²⁴ See South Carolina Revenue Ruling #98-18 and South Carolina Information Letter #14-5, Note 13 for additional information.

²⁵ South Carolina Code §§4-10-720 through 4-10-810.

²⁶ South Carolina Code §§4-10-410 through 4-10-470 (Act No. 316 of 2008).

Tourism Development Tax: The governing body of a municipality, by an ordinance adopted by a two-thirds majority of the municipal council or by approval by a majority of qualified electors voting in a referendum authorized by a majority of the municipal council, may impose a general sales and use tax within the municipality.²⁷ The tax is imposed specifically for tourism advertisement and promotion directed at non-South Carolina residents; however, in the second and subsequent years of this tax a portion of the tax may be used for certain property tax rollbacks and other purposes. It may only be imposed by a municipality located in a county where revenue from the state accommodations tax is at least fourteen million dollars in a fiscal year. As of this date, only Horry County meets this criterion; therefore, only municipalities in Horry County may impose this tax. Currently, only the City of Myrtle Beach imposes this tax.²⁸

E. Local Taxes Administered by Local Governments

Local Accommodations Tax. The governing body of a county or municipality may impose, by ordinance, a local accommodations tax, on the gross proceeds derived from the rental or charges for accommodations furnished to transients as provided in South Carolina Code §12-36-920(A), not to exceed 3%.²⁹ The revenue generated by this additional tax must be used exclusively for certain tourism purposes.

Local Hospitality Tax. The governing body of a county or municipality may impose, by ordinance, a tax on the sales of prepared meals and beverages sold in establishments, or sales of prepared meals and beverages sold in establishments licensed for on-premises consumption of alcoholic beverages, beer, or wine.³⁰ The tax may not exceed 2% of the charges for food and beverages.

F. Exclusions

If a transaction is excluded from the tax, it is not subject to sales and use tax in South Carolina. The exclusions are found in several sections of the sales and use tax statute and apply to a variety of transactions. The following briefly describes South Carolina's sales and use tax exclusions.

Caution: The exclusions below are briefly described. See the statute cited for the specific exclusion details. If a transaction does not squarely fall within the requirements of an exclusions statute and applicable regulations, the exclusion does not apply.

Code Section	Description
12-36-60	Transmission of computer database information by a cooperative service when assembled by and for the exclusive use of the members of the cooperative service

²⁷ South Carolina Code §§4-10-910 through 4-10-970 (Act No. 3 of 2009 and Act No. 130 of 2010).

²⁸ See South Carolina Information Letter #14-5.

²⁹ South Carolina Code §6-1-500.

³⁰ South Carolina Code §6-1-700.

Code Section	Description
12-36-90(1)(c)(iii)	The withdrawal from inventory of tangible personal property for use in replacing a defective part under a warranty contract if the warranty contract is given without charge at the time of original purchase of the defective property; the tax was paid on the sale of the defective part or on the sale of the property of which the defective part was a component; and the warrantee is not charged for any labor or materials
12-36-90(2)(h)	Sales of property that are actually charged off as bad debts or uncollectible accounts for state income tax purposes
12-36-90(2)(i)	Interest, fees, or charges imposed on a customer for late payment of a bill for electricity or natural gas
12-36-110(2)	Sales of tangible personal property to a manufacturer or construction contractor when the property is partially or completely fabricated or manufactured in South Carolina by the manufacturer or construction contractor and transported out of state and assembled, installed or erected at the out-of-state job site
12-36-120(1)	Sales of property to a licensed retailer or another wholesaler for resale. This does not include sales to users or consumers not for resale.
12-36-120(2)	Sales of property to a manufacturer or compounder as an ingredient or component part of the tangible personal property or product manufactured or compounded for sale
12-36-120(3)	Sales of property “used directly” in manufacturing, compounding, or processing tangible personal property into products for sale. SC Regulation 117-302.1 provides property is “used directly” if it comes into direct contact with the product being manufactured and contributes to bring about a chemical or physical change in the product.
12-36-120(4)	Sales of materials, containers, cores, labels, sacks or bags used incident to the sale and delivery of tangible personal property, or used by manufacturers, processors and compounders in shipping tangible personal property
12-36-120(5)	Sales of food or drink products to licensed retail merchants for use as ingredients in preparing ready to eat food or drink sold at retail

Code Section	Description
12-36-140(C)(1)	Purchases of tangible personal property from outside the state and transported to South Carolina for storage and for the exclusive purpose of subsequently transporting it outside of South Carolina for first use outside of South Carolina. (Applies to use tax)
12-36-140(C)(2)	Purchases of tangible personal property from outside the state and transported to South Carolina for the purpose of first being manufactured, processed, or compounded into other tangible personal property that will be transported and used solely outside of South Carolina. (Applies to use tax)
12-36-140(C)(3)	Purchases of tangible personal property for the purpose of being distributed as (1) cooperative direct mail promotional advertising materials, or (2) promotional maps, brochures, pamphlets, or discount coupons by nonprofit chambers of commerce or convention and visitor bureaus who are exempt from income taxation pursuant to Internal Revenue Code § 501(c) by means of interstate carrier, a mailing house, or a United State Post Office to residents of this State from locations both inside and outside the state. (Applies to use tax)
12-36-910(C)	Charges for or use of certain data processing

G. Partial Exemptions

There are two types of exemptions provided under South Carolina’s sales and use tax law: (1) partial exemptions, and (2) full exemptions.

Partial exemptions limit or “cap” the amount of tax.³¹ The local sales and use taxes collected by the Department do not apply to sales that are subject to a cap.

A maximum tax of \$300 is imposed on sales of the following:³²

- Aircraft – including unassembled aircraft assembled by the purchaser
- Motor vehicles – including equipment supplied or installed on a firefighting vehicle at the time of purchase³³
- Motorcycles

³¹ South Carolina Code §12-36-2110.

³² South Carolina Code §12-36-2110(A).

³³ South Carolina Code §12-36-2110(E).

- Boats, including personal watercrafts such as jet skis
- Trailers and semi-trailers that can be pulled only by a truck tractor. This does not include house trailers and campers as defined in South Carolina Code §56-3-710.³⁴
- Horse trailers. This does not include house trailers and campers as defined in South Carolina Code §56-3-710.
- Recreational vehicles, including tent campers, travel trailers, park trailers, motor homes and fifth wheels
- Self-propelled light construction equipment with compatible attachments. The equipment's net engine horse power must not exceed 160.
- Fire safety education trailers

The cap also applies to leases of the above items provided the lease is in writing and the lease has a stated term and remains in force for a period in excess of 90 continuous days. The taxpayer may pay the total tax due at the time the lease is executed or by installments with each lease payment until the \$300 is paid.

Also, a maximum tax of \$300 is imposed on sales of musical instruments or office equipment sold to religious organizations.³⁵

Further, the sale of a manufactured home is subject to a maximum tax of \$300 if the home meets or exceeds certain energy efficient requirements specifically outlined in the law.³⁶ If the home does not meet these energy efficient requirements, the sale of the home is subject to a maximum tax of \$300 plus 2% of the taxable basis or measure that exceeds \$6,000.³⁷ Finally, the sale of a manufactured homes from July 1, 2009 through July 1, 2019, will be exempt from the entire tax if the manufactured home has been designated by the United States Environmental Protection Agency and the United States Department of Energy as meeting or exceeding each agency's energy saving efficiency requirements or has been designated as meeting or exceeding such requirements under each agency's ENERGY STAR program.³⁸

³⁴ Sales of utility trailers that are capable of being pulled by an automobile, minivan, or pick-up truck, and that are not recreational vehicles, fire safety education trailers or horse trailers, are not eligible for the \$300 maximum tax. See SC Revenue Ruling #14-2.

³⁵ South Carolina Code §12-36-2110(C).

³⁶ South Carolina Code §§12-36-2110(B) and 12-36-2120(34).

³⁷ South Carolina Code §§12-36-2110(B) and 12-36-2120(34).

³⁸ South Carolina Code §§12-36-2110(B) and 12-36-2120(34). See Act No. 354 of 2008.

H. Full Exemptions

Although it may be determined that a transaction is subject to sales and use tax, a particular exemption in the statute may exempt it from sales and use tax in South Carolina. South Carolina Code §§12-36-2120 and 12-36-2130 contain numerous full exemptions. The local sales and use taxes collected by the Department do not apply to sales which are exempt from the state sales and use tax.³⁹

The following briefly describes South Carolina's sales and use tax exemptions. For purposes of this discussion, South Carolina's full exemptions are divided into the following categories:

- Government Related Exemptions
- Business Related Exemptions
- Agricultural Exemptions
- Educational Exemptions
- General Public Good Exemptions
- Alternative Energy Exemptions

Caution: The exemptions below are briefly described. See the statute cited for the specific exemption details. If a transaction does not squarely fall within the requirements of an exemption statute and applicable regulations, the exemption does not apply.

Government Related Exemptions

Code Section	Description
12-36-2120(1)	Transactions that are prohibited from being taxed by United States or State Constitutional provisions or federal or state law
12-36-2120(2)	Sales to the federal government

³⁹ All sales and purchases exempt from the state sales and use tax under South Carolina Code §§12-36-2120 and 12-36-2130 are exempt from local sales and use tax administered and collected by the Department on behalf of local jurisdictions, except for sales of unprepared food under South Carolina Code §12-36-2120(75). South Carolina Code §12-36-2120(75) specifically states that the exemption for unprepared food only applies to the state sales and use tax. Therefore, such sales are subject to local sales and use taxes unless the local sales and use tax specifically exempt's sales of unprepared food. See SC Regulation 117-337 and South Carolina Information Letter #14-5.

Code Section	Description
12-36-2120(22)	Material necessary to assemble missiles
12-36-2120(25)	Sales of cars and motorcycles to nonresident military personnel
12-36-2120(29)	Federal government contracts – property that passes to the government
12-36-2120(30)	Supplies purchased by the State General Services Division for resale to State agencies
12-36-2120(46)	War memorials and monuments
12-36-2120(48)	Solid waste disposal collection bags required under a solid waste disposal plan of a county or other political subdivision
12-36-2120(60)	Lottery tickets sold pursuant to Chapter 150 of Title 59 (South Carolina Education Lottery Act)
12-36-2120(61)	Copies of, or access to, legislation or other informational documents provided to the general public or any other person by a legislative agency when a charge for these copies is made reflecting the agency's cost of the copies
12-36-2120(68)	Any property sold to the public through a sheriff's sale as provided by law

Business Related Exemptions

12-36-2120(9)	Coal, coke, or other fuel for manufacturers, transportation companies, electric power companies, and processors Fuel used by an aircraft manufacturer for test flights or for transportation of an aircraft prior to completion from one facility to another facility if the aircraft manufacturer invests at least \$750 million and creates at least 3,800 full-time jobs over a seven year period
12-36-2120(11)	Toll charges between telephone exchanges, certain access charges, charges for telegraph messages and automatic teller machine transactions
12-36-2120(13)	Fuel and other supplies for consumption on ships on the high seas

Code Section	Description
12-36-2120(14)	Wrapping paper, containers, etc., used incident to the sale and delivery of tangible personal property
12-36-2120(15)	Motor fuel taxed under the motor fuel user fee law
12-36-2120(17)	Machines used in manufacturing, processing, recycling, compounding, mining or quarrying tangible personal property for sale. This includes certain machines used to prevent or abate air, water or noise pollution caused by machines used in manufacturing, processing, recycling, compounding, mining or quarrying tangible personal property for sale.
12-36-2120(19)	Electricity used to manufacture, process, mine, or quarry tangible personal property for sale or used by cotton gins to manufacture tangible personal property for sale
12-36-2120(20)	Railcars and locomotives
12-36-2120(21)	Certain vessels and barges (more than 50 tons burden)
12-36-2120(24)	Laundry supplies and machinery. This exemption does not apply to coin operated laundromats. ⁴⁰
12-36-2120(31)	Vacation time sharing plans and exchange of accommodations in which the accommodation to be exchanged is the primary consideration
12-36-2120(34)	50% of the gross proceeds of a modular home regulated under Chapter 43 of Title 23
12-36-2120(35)	Movies sold or rented to movie theatres
12-36-2120(36)	Tangible personal property delivered out of state by South Carolina retailers
12-36-2120(37)	Petroleum asphalt products transported and used outside South Carolina
12-36-2120(40)	Shipping containers used by international shipping lines under contract with the State Ports Authority

⁴⁰ A coin-operated laundromat machine includes any laundromat machine operated by a slot in which is deposited or placed a coin, token, debit card, or other thing of value so as to begin operation of the machine for the purposes of laundering, cleaning, or drying clothing and other textiles.

Code Section	Description
12-36-2120(42)	Depreciable assets sold as part of the sale of an entire business
12-36-2120(43)	Supplies, equipment, machinery and electricity for use in filming/producing motion pictures
12-36-2120(49)	Postage purchased by a person engaged in the business of selling advertising services for clients consisting of mailing advertising material through the United States mail
12-36-2120(50)	The following items when used by a qualified recycling facility: recycling property, electricity, natural gas, fuels, gasses, fluids and lubricants, ingredients or component parts of manufactured products, property used for the handling or transfer of postconsumer waste or manufactured products or in or for the manufacturing process, and machinery and equipment foundations ⁴¹
12-36-2120(51)	Material handling systems and material handling equipment used in the operation of a distribution facility or a manufacturing facility of a taxpayer that invests at least \$35 million in South Carolina
12-36-2120(52)	Parts and supplies used by persons engaged in the business of repairing or reconditioning aircraft owned by or leased to the federal government or commercial air carriers. This exemption does not extend to tools and other equipment not attached to or that do not become a part of the aircraft.
12-36-2120(53)	Motor vehicle extended service and warranty contracts
12-36-2120(54)	Clothing and other attire required for working in a class 100 or better clean room environment (as defined in Federal Standard 209E)
12-36-2120(55)	Audiovisual masters made or used by a production company
12-36-2120(56)	Machines used in research and development
12-36-2120(58)	Cooperative direct mail promotional advertising materials and promotional maps, brochures, pamphlets, or discount coupons for use by nonprofit chambers of commerce or nonprofit convention and visitor bureaus

⁴¹ See South Carolina Code §12-6-3460 for the definitions of “qualified recycling facility,” “recycling property,” and “post-consumer waste material.”

Code Section	Description
12-36-2120(59)	Facilities transmitting electricity that are transferred, sold or exchanged by an electrical utility, municipality, electric cooperative, or political subdivision to a limited liability company subject to regulation under the Federal Power Act and formed to operate or to take functional control of electric transmission assets
12-36-2120(62)	70% of the gross proceeds of the rental or lease of portable toilets
12-36-2120(64)	Sweetgrass baskets made by artists of South Carolina using locally grown sweetgrass
12-36-2120(65) and 12-36-2120(66)	Computer equipment used in connection with, and electricity and certain fuel used by, a technology intensive facility (defined in South Carolina Code §12-6-3360(M)(14)(b)) that invests \$300 million over 5 years, creates at least 100 new jobs during the 5 years with an average cash compensation of 150% of the per capita income of the State, and spends at least 60% of the \$300 million investment on computer equipment Computer equipment used in connection with a manufacturing facility that invests at least \$750 million and creates at least 3,800 full-time new jobs at the facility over a 7 year period. This exemption became effective November 1, 2009.
12-36-2120(67)	Construction material used in the construction of a single manufacturing or distribution facility, or one that is both, that invests at least \$100 million at a single site in South Carolina over an 18 month period. Construction material used in the construction of a new or expanded single manufacturing facility that invests at least \$750 million and creates at least 3,800 full-time new jobs at the facility over a 7 year period. This exemption became effective November 1, 2009.
12-36-2120(70)	Gold, silver or platinum bullion or any combination; coins that are or have been legal tender; and currency
12-36-2120(73)	Amusement park rides; parts, machinery and equipment used to assemble, operate and make up amusement park rides; and performance venue facilities and any related or required machinery, equipment and fixtures. A \$250 million investment and creation of 250 full-time jobs and 500 part-time or seasonal jobs over a 5 year period is required.

Code Section	Description
12-36-2120(78)	Machinery and equipment, building and other raw materials, and electricity used in the operation of a facility owned by an organization which qualifies as a tax exempt organization pursuant to the Internal Revenue Code Section 501(c)(3) when the facility is principally used for researching and testing the impact of such natural hazards as wind, fire, water, earthquake, and hail on building materials used in residential, commercial, and agricultural buildings. A \$20 million in real or personal property at a single site in this State over a 3 year period is required.
12-36-2120(79)	Computers, computer equipment, and computer software used within a datacenter, and electricity used by a datacenter or used by eligible business property located and used at a datacenter where the taxpayer: (1) invests at least \$50 million in real or personal property or both over a 5 year period; or, if more than one taxpayer, invests a minimum aggregate capital investment of at least \$75 million in real or personal property or both over a 5 year period; (2) creates and maintains at least 25 full-time jobs at the facility with an average cash compensation level of 150% of the per capita income of South Carolina or of the county in which the facility is located; and (3) maintains the jobs requirement for 3 consecutive years after certification by the Department of Commerce. This exemption only applies to a datacenter that is certified by the Department of Commerce prior to January 1, 2032 as meeting the investment and job requirements. However, for datacenters certified by December 31, 2031, this exemption will remain in effect for an additional ten year period.
12-62-30	Tangible personal property purchased by a certified motion picture production company for use in connection with the filming or production of motion pictures in South Carolina for a company planning to spend at least \$250,000 in connection with the filming or production of one or more motion pictures in South Carolina within a consecutive 12 month period. This provision does not apply to: (a) local sales tax levied and collected directly by a local governmental subdivision or (b) the production of television coverage of news and athletic events.

Agricultural Exemptions

12-36-2120(4)	Livestock
12-36-2120(5)	Feed used to produce and maintain livestock

Code Section	Description
12-36-2120(6)	Insecticides, chemicals, fertilizers, soil conditioners, seeds, seedlings or nursery stock used in the production of farm products
12-36-2120(7)	Containers and labels used in preparing agriculture products for sale or preparing turpentine gum, gum resin and gum spirits of turpentine for sale
12-36-2120(16)	Farm machinery
12-36-2120(18)	Fuel used to cure agriculture products
12-36-2120(23)	Farm products sold in their original state of production when sold by the producer
12-36-2120(32)	Electricity and gas used in the production of livestock and milk
12-36-2120(44)	Electricity used to irrigate crops
12-36-2120(45)	Building materials, supplies, fixtures and equipment used to construct commercial housing for poultry or livestock

Educational Exemptions

12-36-2120(3)	Textbooks, books, magazines, periodicals, newspapers and access to online information used in a course of study or for use in a school or public library. These items may be in printed form or in alternative forms such as microfilm or CD ROM. Certain communication services and equipment subject to tax under South Carolina Code §§12-36-910(B)(3) and 12-36-1310(B)(3) are not exempt.
12-36-2120(8)	Newspapers, newsprint paper and South Carolina Department of Agriculture Market Bulletin ⁴²
12-36-2120(10)(a)	Meals or food used in furnishing meals to students in schools (not for profit)
12-36-2120(26)	Television, radio and cable TV supplies, equipment, machinery, and electricity

⁴² This exemption also states that sales of religious publications (e.g., The Bible, hymnals) are exempt; however, the South Carolina Supreme Court held in *Thayer v. South Carolina Tax Commission*, 307 S.C. 6, 413 S.E.2d 810 (1992), that the exemption for religious publications was unconstitutional. Therefore, sales of religious publications are subject to the sales and use tax, unless otherwise exempt under the law. For more information, see South Carolina Information Letter #92-8.

Code Section	Description
12-36-2120(27)	Zoo plants and animals
12-36-2130(2)	Exhibition rentals for museums (charitable, eleemosynary or governmental museums) (use tax only) ⁴³
Temporary Proviso 117.40, (Act 286 of 2014)	Purchases of tangible personal property during the state fiscal year 2014-2015 for use in private primary and secondary schools, including kindergarten and early childhood education programs, are exempt from the <u>use tax</u> if the school is exempt from income taxes under Internal Revenue Code §501(c)(3) ⁴⁴

General Public Good Exemptions

12-36-2120(10)(b)	Meals provided to elderly or disabled persons at home by nonprofit organizations
12-36-2120(10)(c)	Food sold to nonprofit organizations or food sold or donated by the nonprofit organization to another nonprofit organization
12-36-2120(10)(d)	Meals or foodstuffs prepared or packaged that are sold to public or nonprofit organizations for congregate or in-home service to the homeless or needy or disabled adults over 18 or individuals over 60. This exemption only applies to meals and foodstuffs eligible for purchase under the USDA food stamp program.
12-36-2120(12)	Water sold by public utilities and certain non-profit corporations
12-36-2120(28)	Medicine and prosthetic devices sold by prescription; certain diabetic supplies sold to diabetics under the written authorization and direction of a physician; certain free samples of medicine and certain medicine donated to hospitals; prescription medicine and radiopharmaceuticals used in treating cancer or rheumatoid arthritis, including prescription medicines to relieve the effects of treatment; prescription medicines used to prevent respiratory syncytial virus; disposable medical supplies, such as bags, tubing, needles, and syringes, dispensed by a pharmacist by prescription of a licensed health care provider for the intravenous administration of a prescription drug (only for treatment outside of a hospital, skilled nursing facility, or ambulatory surgical treatment center); and prescription medicine dispensed to Medicare Part A patients in a nursing home.

⁴³ This exemption only applies to the use tax. If the transaction in question is a sales tax transaction, this exemption does not apply. See SC Regulation 117-334 for information on when a transaction is a sales tax transaction and when it is a use tax transaction.

⁴⁴ This exemption only applies to the use tax. If the transaction in question is a sales tax transaction, this exemption does not apply. See SC Regulation 117-334 for information on when a transaction is a sales tax transaction and when it is a use tax transaction.

Code Section	Description
12-36-2120(33)	Residential electricity and fuel
12-36-2120(38)	Hearing aids
12-36-2120(39)	Concession sales by nonprofit organizations at festivals
12-36-2120(41)	Sales by nonprofit organizations
12-36-2120(47)	Goods sold to nonprofit hospitals that primarily treat children at no cost to the patient
12-36-2120(57)	Annual sales tax holiday on the first Friday, Saturday, and Sunday in August for personal use clothing, clothing accessories, footwear, computers, printers, printer supplies, computer software, bath wash cloths, blankets, bed spreads, bed linens, sheet sets, comforter sets, bath towels, shower curtains, bath rugs, pillows, pillow cases, and school supplies
12-36-2120(63)	Medicine and medical supplies, including diabetic supplies and diabetic diagnostic and testing equipment, sold to a health care clinic providing free medical and dental care to all patients
12-36-2120(74)	Durable medical equipment and related supplies as defined under federal and state Medicare and Medicaid laws if (a) paid directly by funds of South Carolina or the United States under the Medicare and Medicaid programs, (b) state and federal law prohibits the payment of the sales and use tax, and (c) the sale is by a provider with a South Carolina retail license whose principal place of business is in South Carolina. This exemption became fully implemented effective January 1, 2013. ⁴⁵
12-36-2120(75)	Unprepared food that lawfully may be purchased with United States Department of Agriculture food coupons. This exemption does not apply to local taxes unless the local tax specifically exempts the sale of such food.

⁴⁵ An uncodified provision of the legislation that enacted this exemption in 2007 provided that the exemption would be phased in by reducing the rate of tax based on revenue projections by the Board of Economic Advisors. This uncodified provision was later amended in Act 32 of 2011 to establish a new phase in of the exemption as follows: The rate of tax imposed on the gross proceeds of sales of items meeting the requirements of the exemption in Code Section 12-36-2120(74) is five and one-half percent for such sales from July 1, 2007. The rate of tax imposed on the gross proceeds of sales of items meeting the requirements of the exemption in Code Section 12-36-2120(74) is three and one-half percent for such sales from July 1, 2011. The rate of tax imposed on the gross proceeds of sales of items meeting the requirements of the exemption in Code Section 12-36-2120(74) is one and three-quarters percent for such sales from July 1, 2012. Effective January 1, 2013, the sales tax exemption on the gross proceeds of sales of items meeting the requirements of Code Section 12-36-2120(74) is fully implemented. Local sales and use taxes continued to apply until the exemption was fully implemented. Effective January 1, 2013, sales meeting the requirements of the exemption are fully exempt from both state and local sales and use taxes.

Code Section	Description
12-36-2120(76)	This exemption for a sales tax holiday for handguns, rifles, and shotguns was ruled unconstitutional by the Supreme Court of South Carolina ⁴⁶
12-36-2120(77)	This exemption for certain energy efficient products was ruled unconstitutional by the Supreme Court of South Carolina ⁴⁷
12-36-2120(80)	Injectable medications and injectable biologics, so long as the medication or biologic is administered by or pursuant to the supervision of a physician in an office which is under the supervision of a physician, or in a Center for Medicare or Medicaid Services certified Kidney dialysis facility. On February 19, 2014, the Board of Economic Advisors notified the Department that the requirements have been met to implement this exemption. Accordingly, for July 1, 2014 - June 30, 2015, 50% of the gross proceeds of sales of qualifying sales or purchases are exempt from the State and local sales and use taxes. On or after July 1, 2015, qualifying sales or purchases are fully exempt from the State and local sales and use taxes. ⁴⁸
Temporary Proviso 117.65 (Act No. 286 of 2014)	Viscosupplementation therapies (for state fiscal year 2014–2015)

Alternative Energy Exemptions

12-36-2120(71)	Any device, equipment or machinery that is (a) operated by hydrogen or fuel cells, (b) used to generate, produce or distribute hydrogen and designated specifically for hydrogen applications or for fuel cell applications and (c) used predominantly for the manufacturing of, or research and development involving hydrogen or fuel cell technologies. This exemption is effective October 1, 2007.

⁴⁶ On May 4, 2009, the Supreme Court of South Carolina ruled that South Carolina Code §12-36-2120((76), which established an annual sales tax holiday on the Friday and Saturday after Thanksgiving for handguns (as defined in South Carolina Code §16-23-10(1)), rifles and shotguns, was unconstitutional. *The American Petroleum Institute and BP Products North America Inc v. South Carolina Department of Revenue, et al.* S.C., 677 S.E.2d 16 (2009). However, the General Assembly enacted a temporary proviso that established a sales tax holiday on November 26th and 27th of 2010 for handguns (as defined in South Carolina Code §16-23-10(1)), rifles and shotguns.

⁴⁷ On May 4, 2009, the Supreme Court of South Carolina ruled that South Carolina Code §12-36-2120(77), which established an annual sales tax holiday during the month of October (beginning in 2009 and ending 2018) for certain energy efficient products (provided certain revenue growth forecasts were met), was unconstitutional. *The American Petroleum Institute and BP Products North America Inc v. South Carolina Department of Revenue, et al.* S.C., 677 S.E.2d 16 (2009).

⁴⁸ When completing the Sales and Use Tax Return (ST-3), a taxpayer will reflect sales or purchases qualifying for this exemption on “the worksheet” under the “Allowable Deductions” section. The taxable gross proceeds after all deductions will be subject to both the State and applicable local sales and use taxes.

Code Section	Description
12-36-2120(72)	Building material used to construct a new or renovated building in a research district and machinery or equipment located in a research district. The sales tax that would have been assessed must be invested by the taxpayer in hydrogen or fuel cell machinery or equipment located in the same research district within 24 months of the exempt purchase. This exemption is effective October 1, 2007.

2

Sales Tax Impositions

Chapter 2

Sales Tax Impositions

This chapter will discuss the basics of the “general” sales tax imposition and the specific “special” impositions enacted by the General Assembly. Later chapters will provide a more in depth discussion of certain concepts, such as “gross proceeds,” “sales at retail” and “tangible personal property” as well as the “special” impositions.

A. General Sales Tax Imposition

“In general, the sales tax is an imposition upon the privilege of the business of selling at retail and measured by the amount of business done, which is a clear case of an excise tax to which the constitutional provisions relating to property taxes are irrelevant.”¹ It is a “transaction tax” imposed with respect to the transaction of a “retail sale” of tangible personal property.

South Carolina imposes a “general” sales tax, equal to 6% of the gross proceeds of sales, upon every person engaged or continuing within this State in the business of selling tangible personal property at retail.²

The tax will therefore be applicable if:

- a person is engaged or continuing in the business of selling,³
- the person is selling tangible personal property in South Carolina, and
- the sales of tangible personal property in South Carolina are at retail.⁴

The tax, if the above conditions are met, will be based upon the “gross proceeds of sales.”⁵

¹ *State ex. rel. Roddey v. Byrnes*, 219 S.C. 485, 66 S.E.2d 33 (1951).

² South Carolina Code §§12-36-910 and 12-36-1110.

³ SC 117-322 states that “[c]asual or isolated sales by persons not engaged in the business of selling tangible personal property at retail are not subject to the sales or use tax.” (Emphasis added.) The regulation defines the term “casual” to mean “occurring, encountered, acting or performed without regularity or at random” and defines the term “occasional” and the term “isolated” to mean “occurring alone or once, an incident not likely to recur, sporadic.”

⁴ *International Harvester Co. v. Wasson*, 281 S.C. 458 316 S.E.2d 378, (1984).

⁵ South Carolina Code §12-36-90.

With respect to goods shipped into South Carolina, the sales tax will apply (as opposed to the use tax) when:⁶

- tangible personal property is purchased for use or consumption in this State;
- the seller is engaged or continuing within this State in the business of selling tangible personal property at retail;
- delivery is made in this State;⁷ and
- the order for the future delivery of tangible personal property is sent by the purchaser to, or the subsequent delivery of the property is made by, any local branch, office, outlet or other place of business of the retailer in this State, or agent or representative operating out of or having any connection with, such local branch, office, outlet or other place of business.

The seller may pass the sales tax on to the purchaser when billing the purchaser, but while many sellers collect the sales tax from the purchaser, this is not a requirement. However, the seller's inability, refusal or failure to collect the sales tax from the customer does not relieve the seller from remitting the sale tax to the State.⁸ In fact, the seller may advertise that the seller will absorb the sales tax and not collect it from the purchaser.⁹

B. Definitions

To understand the imposition of the sales tax, the definitions provided in the law for certain terms must be reviewed.

Person¹⁰ includes any individual, firm, partnership, limited liability company, association, corporation, receiver, trustee¹¹ or group or combination acting as a unit. It also includes the state, state agencies, and any instrumentality, authority, political subdivision or municipality.¹²

⁶ SC Regulation 117-334.

⁷ SC Regulation 117-334.1(A) states that "[d]elivery is held to have taken place in this State (1) when physical possession of the tangible personal property is actually transferred to the purchaser or the purchaser's designee within this State, or (2) when the tangible personal property is placed in the mails at a point outside this State and directed to the purchaser or the purchaser's designee in this State or (3) when the tangible personal property is placed on board a carrier at a point outside this State (regardless of shipping terms) and directed to the purchaser or the purchaser's designee in this State."

⁸ South Carolina Code §12-36-940.

⁹ Attorney General Opinion 1228 (11/18/1961).

¹⁰ South Carolina Code §12-36-30.

¹¹ An Attorney General Opinion dated 11/29/1983 concluded that, "[e]xcept 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."

¹² See also SC Regulations 117-304 and 117-304.1.

Tangible personal property¹³ is personal property that may be seen, weighed, measured, felt, touched, or in any manner perceptible to the senses. It does **not** include stocks, notes, bonds, mortgages or other evidences of debt.

Sale or purchase¹⁴ is a transfer of title or possession of tangible personal property for a consideration. It includes rentals, leases and licenses to use.

Sale at retail¹⁵ means a sale of tangible personal property to an end-user or consumer of the property. Included within the term are (1) leases and rentals of tangible personal property, and (2) the withdrawal, use or consumption of tangible personal property by any person who previously purchased it at wholesale.¹⁶ If a sale is not a retail sale, then it is a wholesale sale.

Gross proceeds of sales¹⁷ is the total amount proceeding or accruing from the retail sales of a business and is the measure or basis for the sales tax.

C. Summary of the General Sales Tax Imposition

Based on the general imposition and the above definitions, the sales tax, which is 6% of the total amount proceeding or accruing from the retail sales of a business, is imposed on:

- any individual, firm, partnership, limited liability company, association, corporation, receiver, trustee, state agency, instrumentality, authority, political subdivision, county, municipality, or any group or combination acting as a unit
- engaged in the business of selling, leasing, renting or otherwise providing for a consideration
- personal property that may be seen, weighed, measured, felt, touched, or is in any manner perceptible to the senses¹⁸
- to an end-user or consumer.

¹³ South Carolina Code §12-36-60.

¹⁴ South Carolina Code §12-36-100. By definition, “tangible personal property” (personal property that may be seen, weighed, measured, felt, touched, or is in any manner perceptible to the senses) also includes certain services and intangibles that are specifically subject to the sales tax. See discussion entitled “Special Sales Tax Impositions.”

¹⁵ South Carolina Code §12-36-110.

¹⁶ South Carolina Code §12-36-110(1)(c) and South Carolina Revenue Ruling #08-11.

¹⁷ South Carolina Code §12-36-90.

¹⁸ By definition, “tangible personal property” (personal property that may be seen, weighed, measured, felt, touched, or is in any manner perceptible to the senses) includes certain services and intangibles that are specifically subject to the sales tax. See discussion entitled “Special Sales Tax Impositions.”

D. Special Sales Tax Impositions

South Carolina also imposes its sales tax on specific services and intangibles. By definition, these specifically taxed services and intangibles are “tangible personal property.”¹⁹ As “tangible personal property,” various other provisions of the sales and use tax law apply to these services and intangibles (e.g., exemptions, wholesale sales, etc). The following will address each of these “special” impositions.

Laundry and Drycleaning Services²⁰

The sales tax, equal to 6% of the gross proceeds of sales, also applies to every person in the business of providing or furnishing at retail any of the following:

- laundering services,
- drycleaning services,
- dying services, or
- pressing services.

The tax applies to all charges from these businesses related to items laundered, dry-cleaned, dyed or pressed, including but not limited to, charges for:²¹

- repairing,
- altering,
- storing,
- pick-up, and
- delivery.

Charges derived from coin-operated laundromats and drycleaning machines²² are not subject to the tax.²³ However, charges at coin-operated laundromats for laundering services, such as a “wash and fold” service, are subject to the tax.²⁴

¹⁹ South Carolina Code §12-36-60.

²⁰ South Carolina Code §12-36-910(B)(1).

²¹ SC Regulation 117-303.

²² A coin-operated laundromat machine includes any laundromat machine operated by a slot in which is deposited or placed a coin, token, debit card, or other thing of value so as to begin operation of the machine for the purposes of laundering, cleaning, or drying clothing and other textiles.

²³ South Carolina Code §12-36-910(B)(1).

²⁴ South Carolina Revenue Ruling #88-7.

Electricity²⁵

The sales tax, equal to 6% of the gross proceeds of sales, also applies to every person in the business of selling at retail electricity.

Communications Services²⁶

The sales tax, equal to 6% of the gross proceeds of sales, also applies to every person in the business of selling at retail “the ways or means for the transmission of the voice or messages.”

The tax applies to charges for:²⁷

- Telephone services,²⁸ including telephone services provided via the traditional circuit-committed protocols of the public switched telephone network (PSTN), a wireless transmission system, a voice over Internet protocol (VoIP), or any of other method
- Teleconferencing services
- Paging services
- Cable television services
- Satellite programming services and other programming transmission services (includes, but is not limited to, emergency communication services and television, radio, music or other programming services)
- Fax transmission services
- E-mail services
- Electronic filing of tax returns when the return is electronically filed by a person who did not prepare the tax return
- Database access transmission services (online information services), such as legal research services, credit reporting/research services, charges to access an individual website (including Application Service Providers), etc.²⁹

²⁵ South Carolina Code §12-36-910(B)(2).

²⁶ South Carolina Code §12-36-910(B)(3). By definition, “tangible personal property” does not include the transmission of computer database information by a cooperative service when the database information has been assembled by and for the exclusive use of the members of the cooperative service. Therefore, such transmissions are not subject to the sales tax.

²⁷ SC Regulation 117-329 (effective June 27, 2008) and South Carolina Revenue Ruling #06-8.

²⁸ See South Carolina Code §12-36-2120(11) for exemptions specifically related to telephone services.

²⁹ See also South Carolina Private Letter Ruling #10-2 and South Carolina Private Letter Ruling #07-2.

For a more detailed discussion on the sales tax as it applies to communication services, see Chapter 17 of this manual.

Manufactured Property Used by the Manufacturer³⁰

The sales tax, equal to 6%, also applies to every manufacturer when that manufacturer manufactures within South Carolina tangible personal property for sale, but instead of selling the tangible personal property the manufacturer uses or consumes it within South Carolina. The tax applies to the fair market value of the tangible personal property used or consumed by the manufacturer.

For example, a manufacturer that produces computers in South Carolina for sale throughout the world is liable for the sales tax on the fair market value of any computers that it removes from its inventory to use in any of its offices or manufacturing operations in South Carolina or that it provides free to its employees.

Prepaid Wireless Calling Arrangements³¹

The sales tax, equal to 6%, also applies to sales at retail of prepaid wireless calling arrangements and to recharges at retail for prepaid wireless calling arrangements. A “prepaid wireless calling arrangement” is a communication service that:

- (1) is used exclusively to purchase wireless telecommunications
- (2) is purchased in advance,
- (3) allows the purchaser to originate telephone calls by using an access number, authorization code, or other means entered manually or electronically and
- (4) are sold in units or dollars, which decline with use in a known amount.

For example, if a retailer sells a prepaid phone card that can only be used in making wireless telephone calls, then the sale or recharge of that card is subject to the sales tax, provided the card meets the remaining requirements of a prepaid wireless calling arrangement as defined above.

For a more detailed discussion on the sales tax as it applies to communication services, see Chapter 17 of this manual.

900 and 976 Numbers³²

The sales tax, equal to 11%, also applies to the gross proceeds accruing or proceeding from the business of providing a 900 telephone service, a 976 telephone service, or both.

³⁰ South Carolina Code §12-36-910(B)(4).

³¹ South Carolina Code §12-36-910(B)(5). See also SC Revenue Ruling #04-4.

³² South Carolina Code §§ 12-36-2645 and 12-36-1110.

Accommodations and “Additional Guest Charges”³³

The sales tax is also imposed upon charges for accommodations and “additional guest charges.” The term “additional guest charge” means an amount which is added to the guest’s room charge for room service, laundering and dry cleaning services, in-room movies, telephone services, and the rental of meeting rooms.

Charges for rooms, lodgings and accommodations are taxed at 7%, while other charges for room service, laundering and dry cleaning services, in-room movies, telephone services, and the rental of meeting rooms, when over and above the services customarily provided with the room, are taxed at 6% as an “additional guest charge.” However, if an “additional guest charge” would be taxed under other provisions of the sales and use tax law (Chapter 36 of Title 12), then such charges are not taxed as an “additional guest charge.”

The sales tax upon charges for rooms, lodgings and accommodations applies to the gross proceeds from the rental or charges for any rooms, lodgings or accommodations furnished to transients by any hotel, inn, tourists court, motel, residence, or any place in which rooms, lodgings or accommodations are furnished to transients for a consideration, except where such facilities consist of less than six sleeping rooms, contained on the same premises, which is used as the place of abode of the owner or operator of such facilities.

The gross proceeds derived from the lease or rental of accommodations supplied to the same person for a period of 90 continuous days are not considered proceeds from a transient and therefore are not subject to the sales tax on accommodations.

The sales tax upon “additional guest charges”³⁴ applies to:

- room service,
- laundering and dry cleaning services,
- in-room movies,
- telephone charges, and
- rentals of meeting rooms.

For a more detailed discussion on the sales tax as it applies to accommodations and “additional guest charges,” see Chapter 11 of this manual.

³³ South Carolina Code §12-36-920. See also SC Revenue Ruling #14-5.

³⁴ South Carolina Code §12-36-920(B). See also SC Revenue Ruling #14-5.

Motor Vehicles Sold to Nonresidents³⁵

The sales tax applies to sales to nonresidents of motor vehicles, trailers, semitrailers or pole trailers that are to be registered and licensed in the nonresident purchaser's state of residence. This tax is the lesser of:

- a) the sales tax that would be imposed on the sale in the purchaser's state of residence
- or
- b) the tax that would be imposed under Chapter 36 of the South Carolina Code of Laws³⁶.

However, no sales tax is due in South Carolina if a nonresident purchaser cannot receive a credit in his state of residence for sales tax paid to South Carolina.

Since the amount of tax imposed on a nonresident purchaser of a motor vehicle depends, in part, on the tax rate and type of tax imposed in the nonresident's home state, information concerning the sales tax imposed on sales of motor vehicles by other states is needed to calculate the tax due, if any.

The neighboring states tax information, as of the date of this Information Letter, for motor vehicles is:

Alabama	a 2% State rate imposed on sales price less trade in allowance
Florida	a 6% State rate imposed on sales price less trade in allowance
Georgia	no sales tax is due since Georgia does not impose a sales tax on the sale or lease of a motor vehicle, but imposes a Title Ad Valorem Tax ("TAVT") on the sale or lease of a motor vehicle. ³⁷
Kentucky	no sales tax is due since Kentucky does not impose a sales tax on the sale of a motor vehicle, but imposes a motor vehicle usage tax upon registration.

³⁵ South Carolina Code §12-36-930.

³⁶ For information on vehicles that qualify for the \$300 maximum tax, see Chapter 10 of this manual.

³⁷ Lease payments for a motor vehicle that is leased for more than 31 consecutive days are exempt from the Georgia sales and use tax, but are subject to the Georgia TAVT. As such, the lease of a motor vehicle by a South Carolina dealer to a resident of Georgia for more than 31 consecutive days, where the dealer obtains a notarized statement of the lessee's intent to license the motor vehicle in Georgia within 10 days, is not subject to the South Carolina sales tax.

North Carolina	no sales tax is due since North Carolina does not impose a sales tax on the sale of a motor vehicle, but imposes a highway use tax upon registration.
Tennessee	a 7% State rate imposed on sales price less trade in allowance
Virginia	no sales tax is due since Virginia does not allow a credit for taxes paid in another state if the state of purchase (<i>e.g.</i> , South Carolina) exempts sales of motor vehicles to residents of states that do not give such credit.
West Virginia	no sales tax is due since West Virginia does not allow a credit for taxes paid in another state

E. Sales to Individuals 85 Years of Age and Older³⁸

An individual³⁹ who is 85 years of age or older is entitled to a lower state sales tax rate, sometimes referred to as the “1% exclusion,” for items that individual purchases for his or her own personal use.⁴⁰ In other words, a person who is 85 years of age or older would pay a state sales tax of 5% instead of 6% (any local sales and use taxes would still apply) on:

- (1) purchases of tangible personal property (prepared food⁴¹, clothing, furniture, appliances, etc.); and
- (2) purchases of communications services, such as phone service (long distance calls are already exempt), cable television service, satellite programming services (radio, emergency, television) as well as other communication services.

An individual who is 85 years of age or older would pay a state sales tax of 6% instead of 7% (any local sales and use taxes would still apply) on purchases of accommodations services (the rental charge for a hotel room or condominium) and would pay a state sales tax of 5% instead of 6% on any additional guest charges (charges for room service, laundering and dry cleaning services, in-room movies, telephone services, and the rental of meeting rooms) charged by the place providing the accommodations.

³⁸ South Carolina Code §§12-36-2620 and 12-36-2630. See also South Carolina Revenue Ruling #08-5.

³⁹ In Commission Decision S-D-173, it was held that the lower rate allowed for persons 85 years of age and older only applied to sales to individuals, and did not apply to sales to partnerships, corporations and other legal entities.

⁴⁰ South Carolina Code §§12-36-2620 and 12-36-2630.

⁴¹ Sales of unprepared food that lawfully may be purchased with United States Department of Agriculture food coupons are exempt from the 6% state sales and use tax. This exemption does not apply to local taxes unless the local tax specifically exempts the sale of such food. See South Carolina Code §12-36-2120(75) and SC Regulation 117-337.

The law granting this exclusion for individuals 85 years of age or older does not require the purchaser to complete any form with the Department of Revenue. It only requires that (1) the individual purchases the tangible personal property himself or herself, (2) that the tangible personal property is purchased for his or her own personal use, (3) that the purchaser requests the exclusion at the time of the sale and (4) that the purchaser provides the retailer with proof of age.

Finally, purchases by an individual who is 85 years of age or older are not entitled to the lower state sales and use tax rate if the purchase is not for the personal use of the individual purchaser who is 85 years of age or older. For example, purchases for a business use or as a gift for another individual are not entitled to the lower state sales and use tax rate.

3

Use Tax Impositions

Chapter 3

Use Tax Impositions

This chapter will discuss the basics of the “general” use tax imposition and the specific “special” impositions enacted by the General Assembly. Later chapters will provide a more in depth discussion of certain concepts, such as “sales price,” “sales or purchases at retail,” and “tangible personal property” as well as the “special” impositions.

A. General Use Tax Imposition¹

South Carolina imposes a “general” use tax, equal to 6% of the sales price of the property, on the use, storage or consumption of tangible personal property purchased at retail for use, storage or consumption in South Carolina.² The use tax was enacted in 1951 – the same year the sales tax law was adopted in South Carolina. It is a “transaction tax” imposed with respect to the transaction of “using, storing or consuming” tangible personal property “purchased at retail” for use, storage or consumption in South Carolina.

While the sales tax is imposed on retail sales in South Carolina, it is supplemented by the use tax which is imposed on the storage, use or other consumption in South Carolina of tangible personal property purchased at retail regardless of whether the retailer is or is not engaged in business in South Carolina.³ “Double taxation is avoided by providing...that the user shall be relieved of liability for the use tax on property subject to the sales tax and on which the tax has been paid, or when the retailer has given the purchaser a receipt for the same.”⁴

Essentially, the use tax is a tax that applies to purchases of tangible personal property from out-of-state retailers for use, storage or consumption in South Carolina, and includes purchases from retailers made via the Internet (retailers’ websites and retailers’ sales on auction sites), through out-of-state catalog companies or when visiting another state or another country.

With respect to goods shipped into South Carolina, the use tax (as opposed to the sales tax) will apply when⁵

- tangible personal property is purchased for use or consumption in this State;
- delivery is made in this State; and

¹ South Carolina Code §12-36-1310(A).

² *Senn Trucking Company v. Wasson*, 280 SC 279, 312 S.E. 2d 252 (1984).

³ South Carolina Code §12-36-1310(A).

⁴ *McJunkin Corporation v. City of Orangeburg*, 238 F2d 528 (1956); South Carolina Code §§12-36-2130(1) and 12-36-1330(B).

⁵ SC Regulation 117-334.2.

- the order for future delivery is sent by the purchaser directly to the seller at a point outside this State, and the property is shipped into this State from a point outside this State directly to the purchaser or the purchaser's designee and there is no participation whatever in the transaction by any local branch, office, outlet or other place of business of the retailer or by any agent or representative of the retailer having any connection with such branch, office, outlet or other place of business.

Furthermore, "[w]hen tangible personal property is purchased for use or consumption in this State and the property is shipped from a point outside this State directly to the purchaser or the purchaser's designee at a point in this State, there is a rebuttable presumption that the purchase is subject to the use tax. If the receipt from a seller does not separately state the South Carolina tax, the Department may assess either the purchaser or the seller (if licensed or nexus exists) for the use tax."⁶

The state tax rate for the use tax is the same as the sales tax. The total tax rate (state and local) is determined by where the tangible personal property will be used, stored or consumed, regardless of where the sale actually takes place.

The use tax is imposed upon the consumer (**purchaser**) of tangible personal property that is purchased at retail for use, storage, or consumption in South Carolina. The use tax applies to purchases from out-of-state retailers. However, South Carolina will allow a credit against the state and local use tax due in South Carolina for the state and local sales or use tax due and paid in another state on the purchase of tangible personal property⁷. The statute does not require that the other state offer a similar credit.

In order for the taxpayer liable for the use tax in South Carolina to take the credit,⁸ the following requirements must be met:

- 1) The taxpayer must have purchased tangible personal property⁹ in one of the other 49 states or the District of Columbia.¹⁰

Note: A credit is not allowed for any sales or use tax due and paid in another country or in a territorial possession of the United States.

- 2) A sales or use tax must have been legally due on the purchase transaction in the other state.

⁶ SC Regulation 117-334.2(C).

⁷ South Carolina Code §12-36-1310(C).

⁸ South Carolina Code §12-36-1310(C).

⁹ South Carolina Code §12-36-60.

¹⁰ Several states do not impose a state sales tax or use tax. In addition, it has been the longstanding policy of the Department to consider the District of Columbia a state for purposes of this credit. Therefore, any further reference to another state in this document is considered to include the District of Columbia.

- 3) The sales or use tax that was legally due on the purchase transaction in the other state must have been paid in that state.
- 4) The taxpayer must have proof that the sales or use tax was due and paid in the other state.

Finally, if the state and local sales or use tax due and paid in the other state is less than the amount of state and local use tax due in South Carolina, the taxpayer liable for the use tax in South Carolina must pay the difference to the South Carolina Department of Revenue. If the state and local sales or use tax due and paid in the other state is greater than the state and local use tax due in South Carolina, the taxpayer is not entitled to a refund.¹¹

An out-of-state retailer must obtain a retail license and remit either the South Carolina sales tax or use tax on retail sales shipped into South Carolina if the out-of-state retailer has a physical presence in South Carolina.¹²

Examples of physical presence include, but are not limited to, maintaining (temporarily or permanently) an office, warehouse, store, other place of business, or property of any kind in the state or having (temporarily or permanently) an agent, representative (including delivery personnel and independent contractors acting on behalf of the retailer), salesman, or employee operating within the state.

An out-of-state retailer that is not required to obtain a retail license and remit the South Carolina sales or use tax may; however, voluntarily obtain the retail license and collect and remit the tax to South Carolina.

If the purchaser has a receipt showing the **entire** South Carolina (state and local) sales tax or use tax has been paid to a licensed out-of-state retailer, then the purchaser is no longer liable for the South Carolina use tax.

Both the sales tax and the use tax also apply to leases or rentals at retail of tangible personal property (e.g., tuxedos, office equipment, etc.).

It is important to note that either the South Carolina sales tax or the South Carolina use tax is due with respect to a single transaction, but not both.

¹¹ Each purchase transaction must stand on its own. In other words, if the state and local sales or use tax due and paid in another state on one purchase transaction is greater than the state and local use tax due in South Carolina, the “excess” tax paid in the other state on the purchase transaction cannot be used to offset any use tax that may be due in South Carolina on another out-of-state purchase transaction. See South Carolina Revenue Ruling #06-4.

¹² See Chapter 13 of this manual.

Where property purchased in another state and used outside the state of South Carolina, is later brought into the state for use, storage or consumption in South Carolina, the use tax will apply unless the following conditions are conclusively established: (1) That the property when purchased was intended for a bona fide use outside the state of South Carolina; (2) That the first actual use of the property was outside the state of South Carolina; and (3) That the first actual use of the property was substantial and constituted the primary use for which the property was purchased.¹³

The responsibility for proof rests upon the purchaser and until the above facts are established to the satisfaction of the department, it will be presumed that the use of such property in South Carolina is subject to a use tax.

Unlike the sales tax, a retailer must collect the use tax from the purchaser¹⁴. The retailer may not advertise or state, in any manner, that the use tax, or any part of it, will be assumed or absorbed by the retailer, will not be added to the selling price, or will be refunded.¹⁵

B. Definitions

To understand the imposition of the sales tax, the definitions provided in the law for certain terms must be reviewed.

Person¹⁶ includes any individual, firm, partnership, limited liability company, association, corporation, receiver, trustee or group or combination acting as a unit. It also includes the state, state agencies, and any instrumentality, authority, political subdivision or municipality.

Tangible personal property¹⁷ is personal property that may be seen, weighed, measured, felt, touched, or in any manner perceptible to the senses. It does **not** include stocks, notes, bonds, mortgages or other evidences of debt.

Sale or purchase¹⁸ is a transfer of title or possession of tangible personal property for a consideration. Includes rentals, leases and license to use.

Sale at retail¹⁹ means a sale of tangible personal property to an end-user or consumer of the property. Included within the term are leases and rentals of tangible personal property. If a sale is not a retail sale, then it is a wholesale sale.

¹³ SC Regulation 117-320.1.

¹⁴ South Carolina Code §12-36-1350(A).

¹⁵ South Carolina Code §12-36-1350(B).

¹⁶ South Carolina Code §12-36-30.

¹⁷ South Carolina Code §12-36-60.

¹⁸ South Carolina Code §12-36-100.

¹⁹ South Carolina Code §12-36-110.

Purchase (sale) at retail²⁰ means a purchase of tangible personal property by the end-user or consumer of the property. Included within the term are leases and rentals of tangible personal property. If a purchase is not a retail transaction, then it is a wholesale transaction.

Gross proceeds of sales²¹ is the total amount proceeding or accruing from the retail sales of a business and is the measure or basis for the sales tax.

Sale price²² - the measure of the use tax - is the total amount for which tangible personal property is sold. It includes the cost of any materials, labor, interest, services or transportation that are part of the sale.

Sales price does not include:

- cash discounts allowed and taken;
- an amount charged for property when the full amount is refunded in cash or by credit;
- the value allowed for property taken as a trade-in; or
- excise taxes imposed by the federal government on retailers.

Storage²³ is the keeping or retaining of tangible personal property in South Carolina that has been purchased at retail.

Use²⁴ is exercising any right or power over tangible personal property, incident to the ownership of the property, or by any transaction in which possession is given.

The terms storage and use do not include²⁵ the keeping, retaining or exercising of any right or power over tangible personal property in South Carolina:

- for the purpose of being sold;
- for the exclusive purpose of being transported outside the state for first use; or
- for the purpose of being first manufactured, processed or compounded into other tangible personal property for use solely outside the state.

²⁰ South Carolina Code §12-36-110.

²¹ South Carolina Code §12-36-90

²² South Carolina Code §12-36-130.

²³ South Carolina Code §12-36-140(A).

²⁴ South Carolina Code §12-36-140(B).

²⁵ South Carolina Code §12-36-140(C). See also South Carolina Revenue Ruling #09-17.

C. Summary of the General Use Tax Imposition

Based on the general imposition and the above definitions, the use tax, which is 6% of the total amount for which tangible personal property is sold, is imposed on:

- the use, storage or consumption of
- personal property that may be seen, weighed, measured, felt, touched, or is in any manner perceptible to the senses,²⁶
- that was purchased, leased, rented or otherwise obtained for a consideration at retail,
- for use, storage or consumption in South Carolina.

D. Special Use Tax Impositions

South Carolina also imposes its use tax on specific services and intangibles. By definition, these specifically taxed services and intangibles are “tangible personal property.”²⁷ As “tangible personal property,” various other provisions of the sales and use tax law apply to these services and intangibles (*e.g.*, exemptions, wholesale sales, etc).

The following will address each of these “special” impositions.

Laundry and Drycleaning Services²⁸

The use tax, equal to 6% of the gross proceeds of sales, also applies to the use, storage or consumption of any of the following:

- laundering services,
- drycleaning services,
- dying services, or
- pressing services.

²⁶ By definition, “tangible personal property” (personal property that may be seen, weighed, measured, felt, touched, or is in any manner perceptible to the senses) includes certain services and intangibles that are specifically subject to the sales tax. See discussion entitled “Special Use Tax Impositions.”

²⁷ South Carolina Code §12-36-60.

²⁸ South Carolina Code §12-36-1310(B)(1).

The tax applies to all charges related to items laundered, drycleaned, dyed or pressed, including but not limited to, charges for:²⁹

- repairing,
- altering,
- storing,
- pick-up, and
- delivery.

However, charges derived from coin-operated laundromats and drycleaning machines³⁰ are not subject to the tax. However, charges at coin-operated laundromats for laundering services, such as a “wash and fold” service, are subject to the tax.³¹

Electricity³²

The use tax, equal to 6% of the gross proceeds of sales, also applies to the use, storage or consumption of electricity.

Communications Services³³

The use tax, equal to six percent of the gross proceeds of sales, also applies to the use, storage or consumption of “the ways or means for the transmission of the voice or messages.”

The tax applies to charges for:³⁴

- Telephone services,³⁵ including telephone services provided via the traditional circuit-committed protocols of the public switched telephone network (PSTN), a wireless transmission system, a voice over Internet protocol (VoIP), or any of other method
- Teleconferencing services
- Paging services

²⁹ SC Regulation 117-303.

³⁰ A coin-operated laundromat machine includes any laundromat machine operated by a slot in which is deposited or placed a coin, token, debit card, or other thing of value so as to begin operation of the machine for the purposes of laundering, cleaning, or drying clothing and other textiles.

³¹ South Carolina Revenue Ruling #88-7.

³² South Carolina Code §12-36-1310(B)(2).

³³ South Carolina Code §12-36-1310(B)(3).

³⁴ SC Regulation 117-329 and South Carolina Revenue Ruling #06-8.

³⁵ See South Carolina Code §12-36-2120(11) for exemptions specifically related to telephone services.

- Cable television services
- Satellite programming services and other programming transmission services (includes, but is not limited to, emergency communication services and television, radio, music or other programming services)
- Fax transmission services
- E-mail services
- Electronic filing of tax returns when the return is electronically filed by a person who did not prepare the tax return
- Database access transmission services (online information services), such as legal research services, credit reporting/research services, charges to access an individual website (including Application Service Providers), etc.³⁶

For a more detailed discussion on the use tax as it applies to communication services, see Chapter 17 of this manual.

Manufactured Property Used by the Manufacturer³⁷

The use tax also applies to every manufacturer when that manufacturer manufactures outside South Carolina tangible personal property for sale but instead of selling the tangible personal property the manufacturer brings the tangible personal property into South Carolina and uses or consumes it within South Carolina. The tax applies to the fair market value of the tangible personal property used or consumed by the manufacturer.

For example, a manufacturer that produces computers outside of South Carolina for sale throughout the world is liable for the use tax on the fair market value of any computers that it removes from its inventory and brings into South Carolina for use in any of its offices or manufacturing operations in South Carolina or to provide to its employees within South Carolina.

Prepaid Wireless Calling Arrangements³⁸

The use tax, equal to 6%, also applies to purchases at retail of prepaid wireless calling arrangements and to recharges at retail for prepaid wireless calling arrangements. A “prepaid wireless calling arrangement” is a communication service that:

- (1) is used exclusively to purchase wireless telecommunications,

³⁶ See South Carolina Private Letter Ruling #10-2 and South Carolina Private Letter Ruling #07-2.

³⁷ South Carolina Code §12-36-1310(B)(4).

³⁸ South Carolina Code §12-36-1310(B)(5). See also SC Revenue Ruling #04-4.

- (2) is purchased in advance,
- (3) allows the purchaser to originate telephone calls by using an access number, authorization code, or other means entered manually or electronically and
- (4) are sold in units or dollars which decline with use in a known amount.

For example, if a person purchases a prepaid phone card that can only be used in making wireless telephone calls, then the use, storage or consumption of the purchased or recharged card is subject to the use tax, provided the card meets the remaining requirements of a prepaid wireless calling arrangement as defined above.

For a more detailed discussion on the use tax as it applies to communication services, see Chapter 17 of this manual.

900 and 976 Numbers³⁹

The use tax, equal to 11% of the gross proceeds of sales, also applies to the use of a 900 telephone service, a 976 telephone service or both.

Transient Construction Property⁴⁰

Transient construction property purchased and previously used in another state is subject to the South Carolina use tax (prorated to reflect the equipment's duration of use in South Carolina, if the other state's statute has similar provisions for proration of the tax or depreciation of the tax base) when imported or brought into this State for use, storage or consumption in this State.

Transient construction property⁴¹ is defined to mean:

motor vehicles, machines, machinery, tools, or other equipment, other tangible personal property brought, imported, or caused to be brought into this State for use, or stored for use, in constructing, building, or repairing any building, highway, street, sidewalk, bridge, culvert, sewer or water system, drainage or dredging system, railway system, reservoir or dam, power plant, pipeline, transmission line, tower, dock, wharf, excavation, grading or other improvement or structure, or any part of it.

The use tax is computed as follows:

- (1) divide the length of time the property will be used in this State by the total useful life of the property;

³⁹ South Carolina Code §§ 12-36-2645 and 12-36-1110.

⁴⁰ South Carolina Code §12-36-1320.

⁴¹ South Carolina Code §12-36-150.

- (2) multiply the result from (1) above by the sales price of the property;
- (3) multiply the amount in (2) above by six percent.⁴² The result of the computation is the tax due.

The useful life of transient construction property must be determined by the department in accordance with the experience and practices of the building and construction trade. In the absence of satisfactory evidence as to the period of use intended in this State, it is presumed that the property will remain in this State for the remainder of its useful life. South Carolina will also allow a credit (prorated to reflect the equipment's duration of use in South Carolina) for sales or use tax paid in another state, against the use tax, on equipment previously used in another state if the out-of-state contractor's state will allow a similar credit.

The prorated tax credit is computed as follows:

- (1) divide the length of time the property was used in the other state by the total useful life of the property;
- (2) multiply the result from (1) above by the state sales tax legally due and paid the other state;
- (3) the lesser of the result from (2) above or the tax computed in the above paragraph is the prorated credit amount.

However, construction machinery, tools, equipment, and other construction property falling within the definition of transient construction property that is purchased for first use in South Carolina is subject to the full amount of use tax; however, such purchases qualify for a full credit⁴³ for any sales or use tax due and paid in the other state.⁴⁴

E. Temporary Storage – Exclusion from the Use Tax⁴⁵

The use tax will not apply to the purchase at retail from outside of South Carolina of tangible personal property when such property was purchased for:

- (1) the purpose of subsequent use solely outside of South Carolina;
- (2) the exclusive purpose of subsequently transporting it outside of South Carolina for first use outside of South Carolina; or

⁴² Generally, the state tax rate on "transient construction property" is 6%. However, if the "transient construction property" is subject to the maximum tax provisions of South Carolina Code §12-36-2110 (e.g., a motor vehicle), then the state tax rate in this calculation is 5%. See South Carolina Code §12-36-1110.

⁴³ Since the tangible personal property is purchased for first use in South Carolina, neither the use tax due nor the credit for taxes paid in the other state are prorated.

⁴⁴ South Carolina Code §12-36-1310(C).

⁴⁵ South Carolina Code §12-36-140(C).

- (3) the purpose of first being manufactured, processed, or compounded into other tangible personal property in South Carolina that will be transported and used solely outside of South Carolina.

In order for a transaction to qualify for the exclusion for temporary storage to apply, the transaction must meet all of the following requirements:⁴⁶

- (a) The tangible personal property must be purchased at retail from outside of South Carolina. Tangible personal property purchased at wholesale (*e.g.*, extending a resale certificate to the seller) but subsequently used by the purchaser does not qualify for the exclusion for temporary storage.”
- (b) The transaction must be a use tax transaction as described in SC Regulation 117-334.
- (c) The purchaser knew at the time of purchase that the property would be either (i) subsequently transported outside of South Carolina for first use outside of South Carolina or (ii) manufactured, processed, or compounded into other tangible personal property in South Carolina that would be transported outside of South Carolina and used solely outside of South Carolina.
- (d) The tangible personal property must be purchased for a specific use outside of South Carolina.
- (e) The first use of the tangible personal property must be outside of South Carolina, unless the first use in South Carolina was the manufacturing, processing, or compounding of that tangible personal property into other tangible personal property in South Carolina for transportation outside of South Carolina and use solely outside of South Carolina.⁴⁷
- (f) The first use of the tangible personal property outside of South Carolina must be substantial and constitute the primary use for which the property was purchased.

Note: If the tangible personal property is manufactured, processed, or compounded into other tangible personal property in South Carolina for transportation and use outside of South Carolina, the property must be used exclusively outside of South Carolina and must never be returned to South Carolina.

- (g) Any person claiming the exclusion for “temporary storage” must maintain proper records that verify that all the requirements of the exclusion as set forth above have been met.

The exclusion for temporary storage does not apply to sales tax transactions.⁴⁸

⁴⁶ South Carolina Revenue Ruling #09-17.

⁴⁷ See South Carolina Code §12-36-140(C)(3).

⁴⁸ South Carolina Revenue Ruling #09-17.

F. Sales to, or Purchases by, Individuals 85 Years of Age and Older⁴⁹

An individual⁵⁰ who is 85 years of age or older is entitled to a lower state use tax rate, sometimes referred to as the “1% exclusion,” for items that individual purchases for his or her own personal use⁵¹. In other words, a person who is 85 years of age or older would pay a state use tax of 5% instead of 6% (any local use taxes would still apply) on:

- (1) purchases of tangible personal property (prepared food⁵², clothing, furniture, appliances, etc.); and
- (2) purchases of communications services, such as phone service (long distance calls are already exempt), cable television service, satellite programming services (radio, emergency, television) as well as other communication services.

The law granting this exclusion for individuals 85 years of age or older does not require the purchaser to complete any form with the Department of Revenue. It only requires that (1) the individual purchases the tangible personal property himself or herself, (2) that the tangible personal property is purchased for his or her own personal use, (3) that the purchaser requests the exclusion at the time of the sale and (4) that the purchaser provides the retailer with proof of age.

⁴⁹ South Carolina Code §§12-36-2620 and 12-36-2630. See also South Carolina Revenue Ruling #08-5.

⁵⁰ In Commission Decision S-D-173, it was held that the lower rate allowed for persons 85 years of age and older only applied to sales to individuals, and did not apply to sales to partnerships, corporations and other legal entities.

⁵¹ South Carolina Code §§12-36-2620 and 12-36-2630.

⁵² Sales of unprepared food that lawfully may be purchased with United States Department of Agriculture food coupons are exempt from the 6% state sales and use tax. This exemption does not apply to local taxes unless the local tax specifically exempts the sale of such food. See South Carolina Code §12-36-2120(75) and SC Regulation 117-337.

4

Casual Excise Tax

Chapter 4

Casual Excise Tax

A. General Information

The casual excise tax¹ is imposed upon the issuance of a certificate of title or other proof of ownership for every (1) motor vehicle, (2) motorcycle, (3) boat, (4) motor, or (5) airplane required to be registered, titled, or licensed. It applies only to the last sale before the application for title.² The casual excise tax does not apply to trailers (including boat trailers), semitrailers, or pole trailers.

Since most, but not all, of the items subject to the casual excise tax qualify for the maximum tax, the casual excise tax can be imposed at a rate of either 5% or 6% as follows:³

The tax is 5% of the “fair market value” of the motor vehicle, motorcycle, airplane, and boat⁴ purchased.⁵ However, South Carolina Code §12-36-2110 provides that the casual excise tax on sales of motor vehicles, motorcycles, boats, or airplanes may not exceed the \$300 maximum tax on these transactions. In addition, since motor vehicles, motorcycles, airplanes, and boats are subject to the maximum tax, local taxes administered and collected by the Department on behalf of local jurisdictions are not applicable.

¹ South Carolina Code §12-36-1710.

² See South Carolina Code §§12-36-1710(A) and 12-36-1720.

³ South Carolina Code §12-36-1110, which increased the casual excise tax rate as well as the sales and use tax rate from 5% to 6%, does not apply to items subject to the maximum tax provisions of South Carolina Code §12-36-2110. Therefore, items subject to the maximum tax are taxed at a state rate of 5% instead of a state rate of 6%. Specifically, South Carolina Code §12-36-1110 states:

Beginning June 1, 2007, an additional sales, use, and casual excise tax equal to one percent is imposed on amounts taxable pursuant to this chapter, except that this additional one percent tax does not apply to amounts taxed pursuant to South Carolina Code §12-36-920(A), the tax on accommodations for transients, nor does this additional tax apply to items subject to a maximum sales and use tax pursuant to South Carolina Code §12-36-2110 nor to the sale of unprepared food which may be lawfully purchased with United States Department of Agriculture food coupons.

⁴ A boat sold with a motor permanently attached to it is subject to the casual excise tax at the lesser of 5% of the fair market value or \$300. A boat motor is considered permanently attached to a boat if it is (1) an inboard motor or (2) an outboard motor sold mounted to the boat, connected to a permanent steering mechanism, and included in the price of the boat. See South Carolina Revenue Ruling #08-7.

⁵ Any transaction subject to the maximum tax of \$300 is taxed at a state rate of 5% and is not subject to any local tax administered and collected by the Department of Revenue on behalf of local jurisdictions. Any transaction not subject to the maximum tax of \$300 is taxed at a state rate of 6% and is subject to any local tax administered and collected by the Department of Revenue on behalf of local jurisdictions.

The tax is 6% of the “fair market value” of a motor that is purchased alone (not permanently attached to the boat).⁶ In addition, since motors that are purchased alone (not permanently attached to the boat) are not subject to the maximum tax, local taxes administered and collected by the Department on behalf of local jurisdictions are applicable.

The casual excise tax is computed on the “fair market value” which is defined as (1) the total purchase price (i.e., price agreed upon by the buyer and seller) less any trade-in allowance of the motor vehicle, motorcycle, boat, motor, or airplane, or (2) the valuation shown in a national publication adopted by the Department.⁷ The valuation shown in a national publication of used values is used only in cases of necessity, for example, when closely held stock is exchanged for a motor vehicle.⁸

The price agreed upon by the buyer and seller, less any trade in, includes: (1) the amount of cash paid, (2) the amount of any loan assumed, (3) the value of any property exchanges, or (4) the amount paid at delinquent property tax sales.

Department of Revenue Form ST-236, “Casual or Use Excise Tax Return,” is used to compute the casual excise tax or use tax due on the transfer of a motor vehicle, motorcycle, boat, motor, or airplane. The tax may be paid at the Department, or at a Department of Motor Vehicles office when registering a motor vehicle or motorcycle, or at the Department of Natural Resources when registering a boat or motor. Form ST-236 can be obtained from the Department’s website at www.dor.sc.gov. Information on the Department of Motor Vehicles or the Department of Natural Resources can be found at www.sc.gov.

The following transfers of motor vehicles, motorcycles, boats, motors, or airplanes are excluded from the casual excise tax pursuant to South Carolina Code §§12-36-1710 and 12-36-1720:

- a. transfers to members of the immediate family (*i.e.*, spouse, parent, child, sister, brother, grandparent, and grandchild);
- b. transfers to a legal heir, legatee, or distributee;
- c. transfers from an individual to a partnership upon formation, or from a stockholder to a corporation upon formation;
- d. transfers to a licensed motor vehicle dealer or licensed motorcycle dealer for the purpose of resale;
- e. transfers to a financial institution for the purpose of resale;

⁶ South Carolina Code §12-36-1710. See also South Carolina Revenue Ruling #08-7 for information concerning the sale of boats individually as well as boats sold as part of a package that includes the boat motor and boat trailer.

⁷ South Carolina Code §12-36-1710(C) & (D).

⁸ South Carolina Revenue Ruling #08-8.

- f. transfers to any other secured party, as a result of repossession, for the purpose of resale;
- g. transfers to the seller or secured party in partial payment (*e.g.*, trade-ins);
- h. transfers where a sales or use tax has been paid on the transaction necessitating the transfer (this includes sales tax paid to an auctioneer licensed as a retailer);
- i. transfers of motor vehicles, motorcycles, or airplanes specifically exempted by South Carolina Code §12-36-2120 from the sales or use tax (see “Examples of Exempt Transfers” below);
- j. transfers that are a gift or prize; and,
- k. vessels registered and documented by the United States Commissioner of Customs.⁹

B. Examples of Exempt Transfers

Below are examples of transfers that are exempt from sales and use tax under South Carolina Code §12-36-2120 and, therefore, exempt from the casual excise tax. These examples illustrate the more frequent methods of transferring a motor vehicle, motorcycle, boat, motor, airplane, or trailer. See South Carolina Code §12-36-2120 for a complete list of exemptions.

Sales to Nonresident Military Personnel¹⁰

Motor vehicles, as described below, or motorcycles sold to military personnel stationed in South Carolina by reason of orders of the U.S. Armed Forces who are not residents of South Carolina are exempt from South Carolina sales and use tax, and casual excise tax, provided (1) a copy of Form ST-178, “Nonresident Military Tax Exemption Certificate” is furnished to the Department or the Department of Motor Vehicles or (2) a leave and earnings statement from the appropriate department of the armed services is provided to the Department or the Department of Motor Vehicles that designates the state of residence of the buyer. This information must be furnished within ten days of the sale.

This exemption applies only to the sale of motor vehicles that are primarily designed to carry passengers, such as cars, passenger vans, and sports utility vehicles (*e.g.*, Broncos, Explorers and Troopers). Sales and use tax or the casual excise tax (whichever is applicable) is due on sales of motor vehicles designed primarily to carry cargo, such as trucks or cargo vans.

⁹ Attorney General Opinion #83-33 (7/8/1983).

¹⁰ South Carolina Code §12-36-2120(25).

Sales to the Federal Government¹¹

Sales of a motor vehicle, motorcycle, boat, motor, or airplane to the federal government are exempt from sales or use taxes under South Carolina Code §12-36-2120(2) and also exempt from the casual excise tax. When agents of the federal government purchase one of these items on behalf of the federal government, the purchase is not subject to sales and use taxes providing the credit of the agent is not advanced or risked, the purchase order discloses the purchase is made on behalf of the federal government, title to the property vests in the federal government, and the vendor is paid directly by the federal government.

Sales by the Federal Government¹²

Sales of a motor vehicle, motorcycle, boat, motor, or airplane by the federal government are exempt from sales and use taxes under South Carolina Code §12-36-2120(1) and exempt from the casual excise tax.

Sales by, or Sales to, Federal Credit Unions¹³

Sales of a motor vehicle, motorcycle, boat, motor, or airplane by, or sales of such property to, a federal credit union are exempt from sales and use taxes and the casual excise tax. See South Carolina Attorney General Opinion #S-OAG-59, which concluded that federally chartered credit unions are instrumentalities of the federal government.

Transfers to and from an Insurance Company¹⁴

Vehicles that have been declared a total loss and are transferred to or from an insurance company in settlement of a claim are exempt from casual excise tax and sales and use taxes.¹⁵

Sales of Farm Machinery¹⁶

Airplanes used in planting, cultivating or harvesting farm crops (*e.g.*, crop dusting) are exempt from South Carolina sales and use tax and casual excise tax pursuant to South Carolina Code §12-36-2120(16). The tax applies to automobiles or trucks used in farming.

¹¹ South Carolina Code §12-36-2120(2).

¹² South Carolina Code §12-36-2120(1).

¹³ South Carolina Code §12-36-2120(2).

¹⁴ South Carolina Code §56-19-480.

¹⁵ See South Carolina Revenue Ruling #93-13.

¹⁶ South Carolina Code §12-36-2120(16).

Gifts and Prizes¹⁷

The sales and use tax and casual excise tax do not apply to property transferred as a gift or prize since there has not been a “sale” to the recipient. A gift includes a motor vehicle, motorcycle, boat, motor, or airplane transferred by “love and affection”.¹⁸

Sale of Entire Business¹⁹

The casual excise tax and sales and use tax do not apply to depreciable assets, used in the operation of a business when the entire business is sold by the owner, pursuant to a written contract, and the purchaser continues operation of the business. For example, if ABC Company, a retail florist business, sells its entire business (*e.g.*, the building, inventory, delivery trucks, goodwill, etc.) to XYZ Company, a retail gift store business who will operate the floral business it purchased, then there is no sales and use tax due on the sale of the delivery trucks. If; however, ABC Company sold only a portion of its assets (*e.g.*, all of its delivery trucks), then ABC Company is liable for the sales tax due on the sale of its delivery trucks.²⁰

C. Sales to Individuals 85 Years of Age and Older²¹

An individual²² 85 years of age or older who purchases at retail a motor vehicle, motorcycle, airplane, or boat for his or her personal use would pay a state casual excise tax rate of 4% (instead of the 5% applicable to all other persons purchasing this maximum tax item)²³. The 4% tax rate is applied and if the tax as calculated exceeds the \$300 maximum tax, the individual 85 years of age or older would only pay \$300.

An individual²⁴ 85 years of age or older who purchases at retail a motor that is purchased alone (not permanently attached to the boat) for his or her personal use would pay a state casual excise tax rate of 5% (instead of the 6% applicable to all other persons purchasing this maximum tax item).²⁵ In addition, since motors that are purchased alone (not permanently attached to the boat) are not subject to the maximum tax, local taxes administered and collected by the Department on behalf of local jurisdictions are applicable.

¹⁷ South Carolina Code §12-36-1720.

¹⁸ See South Carolina Code §12-36-1720 and South Carolina Revenue Ruling #92-10.

¹⁹ South Carolina Code §12-36-2120(42).

²⁰ See South Carolina Code §§12-36-1710(B)(3), 12-36-2120(42), and South Carolina Revenue Advisory Bulletin #01-1.

²¹ South Carolina Revenue Ruling #08-5.

²² In Commission Decision S-D-173, it was held that the lower rate allowed for persons 85 years of age and older only applied to sales to individuals, and did not apply to sales to partnerships, corporations and other legal entities.

²³ South Carolina Code §12-36-2640.

²⁴ In Commission Decision S-D-173, it was held that the lower rate allowed for persons 85 years of age and older only applied to sales to individuals, and did not apply to sales to partnerships, corporations and other legal entities.

²⁵ South Carolina Code §12-36-2640.

5

***Sales
or
Purchases
At Retail***

Chapter 5

Sales or Purchases at Retail

In order for the sales tax or use tax to apply to a transaction, there must be a “sale at retail” or a “purchase at retail.”

The determination of what is a sale or purchase at retail must first begin with what is a sale. A sale¹ is any transfer, exchange, or barter, conditional or otherwise, of tangible personal property for a consideration². It includes:

- (1) a transaction in which possession of tangible personal property is transferred but the seller retains title as security for payment, including installment and credit sales;
- (2) a rental, lease, or other form of agreement;³
- (3) a license to use or consume; and
- (4) a transfer of title or possession, or both.

In addition, it should be noted that the fact that the two parties in a sale are related entities is irrelevant.⁴ For example, a sale can occur between a parent corporation and a wholly owned subsidiary corporation.

A “sale at retail” or “purchase at retail” is any sale of tangible personal property not defined as a wholesale sale.⁵

A “wholesale sale” is essentially a sale to a licensed retailer or a wholesaler for resale and not for use or consumption.⁶

¹ South Carolina Code §12-36-100.

² The sales tax and the use tax are transaction taxes in which the transfer by a retailer of tangible personal property to the end user for a consideration is subject to the tax. Consideration is not limited to money. It includes, but is not limited to, money, realty, personal property, stocks, bonds, partnership interests, and other intangible property, the forgiveness or cancellation of a debt, the assumption of a debt, and the surrendering of a right. For example, depending on the facts and circumstances of the transaction, the sales tax or the use tax may apply to such transactions as the formation of partnerships or corporations, the reorganization of corporations, and any other similar structural change in business entities, unless the transaction is otherwise exempt under the law (*e.g.*, South Carolina Code §12-36-2120(42)).

³ See also *Edisto Fleets, Inc. v. South Carolina Tax Commission*, 256 SC 350, 182 S.E.2d 713 (1971).

⁴ See *Edisto Fleets, Inc. v. South Carolina Tax Commission*, 256 S.C. 350, 182 S.E. 2d 713 (1971) and South Carolina Private Letter Ruling #04-3.

⁵ South Carolina Code §12-36-110.

⁶ South Carolina Code §12-36-120. See also *Stanton Quilting Co., Inc. v. South Carolina Tax Commission*, 281 S.C. 133, 314 S.E. 2d 844 (1984).

In summary, a retail sale is a sale to the end user or consumer.

However, the statute specifically establishes certain other sales as either wholesale or retail sales.

Specific retail sales include:

(1) Manufacturers, Processors, Compounders, Quarry Operators, or Mine Operators

sales of tangible personal property to manufacturers, processors, compounders, quarry operators, or mine operators, which are used or consumed by them, and do not become an ingredient or component part of the tangible personal property manufactured, processed, or compounded for sale.⁷

(2) Construction Contractors

sales of building materials to construction contractors, builders, or landowners for resale or use in the form of real estate.⁸

sales to contractors for use in the performance of construction contracts.⁹

the use within this State of tangible personal property by its manufacturer as building materials in the performance of a construction contract. The manufacturer must pay the sales tax based on the fair market value at the time and place where used or consumed.¹⁰

(3) Vending Machine Operators

sales of tangible personal property, other than cigarettes and soft drinks in closed containers, to vendors who sell the property through vending machines.¹¹ The vendors are deemed to be the users or consumers of the property.¹²

(4) Medical Institutions, Medical Professionals and Other Medical Transactions

sales of prepared meals, or unprepared food products used to prepare meals to hospitals, infirmaries, sanitariums, nursing homes, and similar institutions, educational institutions, boarding houses, and transportation companies, if furnished as part of the service rendered. These institutions and companies are deemed to be the users or consumers of the property.¹³

⁷ South Carolina Code §12-36-110(1)(b).

⁸ South Carolina Code §12-36-110(1)(a).

⁹ South Carolina Code §12-36-110(1)(e).

¹⁰ South Carolina Code §12-36-110(1)(d). See also South Carolina Revenue Ruling #94-2.

¹¹ An “honor box” is not a vending machine or its functional equivalent. See *Anonymous Taxpayer v. South Carolina Department of Revenue*, 00-ALJ-17-0137-CC (2001).

¹² South Carolina Code §12-36-110(1)(g).

¹³ South Carolina Code §12-36-110(1)(h).

sales of drugs, prosthetic devices, and other supplies to hospitals, infirmaries, sanitariums, nursing homes, and similar institutions, medical doctors, dentists, optometrists, and veterinarians, if furnished to their patients as a part of the service rendered. These institutions, companies, and professionals are deemed to be the users or consumers of the property.¹⁴

sales of tangible personal property to veterinarians. The veterinarians are deemed to be the users or consumers of the property whether used in the rendering of professional services or sold outright as part of the veterinarian practice and not furnished as a part of professional services rendered.¹⁵

sales of tangible personal property used incidental to the performance of services by licensed medical doctors, dentists, doctors of veterinary medicine, oculists, optometrists, and other licensed professionals. Note however, that these professionals may, in addition to rendering a service, also be in the business of making sales of tangible personal property. For instance, a doctor may sell medicines. In those cases where professionals are regularly engaged in the business of selling tangible personal property at retail, they must obtain a retail license and remit the taxes due on such sales.¹⁶

sales of tangible personal property, such as equipment, supplies, and medicines, to dentists for use in rendering professional services. Note: Sales of dental prosthetic devices to dentists are exempt from the tax.¹⁷

sales of tangible personal property, such as supplies, medicines, office furniture and fixtures and special tools and equipment, to doctors for use in the practice of their profession. It is only when a doctor has a stock of drugs from which the doctor makes numerous and substantial retail sales that the doctor is required to have a retail license and to remit sales tax directly to the Department.¹⁸

sales, not otherwise exempted, when reimbursed or paid in whole or in part by Medicare or Medicaid. However, only the net amount reimbursed by Medicare and Medicaid is subject to the tax, if the vendor is prohibited by law from charging the purchaser the difference between the retail sale and the amount reimbursed.¹⁹

¹⁴ South Carolina Code §12-36-110(1)(i). See also SC Regulations 117-305.1; 117-305.2; 117-305.3; and 117-305.4.

¹⁵ South Carolina Code §12-36-110(1)(l).

¹⁶ South Carolina Regulation 117-308.1.

¹⁷ South Carolina Regulation 117-308.2.

¹⁸ South Carolina Regulation 117-308.3.

¹⁹ South Carolina Code §12-36-110(1)(j).

(5) Other Professionals

sales of tangible personal property used incidental to the performance of services by lawyers, accountants, civil engineers, and other licensed professionals. Note however, that these professionals may, in addition to rendering a service, also be in the business of making sales of tangible personal property. In those cases where professionals are regularly engaged in the business of selling tangible personal property at retail, they must obtain a retail license and remit the taxes due on such sales.²⁰

sales of tangible personal property, such as law books, supplies, and equipment, to lawyers.²¹

sales of tangible personal property to architects. Architects are not considered to be engaged in the business of selling tangible personal property when they render professional services in the forming of original plans, designs and specifications. Also considered to be proceeds from the rendition of professional services are charges for the sale of these original design concepts which have been changed as a result of elevation and/or other architectural modifications to a customer's specific requirements. Sales by architects of all reproductions of such plans, designs or specifications, unaltered or unmodified in any way, are deemed to be subject to the sales or use tax.²²

(6) Other Service Businesses

sales of tangible personal property to persons engaged in the business of binding books, magazines or other printed matter belonging to another. Sales of tangible personal property to such persons for use or consumption in the performance of these services are taxable. However if bookbinders bind their own printed matter and sell the finished products to users or consumers, or makes and sells at retail loose-leaf binders or other articles, bookbinders must remit the tax on the entire receipts from such sales.²³

sales of tangible personal property to a person engaged in the business of paper-cutting, folding, gathering, padding or punching circulars, office forms or other printed matter belonging to others. Sales of tangible personal property to such persons for use or consumption in the performance of these services are taxable.²⁴

²⁰ South Carolina Regulation 117-308.1.

²¹ South Carolina Regulation 117-308.4.

²² South Carolina Regulation 117-308.6.

²³ South Carolina Regulation 117-308.10.

²⁴ South Carolina Regulation 117-308.10.

sales of tangible personal property to persons practicing the art of taxidermy for use in the performance of such services.²⁵

sales of paint, supplies, etc. to persons engaged in the business of painting automobiles.²⁶

(7) Gift Transactions

sales of tangible personal property to a person who will give that tangible personal property to another person as a gift or who will award that tangible personal property to another person as a prize.²⁷

(8) Coin-Operated Telephone Providers

sales of all local telecommunications services by local exchange companies (LECs) to customer owned coin-operated telephone (COCOT) providers, as those terms are defined by the South Carolina Public Service Commission. The COCOT providers that purchase these services in order to provide payphone services to their customers are considered to be the users and consumers of the services, and are not subject to sales tax for their subsequent sale of local telecommunications services to their COCOT customers.²⁸

(9) Withdrawals for Use

the withdrawal, use, or consumption of tangible personal property by anyone who purchases it at wholesale,²⁹ except:

- (i) withdrawal of tangible personal property previously withdrawn and taxed by such business or person,
- (ii) tangible personal property which becomes an ingredient or component part of tangible personal property manufactured or compounded for sale,
- (iii) tangible personal property used directly in manufacturing, compounding, or processing tangible personal property for sale,
- (iv) materials, containers, cores, labels, sacks, or bags used incident to the sale and delivery of tangible personal property;

²⁵ South Carolina Regulation 117-308.14.

²⁶ South Carolina Regulation 117-308.15.

²⁷ South Carolina Regulation 117-333. See also South Carolina Revenue Ruling #03-3.

²⁸ South Carolina Code §12-36-110(1)(k).

²⁹ South Carolina Code §12-36-110(1)(c). See also South Carolina Revenue Ruling #08-11.

- (v) a motor vehicle operated with a dealer, transporter, manufacturer or education license plate and used in accordance with the provisions of South Carolina Code §§56-3-2320 or 56-3-2330;

The law establishes certain other sales as “wholesale sales.” As such, these sales are not retail sales and therefore not taxable. These additional “wholesale sales” are sales of:

- (1) tangible personal property to a manufacturer or compounder as an ingredient or component part of the tangible personal property or products manufactured or compounded for sale.³⁰
- (2) tangible personal property used directly in manufacturing, compounding, or processing tangible personal property into products for sale.³¹
- (3) materials, containers, cores, labels, sacks, or bags used incident to the sale and delivery of tangible personal property, or used by manufacturers, processors, and compounders in shipping tangible personal property.³²
- (4) food or drink products to licensed retail merchants for use as ingredients in preparing ready-to-eat food or drink sold at retail. These products include cooking oil used as an ingredient. However, items used or consumed by licensed retail merchants to prepare ready-to-eat food or drink, such as hickory chips, barbecue briquettes, gas, or electricity are subject to tax.³³
- (5) tangible personal property to a manufacturer or construction contractor when the tangible personal property is subsequently processed, partially or completely fabricated, or manufactured in this State by the manufacturer or contractor, for use in the performance of a construction contract if the property is transported to, assembled, installed, or erected at a job site outside the State and thereafter used solely outside the State.³⁴

Finally, operators of businesses who are both making retail sales and withdrawing for use from the same stock of goods are to purchase at wholesale all of the goods so sold or used and report both retail sales and withdrawals for use under the sales tax law. This applies only to those who actually carry on a retail business having a substantial number of retail sales and does not apply to contractors, plumbers, repairmen, and others who make isolated or accommodation sales and who have not set themselves up as being engaged in selling. Where only isolated sales are made, tax should be paid on all of the taxable property purchased with no sales tax return being required of the seller making such isolated or “accommodation” sales.³⁵

³⁰ South Carolina Code §12-36-120(2).

³¹ South Carolina Code §12-36-120(3).

³² South Carolina Code §12-36-120(4).

³³ South Carolina Code §12-36-120(5).

³⁴ South Carolina Code §12-36-110(2).

³⁵ SC Regulation 117-324.

6

***“Gross Proceeds
of Sale”
and
“Sales Price”***

Chapter 6

“Gross Proceeds of Sale” and “Sales Price”

Gross proceeds of sales¹ (or any similar term, such as gross proceeds) is the measure or basis for the sales tax and sales price is the measure or basis for the use tax. Essentially, they are the total amount for which tangible personal property is sold or purchased.

A. Gross Proceeds² and Sales Price³ – What is Includable?

Gross proceeds is the basis or measure of the sales tax⁴ and is the value proceeding or accruing from the sale, lease or rental of tangible personal property. It includes:

- the proceeds from the sale of property sold on consignment by the taxpayer; and,
- the proceeds from the sale of tangible personal property.

Sales price is the basis or measure of the use tax and is the total amount for which tangible personal property is sold, without any deduction for the cost of the property sold, the cost of the materials used, labor or service cost, interest paid, losses, or any other expenses. It includes:

- any services or transportation costs that are a part of the sale, whether paid in money or otherwise; and
- any manufacturers or importers excise tax imposed by the United States.

In calculating gross proceeds or sales price, the retailer may not deduct the following (whether or not such costs are passed on to the customer or separately stated on the bill to the customer):

- the cost of goods sold;
- the cost of materials, labor, or service;
- interest paid;

¹ South Carolina Code §12-36-90.

² South Carolina Code §12-36-90(1).

³ South Carolina Code §12-36-130.

⁴ While the term “gross proceeds” is generally applicable to the sales tax and “sales price” is generally applicable to the use tax, the term “gross proceeds” is the basis or measure of the use tax for certain services that are subject to the use tax as well as the sales tax. See South Carolina Code §12-36-1310(B).

- losses;
- transportation costs;
- manufacturers or importers excise taxes imposed by the United States; or
- any other expenses.

One of the guiding principles of what is includable in “gross proceeds” was established in *Meyers Arnold, Inc. v. South Carolina Tax Commission*, 285 S.C. 303, 328 S.E.2d 920 (1985). In that case, the Court of Appeals of South Carolina held the element of service involved in a lay away sale was subject to tax as being part of the sale of tangible personal property. The test used by the court was as follows:

But for the lay away sales, *Meyers Arnold* would not receive the lay away fees. The fees are obviously charged for the service rendered in making lay away sales. For these reasons, this court holds the lay away fees are part of the gross proceeds and subject to the sales tax.

Accordingly, the total amount charged in conjunction with the sale or purchase of tangible personal property is subject to the tax. This test used by the court would also apply this principle to the use tax in determining what is includable in “sales price.”

Finally, a rebate paid by a third party (*i.e.*, the manufacturer) to the retail customer does not affect “gross proceeds” (the basis for the sales tax) or “sales price” (the basis for the use tax). For example, if Store A sells a product for \$1,000 and the customer pays the \$1,000 for the product, the tax is still due on the \$1,000 even though the manufacturer of the product may at a later date rebate \$100 of the sales price to the customer.⁵

B. Examples of Charges included in “Gross Proceeds” and “Sales Price”

Examples of charges included in “gross proceeds” or “sales price” and therefore subject to the sales tax or use tax are:⁶

Fuel surcharges - an additional fee charged by retailers due to the rising costs of gasoline and diesel fuel when making a delivery via their own vehicle.⁷

Charges by an automobile rental company,⁸ such as:

⁵ Attorney General Opinion #82-30 (5/5/1982).

⁶ Please note that because of the nature of a transaction an example may only apply to “gross proceeds” and the sales tax since the transaction could only occur in South Carolina. Therefore, some examples may not apply to the “sales price” and the use tax.

⁷ South Carolina Revenue Ruling #05-1.

⁸ South Carolina Revenue Ruling #93-1.

- Fueling Charges.
- Charges for Collision Damage Waiver.
- Personal Accident Coverage.
- Extended Protection.
- Personal Effects Coverage.
- Personal Accident and Effects Coverage.

Lease cancellation fees.⁹

Lease Compensatory Damages received as a result of litigation payments from either a third party guarantor and/or lessee.¹⁰

Late fees charged when a customer does not pay his bill on time (except for late fees charged with respect to charges for electricity, natural gas, or both).¹¹

Late fees charged by a video rental “club.”¹²

Membership fees paid to a video rental “club” if the payment of such fee entitles the purchaser to “free” or discount movie rentals.¹³ However, if such fee is in lieu of a security deposit or constitutes only a nominal processing fee and does not include “free” or discount movie rentals, the fee is not subject to the tax.

Membership fees charged by a membership-only warehouse offering a selection of brand-name merchandise to business owners and others where one type of member receives a benefit that another type of membership does not receive.

For example, one type of member pays only the posted wholesale price, while another type of temporary membership pays the posted wholesale price plus a 5% surcharge.¹⁴

Local hospitality taxes authorized under South Carolina Code §6-1-700 *et. seq.* and local accommodations fees imposed by ordinance prior to March 15, 1997 and authorized under Section 10 of Act 138 of 1997, **if the fee or tax is imposed upon the retailer.**¹⁵ (See examples below of charges not includable in gross proceeds for other local taxes and fees.)

⁹ South Carolina Private Letter Ruling #88-5.

¹⁰ South Carolina Private Letter Ruling #12-3.

¹¹ South Carolina Revenue Ruling #09-6.

¹² South Carolina Revenue Ruling #90-6.

¹³ South Carolina Revenue Ruling #90-6.

¹⁴ South Carolina Private Letter Ruling #92-11.

¹⁵ South Carolina Revenue Ruling #97-20.

City or county franchise fees imposed upon a cable television system and calculated as a percentage of the cable television system's gross receipts, regardless of whether it is passed on to customers as a separately stated item on the bill or is included in the overall charge for cable services.¹⁶

Delivery or transportation charges:

- where the seller, by use of a common carrier, effects such delivery and the sale is made F.O.B. point of destination or place of business of the buyer.¹⁷
- where the seller, by use of his own means of transportation, effects such delivery.¹⁸
- where the seller effects delivery from the factory directly to the seller's customer when the transportation is paid by the seller either to a transportation company, the manufacturer, or by way of credit to his customer for transportation costs paid by the customer and deducted from the seller's invoice.¹⁹

Fabrication labor that is a part of the manufacturing, compounding, processing or fabrication of tangible personal property for sale or resale.²⁰

Installation labor incident to the sale of tangible personal property when such charges are not separately stated from the sales price of the property on billing to customers or when the seller's books and records of account do not show the reasonableness of such labor in relation to the sales price of the property.²¹

Gratuities or an amount or percentage, regardless of its designation, added to the price of meals pursuant to a requirement of the retailer furnishing such meals, even though all or a part thereof may be paid by the retailer to his employees.²²

Finance and carrying charges when the established price for the goods includes an amount to cover a finance or carrying charge.²³

¹⁶ South Carolina Revenue Ruling #97-10.

¹⁷ SC Regulation 117-310, South Carolina Private Letter Ruling #90-9, and Commission Decision S-D-152.

¹⁸ SC Regulation 117-310, South Carolina Technical Advice Memorandum #89-9, Commission Decision S-D-145 and Commission Decision #92-46.

¹⁹ SC Regulation 117-310.1.

²⁰ SC Regulation 117-313.1.

²¹ SC Regulation 117-313.3.

²² SC Regulation 117-318.6. However, when a customer voluntarily provides a tip for an employee of a retailer, such a tip is not subject to the sales tax whether given directly to the employee in cash or added by the customer to his bill and charged by the retailer to the customer's account; provided, that in the latter instance, the full amount of such tip is turned over to the employee by the retailer. See also Commission Decisions S-D-82 and S-D-178.

²³ SC Regulation 117-318.2; however, where the seller has an established cash price and when selling on an extended payment basis, adds a separate charge for financing, the additional charge is not to be included in gross proceeds.

Lay-away Fees.²⁴

Universal Service Fund surcharges billed by telephone companies to their customers (part of the “gross proceeds accruing or proceeding from the charges for the ways or means for the transmission of the voice or of messages”).²⁵

Early Termination Charge billed in connection with a taxable communication service (part of the “gross proceeds of sales” or “sales price” of the taxable communications service).²⁶

Property Damage Waiver Fee billed by rental company.²⁷

Engraving charges by a trophy shop when the charge for engraving is in conjunction with the sale of the trophy.²⁸

Charges billed by a photographer for materials, labor and other expenses as part of the sale of photographic transparencies and prints.²⁹

Manufacturer’s Coupon - For example, if an item normally sells for \$5.00 and the customer pays \$4.00 and presents a manufacturer’s coupon valued at \$1.00, then the tax is based on \$5.00 (“gross proceeds” or “sales price”) since the retailer receives \$4.00 from the customer and \$1.00 from the manufacturer.³⁰

Sales Price of Returned Merchandise if the retailer does not refund the purchaser the full sales price in cash or by credit.³¹ If a purchaser returns merchandise to the retailer and receives a refund or credit that is less than the price originally paid because the retailer retains a portion of the price paid as a “restocking” or “handling” fee or for any other reason, then the original price is subject to the tax.

Property Tax Payments under a Lease where the lease requires the lessee to reimburse the lessor for the property taxes on the tangible personal property being leased³² or where the lease requires to the lessee to pay the property taxes on behalf of the lessor on the tangible personal property being leased.

²⁴ *Meyers Arnold, Inc., v. South Carolina Tax Commission*, 285 SC 303, 328 S.E.2d 920 (1985). See also SC Private Letter Ruling #11-4.

²⁵ South Carolina Revenue Ruling #03-1. However, any portion of the Universal Service Fund surcharge based on charges for telecommunication services that are exempt from the sales and use tax under South Carolina Code §12-36-2120 (*e.g.*, sales to the federal government, long distance charges, or certain access charges) or are otherwise nontaxable, are a part of the gross proceeds accruing or proceeding from the charges for an exempt service or a nontaxable charge and therefore not subject to the sales and use tax.

²⁶ South Carolina Private Letter Ruling #06-2.

²⁷ Commission Decision S-D-174.

²⁸ Commission Decisions #92-28, #92-9, # 92-64 and #90-38.

²⁹ Commission Decision S-D-175.

³⁰ South Carolina Revenue Ruling #99-9 and Attorney General Opinion dated 4/6/1998.

³¹ SC Regulation 117-318.8.

³² See Commission Decision S-D-127 (1979).

Rebates paid by a third party to or for the benefit of a purchaser, even though the purpose of the payment is to reimburse the purchaser for a part of the purchase price.³³

Warranty Contracts sold in conjunction with the sale of the tangible personal property unless the sale of the tangible personal property is exempt from the tax.

Note: With limited exceptions, effective September 1, 2011, the sales and use tax will no longer apply to a warranty or maintenance contract purchased after the tangible personal property is purchased.³⁴

Monthly Fixed Charges by a Utility Company for Natural Gas sold as part of an overall agreement between the utility and the customer for the sale of natural gas, whether or not the customer uses natural gas during a particular billing period.

Note: If the sale of natural gas to the customer is exempt under Code Section 12-36-2120, such as the sale of natural gas that is used for residential purposes (Code Section 12-36-2120(33)), then the monthly fixed charges billed by a natural gas utility to a customer are not subject to the sales tax.

Charges billed by a Retailer for Consultation, Engineering and Design as part of the retail sale of a sign³⁵ or the retail sale of a wireless communications system that enhances radio signal strength within the customer's building.³⁶

C. Gross Proceeds and Sales Price – What is Not Includable?³⁷

In calculating gross proceeds or sales price, the retailer may deduct the following:³⁸

- a cash discount allowed and taken on sales;³⁹
- the sales price of property returned by customers when the full sales price is refunded in cash or by credit;⁴⁰

³³ See South Carolina Revenue Ruling #09-11 concerning the Federal "Car Assistance Rebate System" and South Carolina Revenue Ruling #10-4 concerning the "Energy Star Appliance Rebate" program.

³⁴ See SC Revenue Ruling #11-1.

³⁵ SC Regulation 309.9 and SC Private Letter Ruling #07-4.

³⁶ SC Private Letter Ruling #07-3.

³⁷ South Carolina Code §12-36-90(2).

³⁸ Please note that because of the nature of a transaction an example may only apply to "gross proceeds" and the sales tax since the transaction could only occur in South Carolina. Therefore, some examples may not apply to the "sales price" and the use tax.

³⁹ South Carolina Code §12-36-90(2)(a).

⁴⁰ South Carolina Code §12-36-90(2)(b) and SC Regulation 117-318.8.

- the value allowed for secondhand property transferred to the vendor as a trade-in;⁴¹
- the amount of any tax imposed by the United States with respect to retail sales, whether imposed upon the retailer or the consumer, except for manufacturers or importers excise taxes;⁴²
- a motor vehicle operated with a dealer, transporter, or manufacturer, or education license plate and used in accordance with the provisions of Section 56-3-2320 or 56-3-2330;⁴³
- that portion of a charge taxed under South Carolina Code §§12-36-910(B)(3) or 12-36-1310(B)(3) attributable to the cost set by statute for a governmental license or permit;⁴⁴
- fees imposed on the sale of motor oil, new tires, lead-acid batteries, and white goods pursuant to Article 1, Chapter 96 of Title 44, including the refundable deposit when a lead-acid battery core is not returned to a retailer;⁴⁵
- the sales price, not including sales tax, of property on sales which are actually charged off as bad debts or uncollectible accounts for state income tax purposes. A taxpayer who pays the tax on the unpaid balance of an account which has been found to be worthless and is actually charged off for state income tax purposes may take a deduction for the sales price charged off as a bad debt or uncollectible account on a return filed pursuant to this chapter, except that if an amount charged off is later paid in whole or in part to the taxpayer, the amount paid must be included in the first return filed after the collection and the tax paid. The deduction allowed by this provision must be taken within one year of the month the amount was determined to be a bad debt or uncollectible account;⁴⁶
- interest, fees, or charges however described, imposed on a customer for late payment of a bill for electricity or natural gas, or both, whether or not sales tax is required to be paid on the underlying electricity or natural gas bill;⁴⁷
- the environmental surcharge imposed pursuant to South Carolina Code §44-56-430;⁴⁸

⁴¹ South Carolina Code §12-36-90(2)(c).

⁴² South Carolina Code §12-36-90(2)(d).

⁴³ South Carolina Code §12-36-90(2)(e).

⁴⁴ South Carolina Code §12-36-90(2)(f).

⁴⁵ South Carolina Code §12-36-90(2)(g).

⁴⁶ South Carolina Code §12-36-90(2)(h). See also *South Carolina Department of Revenue v. Anonymous Company A and Anonymous Company B*, S.C., 678 S.E. 2d 255 (2009) and South Carolina Revenue Ruling #13-4.

⁴⁷ South Carolina Code §12-36-90(2)(i).

⁴⁸ South Carolina Code §12-36-90(2)(j).

- the alcoholic liquor by the drink excise tax imposed by South Carolina Code §12-33-245;⁴⁹ and
- rental surcharges imposed on the rental of private passenger automobiles, rental vehicles, and heavy equipment under South Carolina Code §§56-31-50 and 12-37-717.⁵⁰

D. Examples of Charges not included in “Gross Proceeds” and “Sales Price”

Examples of charges not included in “gross proceeds” or “sales price” and therefore not subject to the sales tax or use tax are;⁵¹

Late fees charged when a customer does not pay his bill on time with respect to charges for electricity, natural gas, or both;⁵²

Membership fees paid to a video rental “club” if such fee is in lieu of a security deposit or constitutes only a nominal processing fee and does not include “free” or discount movie rentals;⁵³

Membership fees charged by a membership-only warehouse offering a selection of brand-name merchandise to business owners and others where all membership types receive the same benefits;⁵⁴

Local hospitality taxes authorized under South Carolina Code §6-1-700 et. seq. and local accommodations fees imposed by ordinance prior to March 15, 1997 and authorized under Section 10 of Act 138 of 1997 **if the fee or tax is imposed upon the customer and the retailer is merely a collection agent for the city or county;**⁵⁵

⁴⁹ South Carolina Code §12-36-90(2)(k).

⁵⁰ See South Carolina Code §56-31-20 for the definitions of a “private passenger vehicle” and “rental vehicle.” See South Carolina Code §12-37-717 for the definition of “heavy equipment.”

⁵¹ Please note that because of the nature of a transaction an example may only apply to “gross proceeds” and the sales tax since the transaction could only occur in South Carolina. Therefore, some examples may not apply to the “sales price” and the use tax.

⁵² South Carolina Code §12-36-90(2)(i). See also South Carolina Revenue Ruling #09-6.

⁵³ South Carolina Revenue Ruling #90-6.

⁵⁴ A membership fee would be includable in gross proceeds and subject to the tax if the membership fee is the sales price for the tangible personal property. For example, if a direct mail movie rental company charged an annual or month fee to receive movies for short term use of movies and no other charges are paid by the customers to receive the movies, then the annual or monthly fee is the sales price of the tangible personal property and subject to the tax.

⁵⁵ South Carolina Revenue Ruling #97-20.

Local accommodations taxes authorized under South Carolina Code §6-1-500 *et. seq.*; local option sales taxes authorized under South Carolina Code §4-10-10 *et. seq.*; local capital projects sales taxes authorized under South Carolina Code §4-10-300 *et. seq.*; and, local transportation projects sales taxes authorized under South Carolina Code §4-37-30 *et. seq.*;⁵⁶

Delivery or transportation charges where the seller, by use of a common carrier, effects such delivery and the sale is made the sale is made F.O.B. point of origin;⁵⁷

Installation labor incident to the sale of tangible personal property when such charges are separately stated from the sales price of the property on billing to customers and the seller's books and records of account show the reasonableness of such labor in relation to the sales price of the property;⁵⁸

Gratuities when given directly to the employee in cash or added by the customer to his bill and charged by the retailer to the customer's account; provided that in the latter instance, the full amount of such tip is turned over to the employee by the retailer;⁵⁹

Finance and Carrying Charges when the seller has an established cash price and when selling on an extended payment basis adds a separate charge for financing;⁶⁰

Container Deposits required by retailers to insure the return of reusable containers;⁶¹

Self-Redeeming Coupon - For example, if an item normally sells for \$5.00 and the customer pays \$4.00 and presents the store's self-redeeming coupon valued at \$1.00, then the sales tax is based on \$4.00 ("gross proceeds") since the retailer only receives the \$4.00 from the customer;⁶²

911 Surcharges billed by telephone companies to their customers;⁶³ and

Sales Price of Returned Merchandise if the retailer refunds the purchaser the full sales price in cash or by credit.⁶⁴

⁵⁶ South Carolina Revenue Ruling #97-20.

⁵⁷ South Carolina Regulation 117-310.

⁵⁸ South Carolina Regulation 117-313.3.

⁵⁹ South Carolina Regulation 117-318.6.

⁶⁰ South Carolina Regulation 117-318.2.

⁶¹ South Carolina Regulation 117-318.7.

⁶² South Carolina Revenue Ruling #99-9. As noted above in "Examples of Charges included in Gross Proceeds," payments received as a result coupons from third parties, such as manufacturers, (where the retailer will receive a payment from a third party in addition to the payment from the customer) are includable in gross proceeds and subject to the tax.

⁶³ South Carolina Code §§23-47-50(F) & (G)(1).

⁶⁴ SC Regulation 117-318.8.

E. Gross Proceeds – Withdrawals for Use

Gross proceeds also includes the fair market value⁶⁵ of tangible personal property previously purchased at wholesale which is withdrawn from the business or stock and used or consumed in connection with the business or used or consumed by any person withdrawing it.

Tangible personal property withdrawn from inventory and used or consumed in connection with the business or used or consumed by the person withdrawing it includes, but is not limited to, tangible personal property used by the business, given to employees for their personal use, or given to employees to give away to customers or potential customers as a promotion⁶⁶ or for purposes of goodwill.

The imposition of the sales tax upon a withdrawal for use does not apply to:

- (i) withdrawal of tangible personal property previously withdrawn and taxed by such business or person;
- (ii) tangible personal property which becomes an ingredient or component part of tangible personal property manufactured or compounded for sale;
- (iii) tangible personal property replacing defective parts under written warranty contracts if:
 - (A) the warranty, maintenance, service, or similar contract is given without charge at the time of original purchase of the defective property,

⁶⁵ SC Regulation 117-309.17, concerning withdrawals from stock by merchants, states:

To be included in gross proceeds of sales is the money value of property purchased at wholesale for resale purposes and subsequently withdrawn from stock for use or consumption by the purchaser.

The value to be placed upon such goods is the price at which these goods are offered for sale by the person withdrawing them. All cash or other customary discounts which he would allow to his customers may be deducted; however, in no event can the amount used as gross proceeds of sales be less than the amount paid for the goods by the person making the withdrawal.

See also *Colonial Stores, Inc. v. South Carolina Tax Commission*, 253 S.C. 14, 168 S.E.2d 774, 776 (1969) where the South Carolina Supreme Court stated:

That both parties regarded the premium merchandise as being acquired for use by Colonial rather than for resale and, hence, subject to a use tax is further evidenced by the fact that the tax was paid and collected on the basis of the cost of the premium merchandise to Colonial in accordance with Sec. [12-36-1310(A)] of the Code, rather than its reasonable market value. *A different rule of valuation applies where goods are purchased for resale but later withdrawn from stock and used by the taxpayer. In such case, the withdrawal is, in effect, treated as a sale at retail and the basis of valuation for tax purposes is "the reasonable and fair market value" of the tangible property withdrawn.* (Emphasis added.)

⁶⁶ See also South Carolina Private Letter Ruling #11-5.

- (B) the tax was paid on the sale of the defective part or on the sale of the property of which the defective part was a component, and
- (C) the warrantee is not charged for any labor or materials,
- (iv) an automobile furnished without charge to a high school for use solely in student driver training programs;
- (v) a new motor vehicle used by a dealer as a demonstrator.

Since a withdrawal, use, or consumption of tangible personal property purchased at wholesale each constitutes a “retail sale,” any one such event occurring in South Carolina constitutes a “retail sale” within South Carolina and is subject to the tax based on the fair market value of the tangible personal property that is withdrawn, used or consumed in connection with the business or used or consumed by the person withdrawing it.

For example:⁶⁷

- (1) If tangible personal property is withdrawn from inventory in South Carolina for use or consumption inside or outside of South Carolina, then the sales tax is due based on the fair market value of the tangible personal property since the withdrawal (“retail sale”) of the tangible personal property occurred within South Carolina.
- (2) If tangible personal property is withdrawn from inventory outside of South Carolina for use or consumption in South Carolina and then used and consumed in South Carolina, then the use tax is due based on the fair market value of the tangible personal property since the withdrawal outside of South Carolina constitutes a “purchase at retail” and the use or consumption of the tangible personal property occurred within South Carolina.

However, a credit under South Carolina Code §12-36-1310(C) will be allowed against the South Carolina use tax for any sales or use tax legally due and paid in the other state on the withdrawal occurring in that state.

- (3) If tangible personal property is transferred from inventory in South Carolina to an inventory outside of South Carolina where it will be held for sale, then no sales tax is due if any tangible personal property is subsequently withdrawn, used, or consumed outside of South Carolina since a withdrawal, use or consumption (“retail sale”) of the tangible personal property has not occurred in South Carolina. If, however, any tangible personal property is subsequently withdrawn from the inventory outside of South Carolina for use or consumption in South Carolina, see item #2 above for guidance.

⁶⁷ See South Carolina Revenue Ruling #08-11.

- (4) If tangible personal property is transferred from inventory outside of South Carolina to an inventory in South Carolina where it will be held for sale, then no sales tax is due until the tangible personal property is either sold at retail in South Carolina or is withdrawn, used or consumed (“retail sale”) in South Carolina.

The following charts are intended to provide examples for most taxpayers who withdraw, use or consume tangible personal property from inventory in connection with their business or who withdraw, use or consume tangible personal property from inventory for their personal use.⁶⁸

Situation #1 – Employee’s Personal Use: Tangible personal property has been purchased at wholesale by a wholesaler or retailer for resale to retailers or consumers. The tangible personal property will be stored in inventory at a distribution facility, warehouse, or retail facility. Some items in inventory will not be sold, but withdrawn from the inventory and sent to employees to personally use or consume. Examples include, but are not limited to, clothing, sporting equipment, or household items the employee will wear or use or consume.

Event in South Carolina	Event Outside of South Carolina	Taxability of Situation #1
The tangible personal property is withdrawn from inventory in South Carolina and given to or shipped to an employee in South Carolina for use or consumption either in South Carolina or outside of South Carolina.	None	The taxable event is the <u>withdrawal from inventory in South Carolina</u> and the sales tax is due based upon the fair market value of tangible personal property.
The tangible personal property is withdrawn from inventory in South Carolina and shipped to an employee outside of South Carolina.	The employee receives the tangible personal property outside of South Carolina and personally uses or consumes the tangible personal property either inside or outside of South Carolina.	The taxable event is the <u>withdrawal from inventory in South Carolina</u> and the sales tax is due based upon the fair market value of tangible personal property.
The employee receives the tangible personal property from an inventory located outside of South Carolina and personally uses or consumes the tangible personal property in South Carolina.	The tangible personal property is withdrawn from inventory outside of South Carolina and shipped to an employee in South Carolina.	The taxable event is the <u>use or consumption of the tangible personal property in South Carolina</u> and the use tax is due based upon the fair market value of tangible personal property. A credit under South Carolina Code §12-36-1310(C) will be allowed against the South Carolina use tax for any tax legally due and paid in the other state on the withdrawal in that state.

⁶⁸ These charts are also included in South Carolina Revenue Ruling #08-11.

Situation #2 – Sent to Employee to Give Away as Promotion: Tangible personal property has been purchased at wholesale by a wholesaler or retailer for resale to retailers or consumers. The tangible personal property will be stored in inventory at a distribution facility, warehouse, or retail facility. Some items in inventory will not be sold, but withdrawn from the inventory and sent to employees to give away free of charge to customers as a promotion. Examples include, but are not limited to, clothing, sporting equipment, or household items.

Event in South Carolina	Event Outside of South Carolina	Taxability of Situation #2
The tangible personal property is withdrawn from inventory in South Carolina and shipped to an employee in South Carolina to give away to a customer located either inside or outside of South Carolina as a promotion. The employee receives the tangible personal property and gives it away as a promotion to a customer for the customer to use or consume.	None	The taxable event is the <u>withdrawal from inventory in South Carolina</u> and the sales tax is due based upon the fair market value of tangible personal property.
The tangible personal property is withdrawn from inventory in South Carolina and shipped to an employee outside of South Carolina to give away to a customer located either inside or outside of South Carolina as a promotion.	The employee receives the tangible personal property outside of South Carolina and gives it away as a promotion to a customer located either inside or outside of South Carolina for the customer to use or consume inside or outside of South Carolina.	The taxable event is the <u>withdrawal from inventory in South Carolina</u> and the sales tax is due based upon the fair market value of tangible personal property.
The employee receives the tangible personal property from an inventory located outside of South Carolina and gives it away as a promotion to a customer in South Carolina for the customer to use or consume in South Carolina.	The tangible personal property is withdrawn from inventory outside of South Carolina and shipped to an employee in South Carolina to give away to a customer as a promotion.	The taxable event is the <u>use or consumption of the tangible personal property in South Carolina (when the employee gave it away to a customer as a promotion)</u> and the use tax is due based upon the fair market value of tangible personal property. A credit under South Carolina Code §12-36-1310(C) will be allowed against the South Carolina use tax for any tax legally due and paid in the other state on the withdrawal in that state.

Situation #3 – Sent to Employee to Sell, but Given Away as a Promotion: Tangible personal property has been purchased at wholesale by a wholesaler or retailer for resale to retailers or consumers. The tangible personal property will be stored in inventory at a distribution facility, warehouse, or retail facility. Some items in inventory are transferred from inventory in the store, warehouse or distribution center to an employee outside of South Carolina. The employee maintains an inventory of tangible personal property for sale and has the authority to give away some inventory free of charge to customers as a promotion. Examples include, but are not limited to, clothing, sporting equipment, or household items.

Event in South Carolina	Event Outside of South Carolina	Taxability of Situation #3
The tangible personal property is transferred from inventory in the store or warehouse in South Carolina to an employee in South Carolina who maintains an inventory of tangible personal property for sale. The tangible personal property is withdrawn from the employee's inventory located in South Carolina and is given away as a promotion to a customer located either inside or outside of South Carolina for the customer to use or consume.	None	The taxable event is the <u>withdrawal from the employee's inventory in South Carolina</u> and the sales tax is due based upon the fair market value of tangible personal property.
The tangible personal property is transferred from inventory in the store or warehouse in South Carolina to an employee outside of South Carolina who maintains an inventory of the tangible personal property for sale.	The tangible personal property is withdrawn from the employee's inventory located outside of South Carolina and is given away as a promotion to an out-of-state customer for the customer to use or consume outside of South Carolina.	The taxable event is the <u>withdrawal from the employee's inventory outside of South Carolina</u> . Since the withdrawal, use and consumption of the tangible personal property occurs outside of South Carolina, no sales or use tax is due.
The tangible personal property is withdrawn from the employee's inventory in South Carolina and is given away as a promotion to a customer located either inside or outside of South Carolina for the customer to use or consume inside or outside of South Carolina.	The tangible personal property is transferred from inventory in the store or warehouse outside of South Carolina to an employee in South Carolina who maintains an inventory of the tangible personal property for sale.	The taxable event is the <u>withdrawal from the employee's inventory in South Carolina</u> and the sales tax is due based upon the fair market value of tangible personal property.

Situation #4 – Sent to Employee to Show or Display as a Sample: Tangible personal property has been purchased at wholesale by a wholesaler or retailer for resale to retailers or consumers. The tangible personal property will be stored in inventory at a distribution facility, warehouse, or retail facility. Some items in inventory will not be sold, but withdrawn from the inventory and sent to employees as a sample to show or display to customers; however, the sample will not be available for sale while being shown or displayed by the employee. Examples include, but are not limited to, clothing, sporting equipment, or household items.

Event in South Carolina	Event Outside of South Carolina	Taxability of Situation #4
The tangible personal property is withdrawn from inventory in South Carolina and shipped to an employee in South Carolina as a sample to show or display to customers located either inside or outside of South Carolina. The sample is not available for sale while being shown or displayed by the employee.	None	The taxable event is the <u>withdrawal from inventory in South Carolina</u> and the sales tax is due based upon the fair market value of tangible personal property. ⁶⁹
The tangible personal property is withdrawn from inventory in South Carolina and shipped to an employee outside of South Carolina as a sample to show or display to customers located either inside or outside of South Carolina.	The employee receives the tangible personal property outside of South Carolina and shows or displays the sample to customers located either inside or outside of South Carolina. The sample is not available for sale while being shown or displayed by the employee.	The taxable event is the <u>withdrawal from inventory in South Carolina</u> and the sales tax is due based upon the fair market value of tangible personal property. ⁷⁰
The employee receives the tangible personal property from an inventory located outside of South Carolina and shows or displays the sample to customers located either inside or outside of South Carolina. The sample is not available for sale while being shown or displayed by the employee.	The tangible personal property is withdrawn from inventory outside of South Carolina and shipped to an employee in South Carolina as a sample to show or display to customers located either inside or outside of South Carolina.	The taxable event is the <u>use, consumption or storage of the tangible personal property in South Carolina</u> and the use tax is due based upon the fair market value of tangible personal property. A credit under South Carolina Code §12-36-1310(C) will be allowed against the South Carolina use tax for any tax legally due and paid in the other state on the withdrawal, use or consumption in that state. ⁷¹

⁶⁹ The sales tax is a transactional tax. The withdrawal from inventory is a transaction subject to the sales tax. If the sample is returned to the distribution facility, warehouse, or retail facility for sale, this sale is a second, separate and distinct transaction that is subject to the sales tax based on the discounted price provided the sale is a retail sale occurring in South Carolina.

⁷⁰ See footnote #69.

⁷¹ The sales tax and the use tax are transactional taxes. The use, storage or consumption of the tangible personal property is a transaction subject to the use tax. If the sample is returned to the distribution facility,

Situation #5 – Sent to Employee to Show or Display as a Sample: Tangible personal property has been purchased at wholesale by a wholesaler or retailer for resale to retailers or consumers. The tangible personal property will be stored in inventory at a distribution facility, warehouse, or retail facility. Some items in inventory will not be sold, but withdrawn from the inventory and sent to employees as a sample to show or display to customers; however, the sample will be available for sale while being shown or displayed by the employee.⁷² Examples include, but are not limited to, clothing, sporting equipment, or household items.

Event in South Carolina	Event Outside of South Carolina	Taxability of Situation #5
The tangible personal property is shipped from the distribution facility, warehouse or retail facility in South Carolina to an employee in South Carolina as a sample to show or display to customers located either inside or outside of South Carolina. The sample is available for sale while being shown or displayed by the employee.	None	Since the sample is available for sale, it is not subject to the tax unless otherwise used or consumed by the employee or business in South Carolina or until sold at retail in South Carolina. If used or consumed in South Carolina, <u>the taxable event is the use or consumption in South Carolina</u> and the sales tax is due based upon the fair market value of tangible personal property. If <u>sold at retail in South Carolina</u> , the sales tax is due on the “gross proceeds” of the sale. ⁷³
The tangible personal property is shipped from the distribution facility, warehouse or retail facility in South Carolina to an employee outside of South Carolina as a sample to show or display to customers located either inside or outside of South Carolina.	The employee receives the tangible personal property outside of South Carolina and shows or displays the sample to customers located either inside or outside of South Carolina. The sample is available for sale while being shown or displayed by the employee.	Since the sample is available for sale, it is not subject to the tax unless otherwise used or consumed by the employee or business in South Carolina or until sold at retail in South Carolina. If used or consumed in South Carolina, <u>the taxable event is the use or consumption in South Carolina</u> and the sales tax is due based upon the fair market value of tangible personal property. If <u>sold at retail in South Carolina</u> , the sales tax is due on the “gross proceeds” of the sale. ⁷⁴

warehouse, or retail facility for sale, this sale is a second, separate and distinct transaction that is subject to the sales tax based on the discounted price provided the sale is a retail sale occurring in South Carolina.

⁷² The determination that tangible personal property is available for sale while being shown or displayed by an employee will be based on the facts and circumstance as supported by the taxpayer’s records. Factors to consider in making this determination include but are limited to, the taxpayer’s operational requirements or restrictions, whether the product is subsequently discounted when sold due to use (see “Note” below), the employees’ history of selling or not selling the samples, etc. If the facts and circumstances and the taxpayer’s records do not support that the tangible personal property is available for sale, the Department will apply the tax as set forth in Scenario #4.

⁷³ See footnote #69.

⁷⁴ See footnote #69.

Situation #5 – Sent to Employee to Show or Display as a Sample – Continued:

Event in South Carolina	Event Outside of South Carolina	Taxability of Situation #5
The employee receives the tangible personal property from outside of South Carolina and shows or displays the sample to customers located either inside or outside of South Carolina. The sample is available for sale while being shown or displayed by the employee.	The tangible personal property is shipped from the distribution facility, warehouse or retail facility outside of South Carolina to an employee in South Carolina as a sample to show or display to customers located either inside or outside of South Carolina.	Since the sample is available for sale, it is not subject to the tax unless otherwise used or consumed by the employee or business in South Carolina or until sold at retail in South Carolina. If used or consumed in South Carolina, <u>the taxable event is the use or consumption in South Carolina</u> and the use tax is due based upon the fair market value of tangible personal property. A credit under South Carolina Code §12-36-1310(C) will be allowed against the South Carolina use tax for any tax legally due and paid in the other state on the withdrawal, use or consumption in that state. If <u>sold at retail in South Carolina</u>, the sales tax is due on the “⁷⁵gross proceeds” of the sale.

Note: In this Scenario #5, it states that tangible personal property sent to employees as a sample to show or display to customers is not subject to the tax if the sample is still available for sale while being shown or displayed by the employee, unless “otherwise used or consumed by the employee or business in South Carolina.” Examples of samples available for sales that are “otherwise used or consumed by the employee or business in South Carolina” include, but are not limited to: (1) an employee who shows or displays the sample but also demonstrates how the product is used such as demonstrating the effectiveness of a vacuum cleaner; (2) an employee who shows and displays the sample but gives it away to the customer as a promotion or an enticement to buy the product; and (3) an employee who shows or displays the sample but also uses a sample for his own personal use. The determination as to whether samples that are available for sale are “otherwise used or consumed by the employee or business in South Carolina” will be based on the facts and circumstances.

⁷⁵ See footnote #69.

F. Gross Proceeds – Promotional Items Provided to Customers for No Consideration, a Nominal Consideration, or an Amount Significantly Below Cost

Where tangible personal property is purchased by a retailer for resale and is transferred from the retailer to a customer for no consideration, a nominal consideration, or an amount significantly below cost, the tangible personal property is considered a promotional item withdrawn from inventory and used or consumed by the retailer.

For example, if a retailer normally sells a cell phone for \$200, but a customer can purchase the cell phone for \$0.01 by exchanging a certain number of loyalty points, then the cell phone is considered a promotional item withdrawn from inventory and used or consumed by the retailer. Thus, the amount includable in gross proceeds is \$200, the fair market value of the cell phone.

The presumption that tangible personal property sold for an amount that is a nominal consideration, or an amount that is significantly below cost, is a promotional item withdrawn from inventory and used and consumed by the retailer may be rebuttable for clearance sales, end-of-season sales, fire sales, going-out-of-business sales, two-for-one sales, and other traditional store sales where the retailer can document that the transaction is a “true” sale and not a promotional give-away.⁷⁶

⁷⁶ See South Carolina Private Letter Ruling #11-5.

7

***Tangible
Personal Property***

Chapter 7

Tangible Personal Property

A. General Guidelines

Tangible personal property is personal property which may be seen, weighed, measured, felt, touched, or which is in any other manner perceptible to the senses¹. It also includes services and intangibles the sale or use of which are subject to tax under the sales and use tax law, including

- communications,
- laundry and related services,
- furnishing of accommodations, and
- electricity.

Tangible personal property does not include stocks, notes, bonds, mortgages, or other evidences of debt or the transmission of computer database information by a cooperative service when the database information has been assembled by and for the exclusive use of the members of the cooperative service.²

Generally, several issues arise with respect a transaction involving tangible personal property. For example:

- (1) Was the transaction a sale of a service or the sale of tangible personal property?
- (2) Was the transaction a sale of tangible personal property or an improvement to real property?

B. Service vs. Sale of Tangible Personal Property

From time to time it is necessary to determine if the transaction is a sale or rental of tangible personal property or the furnishing of a service. The so-called “true object” test is generally used to delineate sales of services from sales of tangible personal property

The “true object” test is best described in 9 *Vanderbilt Law Review* 231 (1956). It states:

The true test then is one of basic purpose of the buyer. When the product of the service is not of value to anyone other than the purchaser, either because of the confidential character of the product, or because it is prepared to fit the purchaser’s

¹ South Carolina Code §12-36-60.

² South Carolina Code §12-36-60.

special need - a contract or will prepared by a lawyer, or the accident investigation report prepared for an insurance company - this fact is evidence tending to show that the service is the real purpose of the contract. When the purpose of a contract is to produce an article which is the true object of the agreement, the final transfer of the product should be a sale, regardless of the fact that special skills and knowledge go into its production. Under this analysis, printing work, done on special order and of significant value only to the particular customer, is still a sale. The purchaser is interested in the product of the services of the printer, not in the services per se. Similarly, it would seem that contracts for custom-produced articles, be they intrinsically valuable or not, should be classified as sales when the product of the contract is transferred.

The Vanderbilt Law Review article, in quoting *Snite v Department of Revenue*, 398 Ill. 41, 74 N.E.2d. 877 (1947), also establishes the following general rule:

If the article sold has no value to the purchaser except as a result of services rendered by the vendor, and the transfer of the article to the purchaser is an actual and necessary part of the services rendered, then the vendor is engaged in the business of rendering service, and not in the business of selling at retail. If the article sold is the substance of the transaction and the service rendered is merely incidental to and an inseparable part of the transfer to the purchaser of the article sold, then the vendor is engaged in the business of selling at retail, and the tax which he pays...[is measured by the total cost of article and services]. If the service rendered in connection with an article does not enhance its value and there is a fixed or ascertainable relation between the value of the article and the value of the service rendered in connection therewith, then the vendor is engaged in the business of selling at retail, and also engaged in the business of furnishing service, and is subject to tax as to the one business and tax exempt as to the other.

While the above quotes do not establish rigid rules, they do provide general guidance in determining the purpose of a transaction, and are particularly helpful in addressing this issue.

C. Examples of Persons Engaged in the Business of Selling Tangible Personal Property at Retail

While the products created by these persons may involve a certain amount of personal or professional service, the “true object” of the transaction is the sale of tangible personal property.

- Photographers³
- Artists⁴
- Sellers of Custom-Made Items⁵

³ SC Regulation 117-309.2 and Commission Decisions S-D-175 and S-D-148.

⁴ SC Regulation 117-309.4.

- Machine shops⁶
- Undertakers⁷
- Interior decorators⁸
- Sellers of Tax Map Sheets⁹
- Sellers of computer software, whether custom software or “canned” software¹⁰
- Caterers¹¹

For additional examples of persons engaged in selling tangible personal property at retail, see SC Regulation 117-308. However, it should be noted that in some of these examples, persons selling tangible personal property at retail may also be providing a separate and distinct non-taxable service that is not provided in conjunction with the sale of tangible personal property at retail.

D. Examples of Persons Engaged in the Business of Selling a Non-Taxable Service¹²

These persons may provide their customers or clients with tangible personal property, such as a dentist providing dental implants, a lawyer preparing and providing a contract or will, and an architect preparing and providing plans, but the “true object” of the transaction is the professional or personal service. The tangible personal property is incidental to the transaction. As such, these persons do not sell tangible personal property subject to the tax, but use and consume tangible personal property such as the dental implant or paper for the contract, will or plans, in providing a non-taxable service.

- Dentists¹³

⁵ SC Regulation 117-309.5.

⁶ SC Regulation 117-309.6.

⁷ SC Regulation 117-309.8.

⁸ SC Regulation 117-309.10.

⁹ *Richland County v. South Carolina Tax Commission*, Richland County Court of Common Pleas Case No. 82-CP-40-2143 (1983).

¹⁰ *Citizens and Southern Systems, Incorporated v. The South Carolina Tax Commission*, 280 SC 138, 311 SE2d 717 (1984), SC Regulation 117-330, South Carolina Revenue Ruling #12-1; South Carolina Revenue Ruling #11-2; South Carolina Revenue Ruling #03-5. Software must be delivered in tangible form, or sold as a communication service such as an Application Service Provider (“ASP”), in order for the transaction to constitute a sale of tangible personal property subject to the tax. Software delivered electronically is not a sale of tangible personal property and therefore not subject to the tax.

¹¹ South Carolina Revenue Ruling #12-3. This advisory opinion concerns fundraisers by nonprofit organizations. However, through several of the examples contained in it, this opinion demonstrates the Department’s longstanding position that caterers are engaged in the business of selling tangible personal property at retail.

¹² For purposes of this discussion, “non-taxable services” are services upon which the General Assembly has not specifically imposed the sales and use tax.

¹³ SC Regulation 117-308.2.

- Doctors¹⁴
- Lawyers¹⁵
- Veterinarians¹⁶
- Architects¹⁷
- Advertising agencies¹⁸

For additional examples of persons engaged in providing a non-taxable service, see SC Regulation 117-308. However, it should be noted that in some of these examples, persons providing a non-taxable service may also be selling tangible personal property.

E. Sale of Tangible Personal Property vs. Improvement to Real Property

In making the determination as to whether a person is a retailer making sales and installations or a contractor, the following must be considered:

South Carolina Code §12-36-910(A) imposes the sales tax and reads:

A sales tax, equal to [six] percent of the gross proceeds of sales, is imposed upon every person engaged or continuing within this State in the business of selling tangible personal property at retail.

South Carolina Code §12-36-1310(A) imposes the use tax and reads:

A use tax is imposed on the storage, use, or other consumption in this State of tangible personal property purchased at retail for storage, use, or other consumption in this State, at the rate of [six] percent of the sales price of the property, regardless of whether the retailer is or is not engaged in business in this State.

South Carolina Code §12-36-1340 concerns the collection of the use tax by the retailer, and states:

Each seller making retail sales of tangible personal property for storage, use, or other consumption in this State shall collect and remit the tax in accordance with this chapter and shall obtain from the department a retail license as provided in this chapter, if the retail seller:

¹⁴ SC Regulation 117-308.3. However, if a doctor has a stock of drugs from which he makes numerous and substantial retail sales, he is required to have a retail license and to remit sales tax directly to the Department.

¹⁵ SC Regulation 117-308.4.

¹⁶ South Carolina Code §12-36-110(1)(l) and SC Regulation 117-308.5.

¹⁷ SC Regulation 117-308.6. However, sales by architects of all reproductions of their plans, designs or specifications, unaltered or unmodified in any way, are deemed to be subject to the sales or use tax.

¹⁸ SC Regulation 117-308.9.

- (1) maintains a place of business;
- (2) qualifies to do business;
- (3) solicits and receives purchases or orders by an agent or salesman; or
- (4) distributes catalogs, or other advertising matter, and by reason of that distribution receives and accepts orders from residents within the State.¹⁹

South Carolina Code §12-36-70 defines, in part, the term “retailer” to include every person:

- (1)(a) selling or auctioning tangible personal property whether owned by the person or others;
- (b) furnishing accommodations to transients for a consideration, except an individual furnishing accommodations of less than six sleeping rooms on the same premises, which is the individuals [sic] place of abode;
- (c) renting, leasing, or otherwise furnishing tangible personal property for a consideration;
- (d) operating a laundry, cleaning, dyeing, or pressing establishment for a consideration;
- (e) selling electric power or energy;
- (f) selling or furnishing the ways or means for the transmission of the voice or of messages between persons in this State for a consideration. A person engaged in the business of selling or furnishing the ways or means for the transmission of the voice or messages as used in this subitem (f) is not considered a processor or manufacturer;...

South Carolina Code §12-36-110 defines the term “retail sale” to mean in part:

Sale at retail and retail sale mean all sales of tangible personal property except those defined as wholesale sales. The quantity or sales price of goods sold is immaterial in determining if a sale is at retail.

South Carolina Code §12-36-120 defines the term “wholesale sale,” in part, to mean

a sales of...tangible personal property to licensed retail merchants, jobbers, dealers, or wholesalers for resale, and do not include sales to users or consumers not for resale.

¹⁹ The retailer can only be required to register and collect the use tax if the retailer has nexus with South Carolina. See Chapter 13 for information on nexus.

However, South Carolina Code §12-36-110(1) further defines the term “retail sale” to include in part:

- (a) sales of building materials²⁰ to construction contractors, builders, or landowners for resale or use in the form of real estate;

* * * *

- (d) the use within this State of tangible personal property by its manufacturer as building materials in the performance of a construction contract. The manufacturer must pay the sales tax based on the fair market value at the time and place where used or consumed;

- (e) sales to contractors for use in the performance of construction contracts;

* * * *

Based on the above, the statute establishes two types of businesses that may deal with the incorporation of tangible personal property into real property – retailers and contractors.

In other words, any person who sells tangible personal property at retail, or who sets himself up as being engaged in selling tangible personal property at retail, is a retailer. A person who makes improvement to real property but who is not engaged in selling tangible personal property at retail is a contractor.

In South Carolina, the determination as to whether a person is a retailer making sales and installations or a contractor depends on the facts and circumstances. Factors used in making this determination include, but are not limited to: how the person advertises his business (as a retailer or contractor); are retail sales made in which installation is not performed by the seller or on behalf of the seller; does the person have a showroom to display his products and how would this showroom be perceived by the general public; is the person licensed as a contractor under state law; does the person perform labor for a general contractor as a “subcontractor;” etc. In addition, the determination as to whether a person is a retailer making sales and installations or a contractor may require a review of the various agreements or contracts between the taxpayer and his customers.

²⁰ SC Regulation 117-314.2 states: “Building materials when purchased by builders, contractors, or landowners for use in adding to, repairing or altering real property are subject to either the sales or use tax at the time of purchase by such builder, contractor, or landowner. “Building materials” as used in the Sales and Use Tax Law includes any material used in making repairs, alterations or additions to real property. “Builders,” “contractors,” and “landowners” mean and include any person, firm, association or corporation making repairs, or additions to real property. The term “building materials” includes such tangible personal property as lumber, timber, nails, screws, bolts, structural steel, elevators, reinforcing steel, cement, lime, sand, gravel, slag, stone, telephone poles, fencing, wire, electric cable, brick, tile, glass, plumbing supplies, plumbing fixtures, pipe, pipe fittings, prefabricated buildings, electrical fixtures, built-in cabinets and furniture, sheet metal, paint, roofing materials, road building materials, sprinkler systems, air conditioning systems, built-in-fans, heating systems, floorings, floor furnaces, crane ways, crossties, railroad rails, railroad track accessories, tanks, builders hardware, doors, door frames, window frames, water meters, gas meters, well pumps, and any and all other tangible personal property which becomes a part of real property.”

Finally, SC Regulation 117-324, entitled “Dual Business,” states:

Operators of businesses who are both making retail sales and withdrawing for use from the same stock of goods are to purchase at wholesale all of the goods so sold or used and report both retail sales and withdrawals for use under the sales tax law.

This ruling applies only to those who actually carry on a retail business having a substantial number of retail sales and does not apply to contractors, plumbers, repairmen, and others who make isolated or accommodation sales and who have not set themselves up as being engaged in selling. Where only isolated sales are made, tax should be paid on all of the taxable property purchased with no sales tax return being required of the seller making such isolated or “accommodation” sales. (Emphasis added.)

Based on the above statutes and regulations, if a person is deemed to be a contractor, then the sales and use tax is due at the time all materials are purchased. The sales by a contractor that are isolated or accommodation sales are not subject to the sales and use tax.

If a person is deemed a retailer, then the purchases of materials for resale are not subject to the tax, but the subsequent sales at retail of such material are subject to the tax based on “gross proceeds of sales” or “sales price.” However, installation labor, if separately stated on the bill to the customer and reasonable, would not be subject to the tax.

Furthermore, if a retailer truly serves as a contractor or subcontractor in the traditional sense for some transactions (*e.g.*, bids on a project against others, enters into a contract upon winning the bid process, etc.), then the building materials purchased for those contracts may be purchased tax paid as a contractor. Generally, in order to purchase building material tax paid as a contractor, the retailer would need to demonstrate, based on its books and records and how it operates, that these purchases were purchases at retail for a construction contract. If the retailer is unable to demonstrate that the purchases were for a construction contract, the retailer’s transactions with its customers will be treated either as retail sales and installations subject to the tax at the time of the sale or “withdrawals for use” subject to the tax at the time the tangible personal property is withdrawn from inventory.²¹

²¹ See Chapter 6 (“Gross Proceeds of Sales” and “Sales Price”), Section E for a discussion of “withdrawals for use.” See also SC Regulation 117-309-17.

8

Exclusions

Chapter 8

Exclusions

If a transaction is excluded from the tax, it is not subject to sales and use tax in South Carolina. The exclusions are found in several sections of the sales and use tax statute and apply to a variety of transactions. While a transaction must squarely fall within the requirements of an exclusion in order for the tax not to apply, exclusions are liberally construed. In other words, if there is doubt as to whether a transaction falls within the requirements of an exclusion, the tax will not be imposed.

The following provides a list of the exclusions and a list of relevant court cases, regulations, and advisory opinions for each exclusion (if any). The list of court cases, regulations, and advisory opinions is not all-inclusive. The regulations and advisory opinions can be found via the Department's website (www.dor.sc.gov).

Caution: The exclusions below are briefly described. See the statute cited for the specific exclusion details. If a transaction does not squarely fall within the requirements of an exclusion statute and applicable regulations, the exclusions does not apply.

Code Section	Description
12-36-60	Transmission of computer database information by a cooperative service when assembled by and for the exclusive use of the members of the cooperative service.
12-36-90(1)(c)(iii)	The withdrawal from inventory of tangible personal property for use in replacing a defective part under a written warranty contract if the warranty contract is given without charge at the time of original purchase of the defective property; the tax was paid on the sale of the defective part or on the sale of the property of which the defective part was a component; and the warrantee is not charged for any labor or materials.
12-36-90(2)(h)	Sales of property that are actually charged off as bad debts or uncollectible accounts for state income tax purposes. <i>SC Revenue Ruling #13-4</i>
12-36-90(2)(i)	Interest, fees, or charges imposed on a customer for late payment of a bill for electricity or natural gas. <i>SC Revenue Ruling #09-6¹</i>

¹ This exclusion does not apply to charges imposed for a late payment of a bill for other items, such as cable television or telephone service.

Code Section	Description
12-36-110(2)	Sales of tangible personal property to a manufacturer or construction contractor when the property is partially or completely fabricated or manufactured in South Carolina by the manufacturer or construction contractor and transported out of state and assembled, installed, or erected at the out-of-state job site. <i>SC Revenue Ruling #94-2</i>
12-36-120(1)	Sales of property to a licensed retailer or another wholesaler for resale. This does not include sales to users or consumers not for resale. <i>SC Revenue Procedure #08-2</i>
12-36-120(2)	Sales of property to a manufacturer or compounder as an ingredient or component part of the tangible personal property or product manufactured or compounded for sale. <i>SC Regulation 117-302.1</i>
12-36-120(3)	Sales of property “used directly” in manufacturing, compounding, or processing tangible personal property into products for sale. SC Regulation 117-302.1 provides property is “used directly” if it comes into direct contact with the product being manufactured and contributes to bring about a chemical or physical change in the product. <i>SC Regulation 117-302.1</i>
12-36-120(4)	Sales of materials, containers, cores, labels, sacks, or bags used incident to the sale and delivery of tangible personal property, or used by manufacturers, processors, and compounders in shipping tangible personal property. <i>SC Regulation 117-302.2</i>
12-36-120(5)	Sales of food or drink products to licensed retail merchants for use as ingredients in preparing ready to eat food or drink sold at retail. <i>SC Revenue Ruling #95-6</i>

Code Section	Description
12-36-140(C)(1)	Purchases of tangible personal property from outside the state and transported to South Carolina for storage and for the exclusive purpose of subsequently transporting it outside of South Carolina for first use outside of South Carolina. ² <i>SC Revenue Ruling #09-17</i>
12-36-140(C)(2)	Purchases of tangible personal property from outside the state and transported to South Carolina for the purpose of first being manufactured, processed, or compounded into other tangible personal property that will be transported and used solely outside of South Carolina. ³ <i>SC Revenue Ruling #09-17</i>
12-36-140(C)(3)	Purchases of tangible personal property for the purpose of being distributed as cooperative direct mail promotional advertising materials by means of interstate carrier, a mailing house, or a United States Post Office to residents of this State from locations both inside and outside the State. ⁴
12-36-910(C)	Charges for, or use of, certain data processing ⁵ <i>SC Regulation 117-329; South Carolina Revenue Ruling #06-8; South Carolina Private Letter Ruling #13-1; South Carolina Private Letter Ruling #12-2; South Carolina Private Letter Ruling #04-1</i>

² This exclusion only applies to the use tax. If the transaction in question is a sales tax transaction, this exclusion does not apply. See SC Regulation 117-334 for information on the shipment of goods into South Carolina and when the transaction is a use tax transaction and when it is a sales tax transaction.

³ This exclusion only applies to the use tax. If the transaction in question is a sales tax transaction, this exclusion does not apply. See SC Regulation 117-334 for information on the shipment of goods into South Carolina and when the transaction is a use tax transaction and when it is a sales tax transaction.

⁴ This exclusion only applies to the use tax. If the transaction in question is a sales tax transaction, this exclusion does not apply. See SC Regulation 117-334 for information on the shipment of goods into South Carolina and when the transaction is a use tax transaction and when it is a sales tax transaction.

⁵ South Carolina Code §12-36-910(C) defines “data processing” as “the manipulation of information furnished by a customer through all or part of a series of operations involving an interaction of procedures, processes, methods, personnel, and computers. It also means the electronic transfer of or access to that information. Examples of the processing include, without limitation, summarizing, computing, extracting, storing, retrieving, sorting, sequencing, and the use of computers.”

9

Exemptions

Chapter 9

Exemptions

A. Exemptions Authorized under the Sales and Use Tax Law (Chapter 36 of Title 12)

The South Carolina sales and use tax law contain numerous exemptions¹. As a general rule, tax exemption statutes are strictly construed against the taxpayer.² This rule of strict construction simply means that constitutional and statutory language will not be strained or liberally construed in the taxpayer's favor.³

The following briefly describes South Carolina's sales and use tax exemptions⁴. For purposes of this discussion, South Carolina's exemptions are divided into the following categories:

- Government Related Exemptions
- Business Related Exemptions
- Agricultural Exemptions
- Educational Exemptions
- General Public Good Exemptions
- Alternative Energy Exemptions

The following provides a list of the exemptions in each of the above categories and a list of relevant statutes, court cases, regulations, and advisory opinions for each exemption (if any). The list of statutes, court cases, regulations, and advisory opinions is not all-inclusive.

¹ South Carolina Code §§12-36-2120 and 12-36-2130.

² *Owen Industrial Products, Inc. v. Sharpe*, 274 S.C. 193, 262 S.E.2d 33 (1980); *Hollingsworth on Wheels, Inc. v. Greenville County Treasurer et al*, 276 S.C. 314, 278 S.E.2d 340 (1981).

³ *York County Fair Association v. South Carolina Tax Commission*, 249 S.C. 337, 154 S.E.2d 361 (1967).

⁴ All sales and purchases exempt from the state sales and use tax under South Carolina Code §§12-36-2120 and 12-36-2130 are exempt from local sales and use tax administered and collected by the Department on behalf of local jurisdictions, except for sales of unprepared food under South Carolina Code §12-36-2120(75). South Carolina Code §12-36-2120(75) specifically states that the exemption for unprepared food only applies to the state sales and use tax. Therefore, such sales are subject to local sales and use taxes unless the local sales and use tax specifically exempts sales of unprepared food. See SC Regulation 117-337 and South Carolina Information Letter #14-5.

Caution: The exemptions below are briefly described. See the statute cited for the specific exemption details. If a transaction does not squarely fall within the requirements of an exemption statute and applicable regulations, the exemption does not apply.

Government Related Exemptions

Code Section	Description
12-36-2120(1)	Transactions that are prohibited from being taxed by U.S. or State Constitutional provisions or federal or state law⁵ <i>South Carolina Information Letter #89-8 (American Red Cross); South Carolina Code §58-25-80 (Regional Transportation Authorities); South Carolina Code §56-19-480 (Insurance Companies and Motor Vehicles); South Carolina Code §44-7-2120 (Regional Health Services Districts⁶); South Carolina Code §38-29-150 (South Carolina Life and Accident and Health Insurance Guaranty Association); South Carolina Code §38-31-130 (South Carolina Property and Casualty Insurance Guaranty Association); South Carolina Code §12-11-30 (Banks); South Carolina Code §12-13-50 (Building and Loan Associations); South Carolina Code §13-17-90 (South Carolina Research Authority); South Carolina Code §§12-63-20 and 12-63-30 (Motion Picture Production Companies⁷); and South Carolina Revenue Ruling #06-8⁸ (Federal Moratorium on the taxation of Internet Access charges)</i>

⁵ There are several provisions in the South Carolina Code of Laws that are not codified in Chapter 36 of Title 12 that provide an exemption from the sales tax, the use tax or both. Some of these provisions exempt a specific transaction and some exempt a specific entity. In the case of an exemption provision involving a specific entity, each statutory provision must be reviewed to determine if sales to the entity are exempt, sales by the entity are exempt, or if both sales to and sales by the entity are exempt. In addition, there are several provisions of federal law that provide an exemption from state and local taxes to certain specific entities. Each of these federal statutory provisions must also be reviewed to determine if sales to the entity are exempt, sales by the entity are exempt, or if both sales to and sales by the entity are exempt. **Please note that the list (in italics) of transactions that are prohibited from being taxed by U.S. or State Constitutional provisions or federal or state law is not all-inclusive.**

⁶ See also *Lexington Health Services District v. South Carolina Department of Revenue*, S.C., 682 S.E.2d 508 (2009).

⁷ See also Chapter 19 of this publication and South Carolina Revenue Ruling #08-12.

⁸ South Carolina Revenue Ruling #06-8 concerns the taxation of communications services and addresses the federal moratorium on the taxation of Internet Access charges as part of the discussion on taxable and non-taxable communication services.

Code Section	Description
12-36-2120(2)	Sales to the federal government <i>SC Regulation 117-307.6; Attorney General Opinion dated 8/9/1984;⁹ South Carolina Revenue Ruling #09-1; South Carolina Revenue Ruling #13-2</i>
12-36-2120(22)	Material necessary to assemble missiles
12-36-2120(25)	Sales of cars and motorcycles to nonresident military personnel <i>South Carolina Private Letter Ruling #90-12; South Carolina Private Letter Ruling #90-11; South Carolina Private Letter Ruling #89-9</i>
12-36-2120(29)	Federal government contracts – property that passes to the government <i>SC Regulation 117-314.11; South Carolina Revenue Ruling #04-9</i>
12-36-2120(30)	Supplies purchased by State General Services Division for resale to State agencies <i>SC Regulation 117-304.1; South Carolina Revenue Ruling #92-15</i>
12-36-2120(46)	War memorials and monuments
12-36-2120(48)	Solid waste disposal collection bags required under a solid waste disposal plan of a county or other political subdivision
12-36-2120(60)	Lottery tickets sold pursuant to Chapter 150 of Title 59 (South Carolina Education Lottery Act)
12-36-2120(61)	Copies of, or access to, legislation or other informational documents provided to the general public or any other person by a legislative agency when a charge for these copies is made reflecting the agency's cost of the copies

⁹ This Attorney General Opinion concluded that 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 sales and use tax. However, others sales of tangible personal property to the Guard are taxable.

Code Section	Description
12-36-2120(68)	Any property sold to the public through a sheriff's sale as provided by law

Business Related Exemptions

12-36-2120(9)(a – d)	Coal, coke, or other fuel for manufacturers, transportation companies, electric power companies, and processors <i>SC Regulation 117-302.3; South Carolina Private Letter Ruling #88-10</i>
12-36-2120(9)(e)(f)	Fuel used for test flights of aircraft by the manufacturer of the aircraft or used in the transportation of an aircraft prior to its completion from one facility of the manufacturer to another facility of the manufacturer, provided the taxpayer, over a seven year period, invests at least seven hundred fifty million dollars in real or personal property or both comprising or located at a single manufacturing facility and creates at least three thousand eight hundred full-time new jobs at the a single manufacturing facility ¹⁰
12-36-2120(11)	Toll charges between telephone exchanges, certain access charges, charges for telegraph messages, and automatic teller machine transactions
12-36-2120(13)	Fuel and other supplies for consumption on ships on the high seas <i>SC Regulation 117-321.1</i>
12-36-2120(14)	Wrapping paper, containers, etc., used incident to the sale and delivery of tangible personal property <i>SC Regulation 117-302.2; SC Regulation 117-312</i>
12-36-2120(15)	Motor fuel taxed under the motor fuel user fee law
12-36-2120(17)	Machines used in manufacturing, processing, recycling, compounding, mining, or quarrying tangible personal property for sale. This includes certain machines used to prevent or abate air, water, or noise pollution caused by machines used in manufacturing, processing, recycling, compounding, mining, or quarrying tangible personal property for sale

¹⁰ This exemption requires that a notice be filed with the South Carolina Department of Revenue prior to October 31, 2015 in order for the taxpayer to qualify for the exemption.

Code Section	Description
	<i>SC Regulation 117-302.5; SC Regulation 117-302.6; SC Regulation 117-306.1; SC Regulation 309.3; SC Regulation 117-309.9; SC Regulation 117-314.10; SC Regulation 117-315.3; SC Regulation 117-328; <u>Hercules Contractors and Engineers, Inc. v. South Carolina Tax Commission</u>, 313 S.E. 2d 300 (1984); <u>Springs Industries, Inc., v. South Carolina Department of Revenue</u>, South Carolina Court of Appeals, No. 2003-UP-029, January 8, 2003 (unpublished), certiorari denied, October 8, 2003; <u>Anonymous Corporation v. South Carolina Department of Revenue</u> (02-ALJ-17-0350-CC); <u>Southeastern-Kusan, Inc. v. South Carolina Tax Commission</u> 280 S.E. 2d 57 (1981); South Carolina Revenue Ruling #04-7; South Carolina Revenue Ruling #89-7; South Carolina Revenue Ruling #91-8; South Carolina Revenue Ruling #98-19; South Carolina Private Letter Ruling #92-9; South Carolina Private Letter Ruling #91-1; South Carolina Private Letter Ruling #87-3; South Carolina Private Letter Ruling #90-3; South Carolina Private Letter Ruling #89-15; South Carolina Private Letter Ruling #95-8; South Carolina Private Letter Ruling #99-3; South Carolina Revenue Procedure #05-1¹¹</i>
12-36-2120(19)	Electricity used to manufacture, process, mine, or quarry tangible personal property for sale or used by cotton gins to manufacture tangible personal property for sale <i>SC Regulation 117-302.4</i>
12-36-2120(20)	Railcars and locomotives
12-36-2120(21)	Certain vessels and barges (more than 50 tons burden) <i>SC Regulation 117-312; SC Regulation 117-321.1</i>
12-36-2120(24)	Laundry supplies and machinery used by a laundry or drycleaning business. This exemption does not apply to coin operated laundromats. <i>SC Regulation 117-303</i>

¹¹ The controlling authorities with respect to the machine exemption are SC Regulation 117-302.5; *Hercules Contractors and Engineers, Inc. v. South Carolina Tax Commission*, 313 S.E. 2d 300 (1984); *Springs Industries, Inc., v. South Carolina Department of Revenue*, South Carolina Court of Appeals, No. 2003-UP-029, January 8, 2003 (unpublished), certiorari denied, October 8, 2003; and *Anonymous Corporation v. South Carolina Department of Revenue* (02-ALJ-17-0350-CC). The advisory opinions listed are provided for additional reference.

Code Section	Description
12-36-2120(31)	Vacation time sharing plans and exchange of accommodations in which the accommodation to be exchanged is the primary consideration <i>The Department held in South Carolina Revenue Ruling #98-5 that accommodations provided under exchange agreements are subject to the sales tax on accommodations. However, the General Assembly subsequently enacted the above exemption for “any...exchange of accommodations in which the accommodations to be exchanged are the primary consideration.</i> <i>Therefore, the furnishing of accommodations via an exchange of accommodation is not subject to the sales tax on accommodations if the accommodations to be exchanged is the primary consideration. If the accommodations to be exchanged is not the primary consideration, the furnishing of the accommodations is subject to the sales tax on accommodations, unless otherwise exempt.</i>
12-36-2120(34)	50% of the gross proceeds of a modular home regulated under Chapter 43 of Title 23 <i>SC Regulation 117-335.2</i>
12-36-2120(35)	Movies sold or rented to movie theatres
12-36-2120(36)	Tangible personal property delivered out of state by South Carolina retailers
12-36-2120(37)	Petroleum asphalt products transported and used outside South Carolina
12-36-2120(40)	Shipping containers used by international shipping lines under contract with the State Ports Authority
12-36-2120(42)	Depreciable assets as part of a sale of an entire business <i>South Carolina Revenue Advisory Bulletin #01-1</i>

Code Section	Description
12-36-2120(43)	Supplies, equipment, machinery, and electricity for use in filming/producing motion pictures <i>South Carolina Revenue Ruling #08-12¹²</i>
12-36-2120(49)	Postage purchased by a person engaged in the business of selling advertising services for clients consisting of mailing advertising material through the United States mail
12-36-2120(50)	The following items when used by a qualified recycling facility: recycling property, electricity, natural gas, fuels, gasses, fluids and lubricants, ingredients or component parts of manufactured products, property used for the handling or transfer of postconsumer waste or manufactured products or in or for the manufacturing process, and machinery and equipment foundations
12-36-2120(51)	Material handling systems and material handling equipment used in the operation of a distribution facility or a manufacturing facility of a taxpayer that invests at least \$35 million in South Carolina ¹³ <i>South Carolina Revenue Ruling #13-3</i>
12-36-2120(52)	Parts and supplies used by persons engaged in the business of repairing or reconditioning aircraft owned by or leased to the federal government or commercial air carriers. This exemption does not extend to tools and other equipment not attached to or that do not become a part of the aircraft.
12-36-2120(53)	Motor vehicle extended service and warranty contracts <i>South Carolina Revenue Ruling #11-1; South Carolina Revenue Ruling #93-6</i>
12-36-2120(54)	Clothing and other attire required for working in a class 100 or better clean room environment (as defined in Federal Standard 209E)
12-36-2120(55)	Audiovisual masters made or used by a production company

¹² South Carolina Revenue Ruling #08-12 mainly concerns the exemption for motion picture production companies in South Carolina Code §12-63-30; however, it does briefly discuss the exemption in South Carolina Code §12-36-2120(43).

¹³ This exemption requires that certain notices be filed by the taxpayer with the South Carolina Department of Revenue in order for the taxpayer to qualify for the exemption.

Code Section	Description
12-36-2120(56)	Machines used in research and development <i>South Carolina Revenue Ruling #08-3</i>
12-36-2120(58)	Cooperative direct mail promotional advertising materials and promotional maps, brochures, pamphlets, or discount coupons for use by nonprofit chambers of commerce or nonprofit convention and visitor bureaus
12-36-2120(59)	Facilities transmitting electricity that are transferred, sold or exchanged by an electrical utility, municipality, electric cooperative, or political subdivision to a limited liability company subject to regulation under the Federal Power Act and formed to operate or to take functional control of electric transmission assets
12-36-2120(62)	70% of the gross proceeds of the rental or lease of portable toilets <i>South Carolina Revenue Ruling #09-5</i>
12-36-2120(64)	Sweetgrass baskets made by artists of South Carolina using locally grown sweetgrass
12-36-2120(65) and 12-36-2120(66)	Computer equipment used in connection with, and electricity and certain fuel used by, a technology intensive facility (defined in South Carolina Code §12-6-3360(M)(14)(b)) ¹⁴ that invests \$300 million over 5 years, creates at least 100 new jobs during the 5 years with an average cash compensation of 150% of the per capita income of the State, and spends at least 60% of the \$300 million investment on computer equipment Computer equipment used in connection with a manufacturing facility where the taxpayer, over a seven year period, invests at least seven hundred fifty million dollars in real or personal property or both comprising or located at a single manufacturing facility and creates at least three thousand eight hundred full-time new jobs at the a single manufacturing facility ¹⁵

¹⁴ South Carolina Code §12-6-3360(M)(14)(b) defines a “technology intensive facility” for purposes of this exemption as “a facility primarily used for one or more activities listed under the 2002 version of the NAICS Codes 51811 (Internet Service Providers and Web Search Portals).”

¹⁵ This exemption requires that a notice be filed with the South Carolina Department of Revenue prior to October 31, 2015 in order for the taxpayer to qualify for the exemption.

Code Section	Description
12-36-2120(67)	Construction material used in the construction of a single manufacturing or distribution facility, or one that serves both, that invests at least \$100 million at a single site in South Carolina over an 18 month period. ¹⁶
	Construction material used in the construction of a single manufacturing facility where the taxpayer, over a seven year period, invests at least seven hundred fifty million dollars in real or personal property or both comprising or located at a single manufacturing facility and creates at least three thousand eight hundred full-time new jobs at the a single manufacturing facility ¹⁷
12-36-2120(70)	Gold, silver or platinum bullion or any combination; coins that are or have been legal tender; and currency.
12-36-2120(73)	Amusement park rides; parts, machinery and equipment used to assemble, operate and make up amusement park rides; and performance venue facilities and any related or required machinery, equipment and fixtures. A \$250 million investment and creation of 250 full-time jobs and 500 part-time or seasonal jobs over a 5 year period is required.
12-36-2120(78) ¹⁸	Machinery and equipment, building and other raw materials, and electricity used in the operation of a facility owned by an organization which qualifies as a tax exempt organization pursuant to the Internal Revenue Code Section 501(c)(3) when the facility is principally used for researching and testing the impact of such natural hazards as wind, fire, water, earthquake, and hail on building materials used in residential, commercial, and agricultural buildings, provided the taxpayer invests at least twenty million dollars over a three year period.

¹⁶ Act No. 110 of 2007 provided that this exemption will be phased in from July 1, 2007 through June 30, 2011. This exemption was phased in by reducing the tax rate as follows: (a) 4% for sales from July 1, 2007 through June 30, 2008; (b) 3% for sales from July 1, 2008 through June 30, 2009; (c) 2% for sales from July 1, 2009 through June 30, 2010; and (d) 1% for sales from July 1, 2010 through June 30, 2011. Effective July 1, 2011, qualifying construction material is fully exempt.

¹⁷ This exemption became effective November 1, 2009 and requires that a notice be filed with the South Carolina Department of Revenue prior to October 31, 2015 in order for the taxpayer to qualify for the exemption.

¹⁸ Act No. 280 of 2010. To qualify for this exemption, the taxpayer must notify the South Carolina Department of Revenue of its intent to qualify and must invest at least twenty million dollars in real or personal property at a single site in this State over the three-year period.

Code Section	Description
12-36-2120(79)	Computers, computer equipment, and computer software used within a datacenter, and electricity used by a datacenter or used by eligible business property located and used at a datacenter where the taxpayer: (1) invests at least \$50 million in real or personal property or both over a 5 year period; or, if more than one taxpayer, invests a minimum aggregate capital investment of at least \$75 million in real or personal property or both over a 5 year period; (2) creates and maintains at least 25 full-time jobs at the facility with an average cash compensation level of 150% of the per capita income of South Carolina or of the county in which the facility is located; and (3) maintains the jobs requirement for 3 consecutive years after certification by the Department of Commerce.¹⁹ This exemption only applies to a datacenter that is certified by the Department of Commerce prior to January 1, 2032. However, for datacenters certified by December 31, 2031, this exemption will remain in effect for an additional ten year period. <i>South Carolina Revenue Ruling #13-5</i>
12-62-30	Tangible personal property purchased by a certified motion picture production company for use in connection with the filming or production of motion pictures in South Carolina for a company planning to spend at least \$250,000 in connection with the filming or production of one or more motion pictures in South Carolina within a consecutive 12 month period. This provision does not apply to: (a) local sales tax levied and collected directly by a local governmental subdivision or (b) the production of television coverage of new and athletic events. <i>South Carolina Revenue Ruling #08-12</i>

¹⁹ See Code Section 12-36-2120(79) which requires that the taxpayer meet certain investment, jobs, and notification requirements in order to claim this exemption.

Agricultural Exemptions²⁰

Code Section	Description
12-36-2120(4)	Livestock <i>SC Regulation 117-301.1</i>
12-36-2120(5)	Feed used to produce and maintain livestock <i>SC Regulation 117-301.2; South Carolina Private Letter Ruling #99-1</i>
12-36-2120(6)	Insecticides, chemicals, fertilizers, soil conditioners, seeds, or seedlings, or nursery stock used in the production of farm products <i>SC Regulation 117-301.3</i>
12-36-2120(7)	Containers and labels used in preparing agriculture products for sale or preparing turpentine gum, gum resin, and gum spirits of turpentine for sale <i>SC Regulation 117-301.4</i>
12-36-2120(16)	Farm machinery <i>SC Regulation 117-301.5; South Carolina Revenue Ruling #99-3; South Carolina Private Letter Ruling #89-16</i>
12-36-2120(18)	Fuel used to cure agriculture products <i>South Carolina Technical Advice Memorandum #88-6</i>
12-36-2120(23)	Farm products sold in their original state of production when sold by the producer <i>SC Regulation 117-301.9; South Carolina Technical Advice Memorandum #88-4; South Carolina Private Letter Ruling #93-4</i>

²⁰ In reviewing the exemption statutes for the agriculture industry, it should be noted that South Carolina Code §46-1-10 states:

1. The terms “agriculture, agricultural purposes, agricultural uses, farm crops, cultivated crops” or words of similar import shall include horticulture, floriculture, and aquaculture. Words of similar import applicable to agriculture are likewise applicable to horticulture, floriculture, aquaculture.
2. The term “aquaculture” means the cultivation, production, or marketing of domesticated aquatic organisms.
3. The term “domesticated aquatic organism” means any fish, aquatic invertebrate, or aquatic plant that is spawned, produced, or marketed as a cultivated crop in the waters of this State.

Code Section	Description
12-36-2120(32)	Electricity and gas used in the production of livestock and milk <i>SC Regulation 117-301.7</i>
12-36-2120(44)	Electricity used to irrigate crops <i>SC Regulation 117-301.7</i>
12-36-2120(45)	Building materials, supplies, fixtures, and equipment used to construct commercial housing for poultry or livestock <i>SC Regulation 117-301.8; South Carolina Revenue Ruling #95-11; South Carolina Information Letter #95-1</i>

Educational Exemptions

12-36-2120(3)	Textbooks, books, magazines, periodicals, newspapers, and access to on line information used in a course of study or for use in a school or public library. These items may be in printed form or in alternative forms such as microfilm or CD ROM. Communication services and equipment subject to tax under South Carolina Code §§12-36-910(B)(3) and 12-36-1310(B)(3) are not exempt. <i>SC Regulation 117-316; South Carolina Revenue Ruling #94-11; South Carolina Private Revenue Opinion #02-3; South Carolina Technical Advice Memorandum #90-6; South Carolina Private Letter Ruling #90-5</i>
12-36-2120(8)	Newspapers, newsprint paper, and the South Carolina Department of Agriculture Market Bulletin ²¹ <i>SC Regulation 117-315.1; SC Regulation 117-315.2; South Carolina Private Letter Ruling #98-1; South Carolina Private Letter Ruling #93-1 Attorney General Opinion dated 9/26/1983²²</i>

²¹ This exemption also states that sales of religious publications (e.g., The Bible, hymnals) are exempt; however, the South Carolina Supreme Court held in *Thayer v. South Carolina Tax Commission*, 307 SC 6, 413 S.E.2d. 810 (1992) that the exemption for religious publications was unconstitutional. Therefore, sales of religious publications are subject to the sales and use tax, unless otherwise exempt under the law. For more information, see South Carolina Information Letter #92-8.

²² This Attorney General Opinion concluded that “preprints” were an integral part of a newspaper; therefore, the sale or purchase of preprints for incorporation into a newspaper were exempt.

Code Section	Description
12-36-2120(10)(a)	Meals or food used in furnishing meals to K-12 students in schools (not for profit) <i>SC Regulation 117-305.5</i>
12-36-2120(26)	Television, radio, and cable TV supplies, equipment, machinery, and electricity <i>SC Regulation 117-328; South Carolina Private Letter Ruling #12-1.</i>
12-36-2120(27)	Zoo plants and animals
12-36-2130(2)	Exhibition rentals for museums (charitable, eleemosynary, or governmental museums) ²³
Temporary Proviso 117.40, (Act No. 286 of 2014)	Purchases of tangible personal property during the State fiscal year 2014-2015 for use in private primary and secondary schools, including kindergarten and early childhood education programs, are exempt from the <u>use tax</u> if the school is exempt from income taxes under Internal Revenue Code §501(c)(3). ²⁴

General Public Good Exemptions

12-36-2120(10)(b)	Meals provided to elderly or disabled persons at home by nonprofit organizations
12-36-2120(10)(c)	Food sold to nonprofit organizations or food sold or donated by the nonprofit organization to another nonprofit organization
12-36-2120(10)(d)	Meals or foodstuffs prepared or packaged that are sold to public or nonprofit organizations for congregate or in-home service to the homeless or needy or disabled adults over 18 or individuals over 60. This exemption only applies to meals and foodstuffs eligible for purchase under the USDA food stamp program.
12-36-2120(12)	Water sold by public utilities and certain non-profit corporations

²³ This exemption only applies to the use tax. If the transaction in question is a sales tax transaction, this exemption does not apply. See SC Regulation 117-334 for information on when a transaction is a sales tax transaction and when it is a use tax transaction.

²⁴ This exemption only applies to the use tax. If the transaction in question is a sales tax transaction, this exemption does not apply. See SC Regulation 117-334 for information on when a transaction is a sales tax transaction and when it is a use tax transaction.

Code Section	Description
12-36-2120(28)	Medicine and prosthetic devices sold by prescription; certain diabetic supplies sold to diabetics under the written authorization and direction of a physician; certain free samples of medicine and certain medicine donated to hospitals; prescription medicine and radiopharmaceuticals used in treating cancer or rheumatoid arthritis, including prescription medicines to relieve the effects of treatment; prescription medicines used to prevent respiratory syncytial virus; disposable medical supplies, such as bags, tubing, needles, and syringes, dispensed by a pharmacist by prescription of a licensed health care provider for the intravenous administration of a prescription drug (only for treatment outside of a hospital, skilled nursing facility, or ambulatory surgical treatment center); and prescription medicine dispensed to Medicare Part A patients in a nursing home. <i>Home Medical Systems, Inc. v. South Carolina Department of Revenue</i>, 677 SE2d 582 (2009); <i>Associated Medical Specialist, P.A. v. South Carolina Tax Commission</i>, SC Ct. of App., Unpublished Op. No. 97-UP-447 (1997); <i>Drummond v. State of South Carolina</i>, Court of Common Pleas, Case No. 02-CP-40-4651 (2010). SC Regulation 117-332; SC Revenue Ruling #11-3; SC Revenue Ruling #91-19; SC Revenue Ruling #90-1; SC Revenue Ruling #98-9; SC Private Letter Ruling #95-6; SC Private Revenue Opinion #01-4; SC Private Letter Ruling #92-4; SC Private Letter Ruling #05-1; SC Private Letter Ruling #93-5; SC Private Letter Ruling #04-5; SC Private Letter Ruling #05-3; SC Private Letter Ruling #03-3; SC Private Letter Ruling #88-22; SC Private Letter Ruling #92-4; SC Private Letter Ruling #92-8; SC Private Revenue Opinion #02-5
12-36-2120(33)	Residential electricity and fuel SC Regulation 117-323; SC Revenue Ruling #89-5; SC Revenue Ruling #92-4; SC Technical Advice Memorandum #87-5; SC Private Letter Ruling #98-4; SC Private Letter Ruling #89-12
12-36-2120(38)	Hearing aids ²⁵
12-36-2120(39)	Concession sales by nonprofit organizations at festivals

²⁵ Hearing aids are defined in South Carolina Code §40-25-20(5) as “an acceptable wearable instrument or device designated or offered to aid or compensate for impaired human hearing and parts, attachments, or accessories, including earmold, but excluding batteries and cords.” Therefore, separate sales of batteries or cords do not fall within this exemption and are subject to the tax.

Code Section	Description
12-36-2120(41)	Sales by nonprofit organizations <i>SC Revenue Ruling #12-3; SC Revenue Ruling #09-8; SC Revenue Procedure #03-6; SC Private Revenue Opinion #01-5</i>
12-36-2120(47)	Goods sold to nonprofit hospitals that primarily treat children at no cost to the patient
12-36-2120(57)	Annual sales tax holiday on the first Friday, Saturday, and Sunday in August for personal use clothing, clothing accessories, footwear, computers, printers, printer supplies, computer software, bath wash cloths, blankets, bed spreads, bed linens, sheet sets, comforter sets, bath towels, shower curtains, bath rugs, pillows, pillow cases, and school supplies <i>SC Revenue Ruling #10-7; SC Revenue Ruling #10-8</i>
12-36-2120(63)	Medicine and medical supplies, including diabetic supplies and diabetic diagnostic and testing equipment, sold to a health care clinic providing free medical and dental care to all patients <i>SC Revenue Ruling #11-3</i>
12-36-2120(74)	Durable medical equipment and related supplies as defined under federal and state Medicare and Medicaid laws if (a) paid directly by funds of South Carolina or the United States under the Medicare and Medicaid programs, (b) state and federal law prohibits the payment of the sales and use tax, and (c) the sale is by a provider with a South Carolina retail license whose principal place of business is in South Carolina. Effective January 1, 2013, sales meeting the requirements of this exemption became fully exempt from both state and local sales and use taxes. ²⁶ <i>South Carolina Revenue Ruling #11-3</i>

²⁶ An uncodified provision of the legislation that enacted this exemption in 2007 provided that the exemption would be phased in by reducing the rate of tax based on revenue projections by the Board of Economic Advisors. This uncodified provision was later amended in Act 32 of 2011 to establish a new phase in of the exemption as follows: The rate of tax imposed on the gross proceeds of sales of items meeting the requirements of the exemption in Code Section 12-36-2120(74) is five and one-half percent for such sales from July 1, 2007. The rate of tax imposed on the gross proceeds of sales of items meeting the requirements of the exemption in Code Section 12-36-2120(74) is three and one-half percent for such sales from July 1, 2011. The rate of tax imposed on the gross proceeds of sales of items meeting the requirements of the exemption in Code Section 12-36-2120(74) is one and three-quarters percent for such sales from July 1, 2012. Effective January 1, 2013, the sales tax exemption on the gross proceeds of sales of items meeting the requirements of Code Section 12-36-2120(74) is fully implemented. Local sales and use taxes continued to apply until the exemption was fully implemented. Effective January 1, 2013, sales meeting the requirements of the exemption are fully exempt from both state and local sales and use taxes.

Code Section	Description
12-36-2120(75)	Unprepared food that lawfully may be purchased with United States Department of Agriculture food coupons. This exemption does not apply to local taxes unless the local tax specifically exempts the sale of such food <i>SC Regulation 117-337; SC Revenue Ruling #07-4</i>
12-36-2120(77)	This exemption is no longer valid. ²⁷
12-36-2120(80)	Injectable medications and injectable biologics, so long as the medication or biologic is administered by or pursuant to the supervision of a physician in an office which is under the supervision of a physician, or in a Center for Medicare or Medicaid Services certified kidney dialysis facility. ²⁸ <i>SC Information Letter #14-4</i>

Alternative Energy Exemptions

12-36-2120(71)	Any device, equipment, or machinery that is (a) operated by hydrogen or fuel cells, (b) used to generate, produce, or distribute hydrogen and designated specifically for hydrogen applications or for fuel cell applications, and (c) used predominantly for the manufacturing of, or research and development involving hydrogen or fuel cell technologies.

²⁷ In 2008, the General Assembly enacted in South Carolina Code §12-36-2120(77) an annual sales tax holiday during October for certain energy efficient products. However, the Supreme Court of South Carolina held in *The American Petroleum Institute and BP Products North America Inc v. South Carolina Department of Revenue, et al.*, S.C., 677 S.E. 2d 16 (2009) that the act (Act No. 338 of 2008) was unconstitutional. Therefore, the exemption in South Carolina Code §12-36-2120(77) is no longer valid.

²⁸ This exemption will be phased-in based on the annual general fund growth as determined by the Board of economic Advisors (“BEA”). If, beginning with the February 15 forecast, the BEA forecasts an annual general fund revenue growth of at least 2%, then the exemption will be phased-in as follows:

- Phase-in 1: For sales made on or after July 1st of the first State fiscal year (July 1 through June 30) following a February 15th forecast meeting the 2% growth requirement, 50% of the gross proceeds of sales are exempt.
- Phase-in 2: For sales made on or after July 1st of the next State fiscal year (July 1 through June 30), 100% of the gross proceeds of sales are exempt.

On February 19, 2014, the Board of Economic Advisors notified the Department that the requirements have been met to implement this exemption. Accordingly, for July 1, 2014 - June 30, 2015, 50% of the gross proceeds of sales of qualifying sales or purchases are exempt from the State and local sales and use taxes. On or after July 1, 2015, qualifying sales or purchases are fully exempt from the State and local sales and use taxes. See SC Information Letter #14-4.

Code Section	Description
12-36-2120(72)	Building material used to construct a new or renovated building in a research district and machinery or equipment located in a research district. The sales tax that would have been assessed must be invested by the taxpayer in hydrogen or fuel cell machinery or equipment located in the same research district within 24 months of the exempt purchase.
12-36-2110(B)	Manufactured homes designated by the United States Environmental Protection Agency and the United States Department of Energy as meeting or exceeding each agency's energy efficiency requirements or designated as meeting or exceeding the energy efficiency requirements under each agency's Energy Star program. ²⁹

B. Other Sales and Use Tax Exemptions Authorized by the General Assembly

In addition to the sales and use tax exemptions authorized by the General Assembly in the sales and use tax law,³⁰ the General Assembly has authorized sales and use tax exemptions in other provisions of the South Carolina Code of Laws. While the code sections authorizing these exemptions are listed above under the exemption for "Transactions that are prohibited from being taxed by U.S. or State Constitutional provisions or federal or state law," the following will provide additional details about these exemptions.

Some of these exemption provisions exempt a specific transaction and some exempt a specific entity. In the case of an exemption provision involving a specific entity, each statutory provision must be reviewed to determine if sales to the entity are exempt, sales by the entity are exempt, or if both sales to and sales by the entity are exempt. **Please note that the list of transactions that are prohibited from being taxed by state law is not all-inclusive.**

Caution: The exemptions below are briefly described. See the statute cited for the specific exemption details. If a transaction does not squarely fall within the requirements of an exemption statute and applicable regulations, the exemption does not apply.

²⁹ This exemption is only valid for sales or purchases from July 1, 2009 to July 1, 2019. Manufactured homes not meeting the energy efficient requirements for this exemption, but meeting other energy efficient requirements in South Carolina Code §12-36-2110(B), will only be subject to the \$300.00 maximum tax.

³⁰ Chapter 36 of Title 12 of the South Carolina Code of Laws.

South Carolina Code §58-25-80 (Regional Transportation Authorities)

This exemption provides that a regional transportation authority shall not pay any sales tax or use tax. In addition, it provides that a regional transportation authority shall not pay any state or local ad valorem tax, income tax, fuel tax, excise tax or any other use taxes or taxes from which municipalities and counties are exempt.³¹

South Carolina Code §56-19-480 (Insurance Companies and Motor Vehicles)

This exemption provides that vehicles that have been declared a total loss and are transferred to or from an insurance company in settlement of a claim are exempt from casual excise tax and sales and use taxes.³²

South Carolina Code §44-7-2120 (Regional Health Services Districts)

This exemption provides that the gross proceeds of the sale of any property owned by a regional health services district and used in the construction and equipment of any health care facilities for a district is exempt from the sales taxes and all similar excise taxes. In addition, the exemption provision states that it is the intent of the General Assembly that a regional health services district incur no tax liability to the State or any of its political subdivisions except to the extent that sales and use taxes may be payable on the purchases of goods or equipment by the regional health services district.³³

This provision also provides exemptions for other taxes. See the code section for details.

South Carolina Code §38-29-150 (South Carolina Life and Accident and Health Insurance Guaranty Association)

This provision exempts the South Carolina Life and Accident and Health Insurance Guaranty Association from payment of all fees and all state, county, and municipal taxes.

South Carolina Code §38-31-130 (South Carolina Property and Casualty Insurance Guaranty Association)

This provision exempts the South Carolina Property and Casualty Insurance Guaranty Association from payment of all taxes levied by this State or any of its political subdivisions, except taxes levied on real or personal property.

³¹ See 1985 Op. Atty. Gen. No. 85-120, p. 329.

³² See SC Revenue Ruling #93-13 and SC Revenue Ruling #08-8.

³³ See also *Lexington Health Services District v. South Carolina Department of Revenue, S.C.*, 682 S.E.2d 508 (2009).

South Carolina Code §12-11-30 (Banks)

This provision provides that the income tax paid by banks³⁴ is in lieu of all other taxes on banks, except the use tax, the deed recording fee, and taxes on real property. The real property of a bank is taxed in the place where it is located.

South Carolina Code §12-13-50 (Building and Loan Associations)

This provision provides that the income tax paid by building and loan associations³⁵ shall be in lieu of any and all other taxes on such associations, except use taxes, deed recording fees, and taxes on real property. The real property of any such association shall be taxed in the place where it may be located, the same as the real property of individuals.

South Carolina Code §13-17-90 (South Carolina Research Authority)

This provision states that the South Carolina Research Authority shall pay no taxes or assessments including, but not limited to, income tax, sales and use tax, and property tax upon any of the property acquired by it or upon any of its activities; except that the South Carolina Research Authority is entitled to the above-referenced sales and use tax exemption only in (1) transactions to obtain tangible personal property for the authority's own use or consumption, (2) transactions related to authority contracts with governmental entities and nonprofit entities, and (3) transactions related to authority contracts with private, for-profit entities doing business in South Carolina, where these contracts do not place these entities in competition with other private, for-profit entities doing business in South Carolina.

South Carolina Code §§12-63-20 and 12-63-30 (Motion Picture Production Companies³⁶)

This provision provides a sales and use tax exemption for all qualifying tangible personal property used in connection with the South Carolina filming by a “motion picture production company” that is approved by the South Carolina Film Commission at the South Carolina Department of Parks, Recreation and Tourism.

For more details on this exemption, see Chapter 19 of this publication.

³⁴ Chapter 11 of Title 12 of the South Carolina Code of Laws.

³⁵ Chapter 13 of Title 12 of the South Carolina Code of Laws.

³⁶ See also Chapter 19 of this publication and SC Revenue Ruling #08-12.

10

***Maximum
Tax Items***

Chapter 10

Maximum Tax Items

A. General Information

The sales and use taxes are imposed at the rate of 5%¹ for the sale or lease of tangible personal property subject to a maximum tax. Local taxes administered and collected by the Department on behalf of local jurisdictions do not apply to the sale or lease of tangible personal property subject to a maximum tax.

Maximum Tax Applies To:

(A) A maximum tax of \$300.00 is established for each sale² or lease³ of each:⁴

- motor vehicle (“Low speed vehicles” that meet the requirements of South Carolina Code §§56-2-110 through 56-2-130 are subject to the \$300 maximum tax.);⁵
- motorcycle⁶ (on-road or off-road);
- recreational vehicles, including tent campers, travel trailers, park trailers, motor homes and fifth wheels;
- boat⁷ (The sale of personal watercraft, such as a jet ski,⁸ and a barge⁹ are each the transfer of a “boat” subject to the \$300 maximum tax.);
- aircraft;
- trailer or semitrailer capable of being pulled only by a truck tractor;¹⁰

¹ The provisions of South Carolina Code §12-36-1110 which increased the sales and use tax rate from 5% to 6% effective June 1, 2007 do not apply to the sale or lease of tangible personal property subject to the maximum tax.

² The maximum tax only applies for each sale made after June 30, 1984.

³ The maximum tax only applies for each lease executed after August 31, 1985.

⁴ South Carolina Code §12-36-2110(A).

⁵ See the end of this “General Information” section for a definition of the term “motor vehicle.” See also South Carolina Revenue Ruling #10-6.

⁶ See the end of this “General Information” section for a definition of the term “motorcycle.”

⁷ See South Carolina Revenue Ruling #08-7 and the discussion later in this chapter on boats for a complete explanation.

⁸ South Carolina Revenue Ruling #04-10.

⁹ South Carolina Revenue Ruling #06-6. In addition, a barge that is permanently affixed to a (1) dock, (2) the ocean, lake or river bottom, or (3) any other realty is not used as a “boat” and is not entitled to the maximum tax under South Carolina Code §12-36-2110.

¹⁰ See the end of this “General Information” section for definitions of the terms “truck tractor,” “trailer,” and “semitrailer.”

- self-propelled light construction equipment with compatible attachments limited to a maximum of 160 net engine horsepower;¹¹
- fire safety education trailer; and
- horse trailer.

In order for the lease of any of the above items to qualify for the \$300 maximum tax, the lease must specifically state the term of, and remain in force for, a period in excess of 90 continuous days. In addition, the sales or use tax applies to each renewal of the lease and the maximum tax for that renewal will only apply if (1) the lease renewal is in writing and (2) the lease renewal specifically states a term of, and remains in force for, a period in excess of 90 continuous days.

- (B) A maximum tax of \$300.00 is established for the sale of each musical instrument, or each piece of office equipment,¹² purchased by a religious organization exempt under Internal Revenue Code Section 501(c)(3), provided the musical instrument or office equipment must be located on church property and used exclusively for the organization's exempt purpose. The religious organization must furnish to the seller an affidavit on forms prescribed by the department. The affidavit must be retained by the seller.
- (C) A maximum tax is established for the sale of a manufactured home¹³ as defined in South Carolina Code §40-29-20. The maximum tax applicable to the sale of a manufactured home depends on whether or not the manufactured home meets certain energy efficient requirements. See the section in this chapter on manufactured homes for details.¹⁴

Maximum Tax Does Not Apply To:

The following are examples of tangible personal property the sale or lease of which are not subject to the maximum tax:

- trailers or semitrailers capable of being pulled by vehicles other than a truck tractor;¹⁵
- pole trailers;

¹¹ In order for the maximum tax to apply to self propelled light construction equipment, the equipment must be used in construction. Equipment purchased for maintenance or repair purposes does not qualify for the maximum tax and is subject to the state sales and use tax at a rate of 6%, plus any applicable local sales and use taxes. See South Carolina Technical Advice Memorandum #89-13 and Form ST-405.

¹² South Carolina Code §12-36-2110(C).

¹³ South Carolina Code §12-36-2110(B).

¹⁴ Manufactured homes designated by the United States Environmental Protection Agency and the United States Department of Energy as meeting or exceeding each agency's energy efficiency requirements, or designated as meeting or exceeding the energy efficiency requirements under each agency's Energy Star program, are exempt from the sales and use tax for sales or purchases from July 1, 2009 through July 1, 2019. See the section in this chapter on manufactured homes for details.

¹⁵ See SC Revenue Ruling #14-2.

- boat trailers;¹⁶
- self-propelled light construction equipment with compatible attachments with a net engine horsepower that exceeds 160; and,
- all terrain vehicles, legend race cars,¹⁷ golf carts and other items not meeting the definition of a motor vehicle.

Sales or leases of these items are subject to a state tax rate of 6%, plus any applicable local sales and use tax.

Definitions

For purposes of computing the maximum tax, South Carolina Code §56-3-20 provides the following definitions of motor vehicle, motorcycle, vehicle, trailer, semitrailer, pole trailer, and truck tractor:

Motor Vehicle - Every vehicle which is self-propelled, except mopeds, and every vehicle which is propelled by electric power obtained from overhead trolley wires, but not operated upon rails.

Motorcycle – Every motorcycle having no more than two permanent functional wheels in contact with the ground or trailer and having a saddle for the use of the rider, but excluding a tractor.

Vehicle - Every device in, upon or by which any person or property is or may be transported or drawn upon a highway, except devices moved by human power or used exclusively upon stationary rails or tracks.

Trailer - Every vehicle with or without motive power, other than a pole trailer, designed for carrying persons or property and for being drawn by a motor vehicle and so constructed that no part of its weight rests upon the towing vehicle.

Semitrailer - Every vehicle with or without motive power, other than a pole trailer, designed for carrying persons or property and for being drawn by a motor vehicle and so constructed that some part of its weight and that of its load rests upon or is carried by another vehicle.

Pole Trailer - Every vehicle without motive power designed to be drawn by another vehicle and attached to the towing vehicle by means of a reach or pole or by being boomed or otherwise secured to the towing vehicle and ordinarily used for transporting long or irregularly shaped loads such as poles, pipes or structural members capable, generally, of sustaining themselves as beams between the supporting connections.

¹⁶ See South Carolina Revenue Ruling #08-7 and the discussion on boats for a complete explanation.

¹⁷ South Carolina Revenue Advisory Bulletin #00-03.

Truck Tractor - Every motor vehicle designed and used primarily for drawing other vehicles and not so constructed as to carry a load other than a part of the weight of the vehicle and load so drawn.

B. Specific Motor Vehicle Examples

The following outlines some specific examples of the application of the maximum tax to motor vehicles. A motor vehicle is a self-propelled device which is authorized for use on the highways of South Carolina.¹⁸

(A) Motor Vehicle and Specialized Attached Equipment

Since the sales tax and use tax are “transaction taxes,” each sale must be reviewed to determine the application of the tax and the maximum tax provisions. For example:

One Transaction: If a truck and a garbage compactor are sold in one transaction as a single unit at the time of the sale (i.e., delivery), the tax due is the lesser of 5% of the gross proceeds of sale or \$300.¹⁹ Local sales and use taxes are not applicable to this maximum tax transaction.

Multiple Transactions: If the truck and garbage compactor are sold in two separate transactions (i.e., two separate sales transactions or a sales transaction in which the compactor is not connected to the truck at the time of the delivery), then the tax due on the truck is the lesser of 5% of the gross proceeds of sale or \$300 (local sales and use taxes are not applicable to this maximum tax transaction) and the tax due on the garbage compactor is 6% of the gross proceeds of sale, plus any applicable local sales and use taxes., since the garbage compactor in this transaction is not a part of a motor vehicle.²⁰

(B) Motor Vehicle Lease with an Option to Buy

Lease: If a motor vehicle lease contract that exceeds 90 continuous days²¹ allows the lessee the option to purchase the motor vehicle at the end of the lease, the purchase of the motor vehicle is a separate transaction from the lease. Therefore, the lease is a transaction subject to the sales and use tax based on the lesser of 5% of the total lease payments plus other charges or \$300.00. If the purchase option is exercised by the lessee, the purchase is a separate transaction subject to the sales and use tax based on the lesser of 5% of the purchase price or \$300.00.²²

¹⁸ South Carolina Revenue Advisory Bulletin #00-03 and South Carolina Revenue Ruling #10-6. See also the definitions of “vehicle” and “motor vehicle” in the “General Information” section of this chapter.

¹⁹ South Carolina Technical Advice Memorandum #87-13.

²⁰ See also *Anonymous Company v. South Carolina Department of Revenue*, 03-ALJ-17-0435-CC (2004).

²¹ To qualify for the maximum tax, the lease must be in writing and state a term of, and remain in force for, a period in excess of 90 continuous days.

²² Attorney General Opinion dated 2/6/1998.

Sale: If a maximum tax item lease contract is not a true lease but a sale (*e.g.*, a financing arrangement), then the contract is one transaction. The sales contract is subject to the sales and use tax based on the lesser of 5% of the gross proceeds of the sale of the motor vehicle under the contract or \$300.00.

(C) Motor Vehicle Lease with an Option to Extend the Lease

If a motor vehicle lease contract that exceeds 90 continuous days²³ allows the lessee the option to extend the lease at the end of the original lease term, the extension of the lease of the motor vehicle, if exercised, is a separate transaction.

Therefore, the original motor vehicle lease is a transaction subject to the sales and use tax based on the lesser of 5% of the total lease payments plus other charges for the original term of the lease or \$300.00. The extended lease period, as a separate transaction when exercised, is subject to the sales and use tax based on the lesser of 5% of the total lease payments plus other charges for the extended term of the lease or \$300.00 provided the extension is in writing and states a term of, and remains in force for, a period in excess of 90 continuous days. If the extension does not meet these requirements, the extension is subject to the sales and use tax at a rate of 6% plus any applicable local sales and use taxes.

(D) Motor Vehicles Sold to Nonresidents²⁴

The sales tax due on a sale to a nonresident²⁵ of a motor vehicle that is to be registered and licensed in the nonresident purchaser's state of residence, is as follows:

1. The lesser of:

(a) the sales tax which would be imposed on the sale in the purchaser's state of residence or

(b) the tax that would be imposed under Chapter 36 of the South Carolina Code of Laws (the lesser of 5% of the gross proceeds of sale or \$300).

²³ To qualify for the maximum tax, the lease must be in writing and state a term of, and remain in force for, a period in excess of 90 continuous days.

²⁴ South Carolina Code §12-36-930 and South Carolina Information Letter #14-2. Note: The provisions of this section also apply to trailers, semitrailers, or pole trailers; however, the application of the provisions of South Carolina Code §12-36-930 with respect to trailers, semitrailers, or pole trailers is not discussed in the section since not all trailers, semitrailers, or pole trailers are subject to the maximum tax. For details as to vehicle that are or are not subject to the maximum tax, see the "General Information" section of this chapter.

²⁵ South Carolina Code §12-36-2120(25) exempts sales of a motor vehicles (excluding trucks) or motorcycles, which are required to be licensed to be used on the highways, sold to a resident of another state, but who is located in South Carolina by reason of orders of the United States Armed Forces. This exemption is allowed only if within ten days of the sale the vendor is furnished a statement from a commissioned officer of the Armed Forces of a higher rank than the purchaser certifying that the buyer is a member of the Armed Forces on active duty and a resident of another state or if the buyer furnishes a leave and earnings statement from the appropriate department of the armed services which designates the state of residence of the buyer.

2. No sales tax is due in South Carolina if a nonresident purchaser cannot receive a credit in his resident state for sales tax paid to South Carolina.

Note: Even though a credit will be allowed in the purchaser's state of residence for sales tax paid in South Carolina under this provision, a state or local tax may still be due in the purchaser's state of residence. This may be a result of a higher state tax due in the purchaser's state, a local tax due in the purchaser's state, or other provisions of the state tax law in the purchaser's state of residence (e.g., credit provisions concerning state vs. local taxes).

At the time of the sale, the seller must obtain from the purchaser a notarized statement of the purchaser's intent to license the vehicle in the purchaser's state of residence within 10 days²⁶. South Carolina Form ST-385, "Affidavit for Intent to License Motor Vehicle, Trailer, Semitrailer, or Pole Trailer Purchased in South Carolina in Purchaser's State of Residence" may be used. The seller should retain a completed and notarized copy of Form ST-385. The purchaser should give a copy to the appropriate agency (e.g., revenue department, department of motor vehicles) of the purchaser's state of residence.

(E) Truck and Firefighting Equipment

Fire trucks are motor vehicles that qualify for the \$300 maximum tax. In addition, a specific provision of the law allows equipment provided, supplied, or installed on a firefighting vehicle to be included with the vehicle for purposes of calculating the maximum tax due.²⁷ This does not include individual firefighter's protective clothing.²⁸

The following outlines the proper sales or use tax to be imposed upon sales of trucks and fire fighting equipment:

1. The sale of a fire truck alone is subject to tax in the amount of 5% of the truck's sales price or \$300, whichever is less.
2. Sales of fire fighting equipment such as ladders, hoses, fire extinguishers, oxygen tanks, and axes (except for protective clothing) are part of the sale of the truck (i.e. the same transaction) if the equipment is installed, provided, or supplied with the vehicle and included in the purchase price at the time of the sale of the vehicle.

²⁶ If the purchaser does not plan to license the vehicle in his state of residence or does not complete the notarized statement, then the provisions of South Carolina Code §12-36-930 are not applicable and the sale is taxed as if the purchaser were a resident of South Carolina.

²⁷ South Carolina Code §12-36-2120(E). See also South Carolina Revenue Ruling #08-10 and the "General Information" section of this chapter for a definition of the term "motor vehicle."

²⁸ See South Carolina Revenue Ruling #08-10.

If the equipment (except for protective clothing) is installed, provided, or supplied with the vehicle and included in the purchase price at the time of the sale of the vehicle, the sale of the truck and the equipment (except for protective clothing) is taxed as one transaction. The tax due is 5% of the combined sales price of the truck and fire fighting equipment or \$300, whichever is less.

The sale of protective clothing, whether or not installed, provided, or supplied with the vehicle and included in the purchase price at the time of the sale of the vehicle, is subject to the tax at the rate of 6%²⁹, plus any applicable local sales and use tax administered and collected by the Department of Revenue on behalf of a local jurisdiction.

If the equipment is not installed, provided, or supplied with the vehicle and included in the purchase price at the time of the sale of the vehicle, the sale of the truck and fire fighting equipment are separate and distinct transactions. The tax due on the sale of the truck is 5% of the sales price of the truck or \$300, whichever is less. The tax due on the sale of the firefighting equipment (including protective clothing) is 6%³⁰ of the sales price of the equipment, plus any applicable local sales and use tax administered and collected by the Department of Revenue on behalf of a local jurisdiction.

C. Boats, Boat Trailers and Boat Motors

The following guidelines concern the tax rates applicable to the sale of boats, motors, or boat trailers:³¹

1. A boat sold alone is subject to the state sales and use tax at the lesser of 5% of the gross proceeds from the sale or \$300.
2. A motor sold alone is subject to the state sales and use tax at the rate of 6% of the gross proceeds from the sale.
3. A boat trailer sold alone is subject to the state sales and use tax at the rate of 6% of the gross proceeds from the sale.
4. A boat sold with a motor permanently attached to it is subject to the state sales and use tax at the lesser of 5% of the gross proceeds from the sale of the boat and motor or \$300.³²

²⁹ The 6% state tax due on the sale of the firefighting equipment and protective clothing became effective June 1, 2007. Prior to June 1, 2007, the state tax due on the sale of the firefighting equipment and protective clothing was 5%.

³⁰ For purposes of this discussion, boat trailers do not include trailers which must be pulled by truck tractors or boat trailers which are used by manufacturers to transport boats to dealerships.

³¹ South Carolina Revenue Ruling #08-7.

³² A boat motor is considered permanently attached to a boat if it is (1) an inboard motor or (2) an outboard motor sold mounted to the boat, connected to a permanent steering mechanism, and included in the price of the boat.

5. A boat trailer sold in conjunction with the sale of a boat is subject to the state sales and use tax at the rate of 6% of the gross proceeds from the sale of the boat trailer. The boat is subject to the state sales and use tax at the lesser of 5% of the gross proceeds from the sale of the boat or \$300.
6. A boat trailer sold in conjunction with the sale of a boat that has a permanently attached motor is subject to the state sales and use tax at the rate of 6% of the gross proceeds from the sale of the boat trailer. The boat with a permanently attached motor is subject to the state sales and use tax at the lesser of 5% of the gross proceeds from the sale of the boat and motor or \$300. (Note: If the price of the boat trailer is not separately stated from the price of the boat and motor, the boat trailer is subject to the state sales and use tax at 6% of the fair market value of the boat trailer. If the price of the boat trailer is separately stated from the price of the boat and motor, the price breakdown must be reasonable and supported by the records of the taxpayer, otherwise the trailer will be taxed at 6% of its fair market value.)

Note: All transactions listed above that are subject to the maximum tax of \$300 are not subject to local sales and use taxes administered and collected by the South Carolina Department of Revenue on behalf of local jurisdictions. All transactions listed above that are not subject to the maximum tax (and therefore taxed at 6% for state sales and use tax purposes) are subject to local sales and use taxes administered and collected by the South Carolina Department of Revenue on behalf of local jurisdictions.

D. Manufactured Homes

Calculation of the Tax: The maximum tax on the sale of a manufactured home,³³ as defined in South Carolina Code §40-29-20, the tax is calculated as follows:

- (1) subtract trade-in allowance from the sales price;
- (2) multiply the result from (1) by 65%;
- (3) if the result from (2) is no greater than \$6,000.00, multiply by 5% for the amount of tax due;
- (4) if the result from (2) is greater than \$6,000.00, the tax due is \$300.00 plus 2% of the amount greater than \$6,000.00.

Exemption for Tax in Excess of \$300: A manufactured home is exempt from any tax in excess of \$300.00 that may be due as a result of the calculation in item (4) above if it meets these energy efficiency levels: storm or double pane glass windows, insulated or storm doors, a minimum thermal resistance rating of the insulation only of R-11 for walls, R-19 for floors, and R-30 for ceilings.

³³ South Carolina Code §12-36-2110(B).

However, variations in the energy efficiency levels for walls, floors, and ceilings are allowed and the exemption on tax due above \$300.00 applies if the total heat loss does not exceed that calculated using the levels of R-11 for walls, R-19 for floors, and R-30 for ceilings. The edition of the American Society of Heating, Refrigerating, and Air Conditioning Engineers Guide in effect at the time is the source for heat loss calculation.

Exemption for Entire Tax Due: From July 1, 2009, to July 1, 2019, a manufactured home is exempt from any tax that may be due as a result of the calculation above if it has been designated by the United States Environmental Protection Agency and the United States Department of Energy as meeting or exceeding each agency's energy saving efficiency requirements or has been designated as meeting or exceeding such requirements under each agency's ENERGY STAR program.

Records Requirements: The dealer selling the manufactured home must maintain records, on forms provided by the State Energy Office, on each manufactured home sold that meets the energy efficiency levels provided above. These records must be maintained for three years and must be made available for inspection upon request of the Department of Consumer Affairs or the State Energy Office.

Note: The maximum tax authorized does not apply to a single-family modular home regulated pursuant to Chapter 43, Title 23.

Furniture and Appliances Sold with the Home: Furniture and appliances are not considered a part of a manufactured or modular home, unless they are built-ins as noted below. For example, televisions, counter appliances, sofas, chairs and tables, even though sold with a home, are not a part of the home. Because these items are not a part of the home, they are taxed separately from the home at 6%, plus any applicable local sales and use tax, of their sales price less any trade-in allowed. The amount upon which the tax is calculated on furniture and appliances that are not built ins is the amount listed in the sales contract for these items or the retail fair market value of these items if the amounts for these items are not listed in the contract or if the amounts listed in the contract do not reasonably represent the retail fair market value of these items.³⁴

Items such as disposals, built-in dishwashers, and built-in stoves are considered a part of the home and are not taxed separately from the home if installed at the time of the retail sale of the home.³⁵

Heat Pumps, Air Conditioning Systems, Etc.: Heat pumps, air conditioning systems, skirting, steps, decks, septic tanks, wells, and driveways built or installed after the home is delivered to the construction site are not considered a part of the delivered home and are taxed separately from the home. The sale of these items to, or the purchase of these items by, the person who will build or supply and install them is subject to the tax at a rate of 6%, plus any applicable local sales and use tax.³⁶

³⁴ SC Regulation 117-335.4.

³⁵ SC Regulation 117-335.4.

³⁶ SC Regulation 117-335.5.

E. Musical Instruments and Office Equipment Sold to Religious Organizations

The sale of each musical instrument, or each piece of office equipment,³⁷ purchased by a religious organization exempt under Internal Revenue Code Section 501(c)(3) is subject to a maximum tax of \$300, provided the musical instrument or office equipment is located on church property and used exclusively for the organization's exempt purpose. The religious organization must furnish to the seller an affidavit on forms prescribed by the department (Form ST-382). The affidavit must be retained by the seller.

³⁷ South Carolina Code §12-36-2110(C).

11

Accommodations

Chapter 11

Accommodations

A. General Information

Imposition: A 7% sales tax is imposed upon the gross proceeds from the rentals or charges for sleeping accommodations furnished at any place in which rooms, lodgings, or sleeping accommodations of any kind are furnished, including but not limited to:

- hotels
- motels
- inns
- campgrounds (campground spaces)
- tourist courts
- tourist camps
- condominiums
- residences

In addition, local sales taxes administered and collected by the Department on behalf of local jurisdictions are imposed upon the gross proceeds from the rentals or charges for sleeping accommodations.¹

The sales tax on accommodations does not apply to:

- (1) the lease or rental of accommodations supplied to the same person for a period of 90 continuous days;²
- (2) the lease or rental of accommodations at a facility consisting of less than six sleeping rooms, contained on the same premises, which is used as the place of abode of the owner or operator of such facilities; or
- (3) the gross proceeds from rental income wholly excluded from the gross income of the taxpayer pursuant to Internal Revenue Code Section 280A(g). For this exemption to apply, the taxpayer must rent the dwelling unit for less than 15 days during the taxable year and must use the dwelling unit as a residence (for personal purposes) 14 days or more during the taxable year.³

¹ In addition, local governments may impose a local accommodations tax of up to 3%. This is in addition to the statewide sales and accommodations taxes and the local sales taxes administered and collected by the Department (if applicable). **This local accommodations tax is collected by the local government imposing the tax, not the Department of Revenue.**

² South Carolina Code §12-36-920(A) and SC Regulation 117-307.4.

³ See Internal Revenue Code Section 280A(d) for more details on when a dwelling unit is used as a residence.

Liability: The person liable for the tax is the person in the business of furnishing the accommodations, whether such person is the owner or a real estate agent, listing service, broker, online travel company, or similar entity handling the accommodations. The person liable for the sales tax on accommodations must obtain a retail license and remit the tax to the Department on a monthly basis.

However, persons furnishing accommodations to transients for one week or less in any calendar quarter are not required to obtain a retail license, but are required to remit the tax annually by April 15th of the following calendar year.⁴ In addition, persons who rent a dwelling unit for less than 15 days during the taxable year and who also use the dwelling unit as a residence (for personal purposes) for 14 days or more during the taxable year are not required to obtain a retail license.

The following examples illustrate the person liable for the sales tax on accommodations:

Owner Rents: Mr. Smith lives in Greenville, South Carolina and also owns a vacation home in Hilton Head, South Carolina. He uses the vacation home at various times throughout the year, but rents the vacation home on a weekly basis throughout the summer (more than 14 days) and several other times throughout the year on a weekly basis.⁵

Mr. Smith is required to (1) obtain a retail license and (2) remit the 7% sales tax on accommodations to the Department, plus the applicable local sales and use tax administered and collected by the Department on behalf of Beaufort County, with respect to the gross proceeds he receives from the rental of his vacation home. The tax must be remitted on a monthly basis.⁶

Listing Service Rents: Mr. Smith hires XYZ Vacation Rental Company to rent his Hilton Head, South Carolina vacation home on a weekly basis throughout the summer.⁷

XYZ Vacation Rental Company is required to (1) obtain a retail license and (2) remit the 7% sales tax on accommodations to the Department, plus the applicable local sales and use tax administered and collected by the Department on behalf of Beaufort county, with respect to the gross proceeds XYZ Vacation Rental Company receives from the rental of the vacation home. The tax must be remitted on a monthly basis.⁸

⁴ South Carolina Code §12-36-510(B)(3).

⁵ While it is possible for the same person to rent the vacation home for several consecutive weeks, in this example, all rentals are for less than 90 continuous days.

⁶ See also Administrative Law Court decisions #07-ALJ-17-0407-CC (2009); #00-ALJ-17-0569-CC (2001) and #96-ALJ-17-0380-CC (1997).

⁷ While it is possible for the same person to rent the vacation home for several consecutive weeks, in this example, all rentals are for less than 90 continuous days.

⁸ See also Administrative Law Court decisions #00-ALJ-17-0569-CC (2001) and #96-ALJ-17-0380-CC (1997).

Owner Rents for Less Than 15 Days during the Taxable Year: Mr. Smith lives in Greenville, South Carolina and also owns a vacation home in Hilton Head, South Carolina. He uses the vacation home throughout the year (more than 14 days), but he only rents the vacation home one weekend a year during the Heritage Golf Tournament.

Mr. Smith is not required to obtain a retail license and is not liable for the 7% sales tax on accommodations to the Department or any applicable local sales and use taxes administered and collected by the Department on behalf of Beaufort County, with respect to the gross proceeds he receives from the rental of his vacation home.

Listing Service Rents a Client's Residence for Less Than 15 Days during the Taxable Year: Mr. Smith lives in Greenville, South Carolina and also owns a vacation home in Hilton Head, South Carolina. He uses the vacation home throughout the year (more than 14 days). Mr. Smith hires XYZ Vacation Rental Company to rent his Hilton Head, South Carolina vacation home for one weekend a year during the Heritage Golf Tournament.

XYZ Vacation Rental Company is required to (1) obtain a retail license and (2) remit the 7% sales tax on accommodations to the Department, plus the applicable local sales and use tax administered and collected by the Department on behalf of Beaufort county, with respect to the gross proceeds XYZ Vacation Rental Company receives from the rental of the vacation home.

Rentals to Transients at Residential Retirement Communities:⁹ As an amenity to their residents, ABC Residential Retirement Community sets aside a unit for short-term rentals. Out-of-town family members and friends of the residents of the residential retirement community may rent the unit while visiting. Payment for this unit may be made by the resident on behalf of the visitor or by the visitor. The unit is rented on a short-term basis, typically daily or weekly, but in some cases may be available to rent for a month or more.

ABC Residential Retirement Community is required to (1) obtain a retail license and (2) remit the 7% sales tax on accommodations to the Department, plus the applicable local sales and use tax administered and collected by the Department on behalf of the local jurisdiction (*e.g.*, county, municipality), with respect to the gross proceeds of such nightly, weekly or monthly rentals to family and friends of homeowners, unless the same unit is provided to the same person for a period of ninety or more continuous days.

⁹ See South Carolina Revenue Ruling #09-7.

Note: Some residential retirement facilities are operated by nonprofit organizations. If the nonprofit organization qualifies for the exemption under South Carolina Code §12-36-2120(41), rentals of accommodations by the nonprofit organization will not be subject to the sales tax. For a determination as to whether it qualifies for the exemption in South Carolina Code §12-36-2120(41), a nonprofit organization may apply for the exemption using a Form ST-387. Nonprofit organizations that have obtained the exemption certificate are not required to obtain a retail sales tax license. See South Carolina Revenue Procedure #03-6 for more information concerning the sales tax exemption under South Carolina Code §12-36-2120(41).

Online Travel Company (Hotel Intermediary). Through the Internet, potential hotel guests can search for available hotel rooms at the website of ABC Online Travel Company and make a reservation for a room at a hotel and location that best suits their needs. ABC Online Travel Company will charge the customer's credit card for the total reservation price at the time the reservation is booked. ABC Online Travel Company has previously negotiated a price it will pay for the room to be used by the guest. The guest will not pay any additional amount to the hotel for the room. However, if the guest takes advantage of any additional services at the hotel, then the guest must pay the charges for such services (if any) to the hotel, not the ABC Online Travel Company. This method of doing business by ABC Online Travel Company is generally referred to as the "merchant model."

ABC Online Travel Company is required to (1) obtain a retail license and (2) remit the 7% sales tax on accommodations to the Department, plus the applicable local sales and use tax administered and collected by the Department on behalf of the local jurisdiction imposing the local sales and use tax, with respect to the gross proceeds ABC Online Travel Company receives from the rental of the hotel room. ABC Online Travel Company's "gross proceeds" is the total amount it receives from its customer with no deduction for any labor or service.

The tax must be remitted on a monthly basis. The hotel is liable for the tax on any "additional guest charges" it charges the guest directly as well as the tax on room rental charges and "additional guest charges" it charges other guests who directly reserves rooms with the hotel as opposed to an online travel company.

Note: The South Carolina Supreme Court upheld the imposition of the sales tax on accommodations on an online travel company in the case of *Travelscape LLC v. South Carolina Department of Revenue*, 705 SE2d 28, (2011).

Notification Requirements¹⁰: The statute imposing the sales tax on accommodations requires real estate agents, listing services, brokers or similar entities handling the accommodations for an owner to notify the Department "if rental property, previously listed by them, is dropped from their listings."¹¹

¹⁰ SC Information Letter#11-19

¹¹ South Carolina Code §12-36-920(C).

Therefore, if a real estate agent, broker, or similar listing service is handling the accommodations for an owner of a home, condominium unit, timeshare unit or other rental property and is remitting the 7% state sales tax on accommodations on the rental of that property, then the real estate agent, broker, or similar listing service must notify the Department if the owner decides to no longer list that rental property with them.

The notification should be sent to:

South Carolina Department of Revenue
Sales Office Audit– Accommodations Notification Information
P.O. Box 125
Columbia, South Carolina 29214

The notifications should include the following information concerning each listing:

1. Name of the owner of the rental property,
2. Address of the owner of the rental property,
3. Address of the rental property, and
4. The date the rental property was dropped from the listings of the real estate agent, broker, or similar listing service.

The notification may be, but does not need to be, sent each time a listing is dropped. The notification may be sent twice a year – once, by July 31st, for all listings dropped from January through June, and once, by January 31st, for all listings dropped from July through December.

B. Transactions Not Subject to the Sales Tax on Accommodations

The following provides examples of transactions that are not subject to the sales tax on accommodations as a result of (1) exclusions or exemptions provided in federal or state law and (2) transactions that do not fall within the imposition of the sales tax on accommodations. In addition, some examples of exclusions or exemptions also include situations where the tax is applicable to demonstrate the limitations of the exclusion or exemption.

General Exclusions

90 Day Rentals: The lease or rental of accommodations supplied to the same person (same room, same person) for a period of 90 continuous days.¹²

¹² South Carolina Code §12-36-920(A) and SC Regulation 117-307.4.

Rentals of Residence for Less Than 15 Days: The lease or rental of a dwelling unit by its owner for less than 15 days during the taxable year, provided the owner of the dwelling unit uses it as a residence (used for personal purposes) for 14 days or more during the taxable year.¹³

5 Sleeping Rooms or Less: The lease or rental of accommodations at a facility consisting of less than six sleeping rooms, contained on the same premises, which is used as the place of abode of the owner or operator of such facilities.¹⁴

For this exclusion to apply, the facility must serve as the owner's or operator's "place of abode" during the same times at which the remaining sleeping rooms are rented to transients and the rooms must not be rented to transients by a person other than the owner or operator using the facility as his or her "place of abode."¹⁵

The following four examples¹⁶ illustrate the application of this exclusion for a facility with 5 or less sleeping rooms:

Owner Present in Home: W owns a home with less than six sleeping rooms and lives in the home throughout the year. He operates this home as a "bed and breakfast" by renting the remaining sleeping rooms to vacationers on a daily or weekly basis. W rents these rooms to vacationers himself and does not employ the services of a real estate agent or broker.

The rentals by W of these rooms to vacationers qualify for the exception in the statute; therefore, the rental charges paid to W by the vacationers are not subject to the sales tax on accommodations.

Owner Not Present in Home: X owns a home with less than six sleeping rooms and uses the home only for one or two weeks a year for family vacations. She rents the home to vacationers during the rest of the year on a weekly basis (more than 14 days). She rents it herself and does not employ the services of a real estate agent or broker.

The rentals by X of the home to vacationers do not qualify for the exception in the statute; therefore, the rental charges paid to X by the vacationers are subject to the sales tax on accommodations.

Use of Rental Agency: Y owns a home with less than six sleeping rooms and lives in the home throughout the year. He operates this home as a "bed and breakfast" by renting the remaining sleeping rooms to vacationers on a daily or weekly basis. However, Y never rents these rooms to vacationers himself.

¹³ South Carolina Code §12-36-920(A)(2). See also Internal Revenue Code Section 280A(g).

¹⁴ South Carolina Code §12-36-920(A).

¹⁵ SC Regulation 117-307.3.

¹⁶ SC Regulation 117-307.3.

He employs the services of a real estate agent who rents the remaining sleeping rooms for him.

The rentals by the real estate agent of these rooms to vacationers for Y do not qualify for the exception in the statute; therefore, the rental charges paid to the real estate agent by the vacationers are subject to the sales tax on accommodations with the real estate agent liable for the tax.

Both Rental by Owner and Rental Agency: Z owns a home with less than six sleeping rooms and lives in the home throughout the year. He operates this home as a “bed and breakfast” by renting the remaining sleeping rooms to vacationers on a daily or weekly basis. He employs the services of a real estate agent who rents the remaining sleeping rooms for him. However, sometimes Z rents these remaining rooms to vacationers himself.

The rentals by the real estate agent of these rooms to vacationers for Z do not qualify for the exception in the statute; therefore, the rental charges paid to the real estate agent by the vacationers are subject to the sales tax on accommodations with the real estate agent liable for the tax.

The occasional rentals by Z of these rooms to vacationers qualify for the exception in the statute; therefore, the rental charges paid to Z by the vacationers are not subject to the sales tax on accommodations.

Federal Government Agencies¹⁷

Charges for hotel and motel accommodations to a federal employee on official government business are exempt from sales tax if the accommodations are purchased directly by the federal government.

Therefore, the sales tax on accommodations is not applicable when:

1. The federal government is billed directly by the retailer;
2. The federal employee pays by government check; or,
3. The federal employee pays by government credit card¹⁸ and the federal government is billed directly by the credit card company.

However, charges for hotel and motel accommodations to a federal employee on official government business are subject to the sales tax if the accommodations are purchased by the federal employee, even if the employee is reimbursed for the charges. This includes transactions in which:

¹⁷ South Carolina Code §12-36-2120(2), SC Regulation 117-307.6 and South Carolina Revenue Ruling #09-2.

¹⁸ SC Revenue Ruling #09-1.

1. The federal employee pays by personal check; or,
2. The federal employee pays by credit card,¹⁹ is billed directly by the credit card company, and is reimbursed by the federal government.

American Red Cross²⁰

The sale to the American Red Cross is exempt from sales tax if:

- (1) the American Red Cross is billed directly for the transaction,
- (2) the American Red Cross employee uses a credit card that is billed directly to the American Red Cross, or
- (3) the American Red Cross employee pays with an American Red Cross check.

The sale to the American Red Cross employee is subject to sales tax when the employee pays for the charge and is reimbursed by the American Red Cross.

Foreign Diplomats

Sales to foreign officials are exempt from the sales tax in accordance with the type of card issued by, and the level of exemption authorized by, the Office of Foreign Mission.²¹ The exemption is only valid for the person whose photo appears on the card. Vendors may ask to see additional forms of identification, such as diplomatic I.D., or driver's license.

Federal Credit Unions²²

The sale to the federal credit union is exempt from sales tax if: (1) the federal credit union is billed directly for the transaction, (2) the federal credit union employee uses a credit card that is billed directly to the federal credit union, or (3) the federal credit union employee pays with a federal credit union check. The person being furnished accommodations must be an employee of the federal credit union to come within this exemption. For example, if the federal credit union employee works for an association that represents various federal credit unions and the association pays the charges, then the accommodations are taxable since the association is not a federal credit union.

¹⁹ SC Revenue Ruling #09-1.

²⁰ SC Revenue Ruling #09-2.

²¹ South Carolina Revenue Ruling #09-2.

²² South Carolina Revenue Ruling #09-2 and SC Attorney General Opinion #S-OAG-59.

The sale to the federal credit union employee is subject to sales tax when the employee pays for the charge and is reimbursed by the federal credit union. In addition, sales of accommodations to state credit unions are subject to the tax.

Charitable Childrens' Hospital

The lease or rental of accommodations to an employee of a charitable hospital predominately serving children exempt from property taxes under South Carolina Code §12-37-220, where care is provided without charge to the patient as provided in South Carolina Code §12-36-2120(47)²³ is exempt from the sales tax on accommodations if:

- (1) the qualifying charitable hospital is billed directly for the transaction,
- (2) the qualifying charitable hospital employee uses a credit card that is billed directly to the hospital, or
- (3) the nonprofit employee pays for the charge with the hospitals check.

Marina or Dry Boat Storage Space²⁴

The rental of wet slips, by a marina furnishing amenities such as electricity, water, sewage, showers, and cable television, are not subject to the sales tax on accommodations. The rentals of dry storage for boats are not subject to the sales tax on accommodations tax.

Reserved Recreational Vehicle Space at a Raceway²⁵

The rental of reserved recreational vehicle parking spaces at a motorsports raceway is not subject to the sales tax on accommodations.

Exchange of Accommodations

The Department has held that accommodations provided under exchange agreements are subject to the sales tax on accommodations²⁶. However, the General Assembly subsequently enacted an exemptions for “any...exchange of accommodations in which the accommodations to be exchanged are the primary consideration.”²⁷

²³ South Carolina Revenue Ruling #09-2.

²⁴ South Carolina Technical Advice Memorandum #90-5.

²⁵ South Carolina Private Letter Ruling #93-2.

²⁶ South Carolina Revenue Ruling #98-5.

²⁷ South Carolina Code §12-36-2120(31).

Therefore, the furnishing of accommodations via an exchange of accommodations is not subject to the sales tax on accommodations if the accommodations to be exchanged is the primary consideration. If the accommodations to be exchanged is not the primary consideration, the furnishing of the accommodations is subject to the sales tax on accommodations, unless otherwise exempt.

C. Additional Guest Charges²⁸

A 6% sales tax is imposed upon “additional guest charges” at places that furnish accommodations to transients. In addition, local sales taxes administered and collected by the Department on behalf of local jurisdictions are imposed upon the gross proceeds from the “additional guest charges.”

The term “additional guest charge” means an amount which is added to the guest’s room charge for the following services for the guest:

- room service;
- laundering and dry cleaning services;
- in-room movies;
- telephone charges; and,
- rentals of meeting rooms.

Charges for rooms, lodgings and accommodations are taxed at 7%, while other charges for room service, laundering and dry cleaning services, in-room movies, telephone services, and the rental of meeting rooms provided at the hotel, when over and above the services customarily provided with the room, are taxed at 6% as an "additional guest charge." However, if an "additional guest charge" would be taxed under other provisions of the sales and use tax law (Chapter 36 of Title 12), then such charges are not taxed as an "additional guest charge."

As part of Act No.172 of 2014, the General Assembly specifically deleted (effective July 1, 2014) from the definition of “additional guest charges” any charges for amenities, entertainment, special items in promotional tourist packages, and other guest services. Therefore, charges for these services are not subject to the sales tax as an “additional guest charge.” In addition, if separately stated on the bill to a customer and optional, these charges are not subject to the 7% sales tax imposed upon accommodations.

The burden of proof that a charge is an additional guest charge, and not part of the price for the room, rests with the taxpayer. Failure to prove that a particular charge is for a service that is over and above the services customarily provided with the room will subject the charge to the 7% tax rate.

²⁸ South Carolina Code §12-36-920(B) and SC Revenue Ruling #14-5.

D. Examples of the Application of the Sales Tax on Accommodations and Additional Guest Charges²⁹

Telephone Charges

1. Q. If a hotel charges \$100.00 for a room, and that price includes the room and use of the phone for local calls, what tax rate applies to the \$100.00?

A. The \$100.00 charge would be subject to a tax rate of 7%. The use of the phone is a part of the services offered and provided with the room for the \$100.00.
2. Q. If a hotel charges \$80.00 per day for a room, and the customer is also charged \$5.00 per day for the availability of the phone for local calls, what tax rate applies to each of the charges?

A. The \$80.00 room charge and the \$5.00 telephone charge are taxed at 7%. The availability of a phone is a part of the services offered and provided with a room. The \$5.00 is charged whether or not the guest uses the phone. Therefore, it is not an additional guest charge when the charge is based on a per day rate.
3. Q. If a hotel charges \$80.00 per day for a room, and the customer is also charged \$1.00 per local phone call, what tax rate applies to each of the charges?

A. The \$80.00 room charge is taxed at 7%. Each \$1.00 phone charge is taxed at 6%. The availability of a phone is a part of the services offered and provided with a room; however, the use of the phone for a local call is over and above the services customarily provided with the room. Guests expect to pay a charge for each local call made from the room phone. Therefore, the \$1.00 is an additional guest charge when the charge is based on a per call basis. (See Commission Decision #93-66.)
4. Q. If a hotel charges \$80.00 for a room, and the customer is also charged \$20.00 for various long distance calls made, what tax rate applies to each of the charges?

A. The \$80.00 room charge is taxed at 7%, while the remaining charges for the long distance calls are taxed at 6% as additional guest charges. The Department, in Decision #92-11 held that the charges for long distance telephone calls were not otherwise taxed under Chapter 36 and were therefore taxable as additional guest charges. (See also Commission Decision #93-66)

²⁹ These examples can be found in SC Revenue Ruling #14-5. Also, see South Carolina Revenue Ruling #14-7 for the application of the sales tax on additional guest charges to hurricane insurance.

Maid Service

5. Q. If a hotel charges \$100.00 for a room, and that price includes maid service, what tax rate applies to the \$100.00?
- A. The \$100.00 charge would be subject to a tax rate of 7%. The maid service is a service provided with the room and is, therefore, a part of the room charge that is subject to the tax at 7%.
6. Q. If a hotel charges \$80.00 for a room, and the customer also must pay a mandatory \$20.00 charge for maid service, which may or may not be separately stated, what tax rate applies to each of the charges?
- A. The \$80.00 room charge and the \$20.00 maid service charge are taxed at 7%. The maid service is part of the services provided with the room. The fact that it may be separately charged does not make it a charge for a separate service. In this case the maid service is mandatory, and therefore, the actual charge for the room is \$100.00 which is taxed at 7%.
7. Q. If a rental agency charges \$800.00 per week for a condominium unit, and the customer also must pay a mandatory \$50.00 charge for maid service at the end of the week, what tax rate applies to each of the charges?
- A. The \$800.00 weekly unit charge and the \$50.00 maid service charge are taxed at 7%. The maid service is part of the services provided with the unit. The fact that it may be separately charged does not make it a charge for a separate service. The maid service is mandatory, and therefore, the actual charge for the unit is \$850.00, which is taxed at 7%.
8. Q. If a rental agency charges \$800.00 per week for a condominium unit, and the customer is required to leave the unit in a clean condition, what tax rate applies to each of the charges if the customer has the option to have the rental agency clean the unit at the end of the week for \$50.00?
- A. The \$800.00 weekly unit charge is taxed at 7% and the \$50.00 optional maid service charge is not subject to the sales tax. The \$50.00 optional maid service is provided over and above the services provided with the unit, but it is not an “additional guest charge” under the statute. The \$50.00 is therefore not subject to the tax.
9. Q. If a rental agency charges \$800.00 per week for a condominium unit, a mandatory \$50.00 charge for maid service at the end of the week, and the customer has the option to receive daily maid service for \$20.00 a day, what tax rate applies to each of the charges?

- A. The \$800.00 weekly unit charge and the \$50.00 maid service charge are taxed at 7%. The maid service is part of the services provided with the unit. The maid service is mandatory, and therefore, the actual charge for the unit is \$850.00, which is taxed at 7%. The \$20.00 optional maid service is provided over and above the services provided with the unit, but it is not an “additional guest charge” under the statute. The \$20.00 is therefore not subject to the tax.

In-Room Movies

10. Q. If a hotel charges \$100.00 for a room, and that price includes the in-room movies at no extra charge, what tax rate applies to the \$100.00?
- A. The \$100.00 charge would be subject to a tax rate of 7%. The availability of in-room movies is a part of the services offered and provided with the room for the \$100.00.
11. Q. If a hotel charges \$80.00 per day for a room, and the customer is also charged a mandatory fee of \$5.00 per day for in-room movies (whether or not the guest watches any movies), what tax rate applies to each of the charges?
- A. The \$80.00 room charge and the mandatory \$5.00 in-room movie charge are taxed at 7%. The availability of in-room movies is a part of the services offered and provided with a room. The \$5.00 is charged whether or not the guest watches the movies. Therefore, it is not an additional guest charge when the charge is based on a per day rate and the guest is charged whether or not the movies are watched.
12. Q. If a hotel charges \$80.00 per day for a room, and the customer is also charged \$7.00 for each in-room movie he watched, what tax rate applies to each of the charges?
- A. The \$80.00 room charge is taxed at 7%. The \$7.00 movie charge is taxed at 6%. The availability of in-room movies is a part of the services offered and provided with a room; however, the charge for viewing a movie is over and above the customary charge for the room. Guests expect to pay a charge for each movie viewed. Therefore, the \$7.00 is an additional guest charge when the charge is based on a separate charge for watching the movie. The tax on this additional guest charge is the liability of the hotel, regardless of whether or not service is being provided by a third party or the hotel itself. (See Commission Decision #95-26.)

Meals

13. Q. If a hotel charges \$100.00 for a room, and that price includes a continental breakfast for the guest, what tax rate applies to the \$100.00?
- A. The \$100.00 charge is taxed at 7%. Since the continental breakfast is provided with the room, it is not an additional guest charge. (The withdrawal of the food from the hotel's inventory is subject to the sales tax based on its fair market value. See Code Section 12-36-90, Code Section 12-36-110 and Commission Decision #93-66.)
14. Q. If a hotel charges \$100.00 for a room, and also charges the guest a separately stated \$20.00 "club" fee, what tax rate applies to each of the charges? (The "club" fee, for that extra \$20.00, provides the guest access to a buffet meal that is not available to other guests.)
- A. The Department, in Decision #92-32, held that the separately stated charge of \$20.00 was not part of the charge for the room but a retail sale of the meal to the guest. Therefore, the charges are taxed as follows: 7% tax applies to the \$100.00 charge for the room and 6% tax applies to the \$20.00 charge for the meal. The meal is not taxed as an additional guest charge under Code Section 12-36-920(B) since it is otherwise taxed at 6% under Chapter 36 - Code Section 12-36-910.

Linens

15. Q. If a rental agency charges \$800.00 per week for a condominium unit, and the customer has the option to rent linens for \$50.00 for the week, what tax rate applies to each of the charges?
- A. The \$800.00 weekly unit charge is taxed at 7%. The rental of the linens is optional and not part of the services provided with the unit for the \$800.00 charge. The \$50.00 rental of the linens is not an additional guest charge since the rental charge for the linens is a sale of tangible personal property and is otherwise taxed at 6% under Chapter 36 - Code Section 12-36-910.

Golf and Other Tourist Packages

16. Q. If a hotel has a "golf package" for \$100.00 per night, and the customer is entitled to a room at the hotel, one round of golf at a golf course at no extra charge, and a meal at no extra charge, what tax rate applies?

- A. Based on the Department's longstanding administrative policy concerning tourist packages (See SC Revenue Ruling #88-2)³⁰, the \$100 charge would be subject to the 7% tax, except any portion forwarded to the golf course for payment of the green fee and any portion forwarded to the restaurant for payment of the meal. However, see the one exception in the "Note" in Example #1.

The following examples best explain this longstanding administrative policy:

Example #1: The hotel receives \$100 from the guest for the golf package. The hotel pays the golf course \$30 for the guest's green fee and pays the restaurant \$5 for the guest's meal.

The hotel would be liable for the 7% tax on \$65 (\$100 - \$35). The golf course would be liable for the 5% admissions tax on \$30 and the restaurant would be liable for 6% sales tax on the sale of the \$5 meal. This calculation must be made on a guest by guest basis. In other words, the 7% tax due will be determined for each guest by multiplying 7% by the total charge for the package less the portion forwarded to the golf course for payment of the green fee and the portion forwarded to the restaurant for payment of the meal.

Note: If the hotel's guest is unable to play golf that day ("No-Show ") (but still received the meal), and under terms of the golf package the guest will not be required to pay the "green fee portion" of the package, the hotel would be liable for the 7% tax on the amount it received from the guest less the amount paid by the hotel to the restaurant. For example, if the hotel determined that the "green fee portion" of the \$100 package was \$30 and required the guest to only pay \$70 for that day, then the hotel would be liable for the 7% tax on \$65 and the restaurant would be liable the 6% sales tax on the sale of meal.

If the hotel's guest is unable to play golf that day ("No-Show") (but still received the meal), and under terms of the golf package the guest must still pay the hotel the full \$100, the hotel would be liable for the 7% tax on the "accommodations portion" of the package. The golf course would not be liable for the 5% admissions tax since the guest did not play golf and the golf course did not receive an admissions fee from the hotel. However, the hotel is not liable for the 6% tax on the other portion of the \$100 paid by the guest since it does not represent an additional guest charge for the service of making the golf arrangements that were not used. This amount, however, must be equal to the green fee that the hotel would have had to pay to the golf course in order for the entire charge not to be subject to the 7% tax. In other words, if the hotel would have been required to pay \$30 had the guest played golf, then the \$30 that

³⁰ This policy has been consistent since 1988 and did not change when the sales and use tax law under Chapter 35 of Title 12 was recodified in 1991 as Chapter 36 of Title 12 or when Act No. 172 of 2014 was enacted.

would have been, but was not, sent to the golf course is not subject to the sales tax. As such, the hotel would be liable for the 7% tax on \$65 and the restaurant would be liable for the 6% sales tax on the sale of the meal. The \$30 that would have been, but was not, sent to the golf course is not subject to either the sales tax or the admissions tax. See Anonymous v. South Carolina Department of Revenue, 97-ALJ-17-0263-CC (April 24, 1998); Anonymous v. South Carolina Department of Revenue, 97-ALJ-17-0379-CC (April 24, 1998); and Act No. 172 of 2014.

Example #2: The hotel receives \$100 from the guest for the golf package. The hotel pays the restaurant \$5 for the guest's meal. The hotel has an agreement with the golf course to pay the golf course \$30 for the guest's green fee. When a guest does play golf, the hotel pays the \$30; however, the hotel will receive money back from the golf course at a later date to help pay for the hotel's advertisements of its golf packages.

The hotel would be liable for the 7% tax on \$65 (\$100 - \$35). The golf course would be liable for the 5% admissions tax on \$30 and the restaurant would be liable for the 6% sales tax on the sale of the meal. The fact that the hotel will receive a portion of the money back in the future does not affect the taxation of the charges. It is merely an expense of the golf course that is paid to the hotel.

Notes: 1. To ensure the 7% tax is not circumvented by sending most of the package charge to the golf course and then later having a large portion of it returned to the hotel as "advertising," the amount paid to the golf course and returned to the hotel to pay for advertising must be reasonable and supported by the books and records of both taxpayers. Otherwise, the Department will assess taxes according to a reasonable breakdown of room charges, green fees, and meal charges.

2. Other tourist packages, such as tennis, honeymoon, and entertainment packages, handled in a similar manner would be taxed in the manner described above for golf packages.

Bike Rentals

17. Q. If a hotel charges \$100.00 per night for a room, and the customer has the option to rent a bike to travel around the resort area for \$10.00 a day, what tax rate applies to each of the charges?
- A. The \$100.00 hotel charge is taxed at 7%. The rental of the bike is optional and not part of the services provided with the room for the \$100.00 charge. The \$10.00 is not an additional guest charge. However, the rental charge for the bike is a sale of tangible personal property and is otherwise taxed at 6% under Chapter 36.

18. Q. If a hotel charges \$100.00 per night for a room, and the hotel allows the guest to reserve a bike at no extra charge to travel around the resort, what tax rate applies to the charge?

A. The \$100.00 hotel charge is taxed at 7%. The availability of the bike is a part of the services provided with the room for the \$100.00 charge.

Newspapers

19. Q. If a hotel charges \$80.00 for a room, and the guest receives a newspaper that is delivered to the guest's door in the morning, what tax rate applies to the charge?

A. The \$80.00 room charge is taxed at 7%.

20. Q. If a hotel charges \$80.00 for a room, and the customer is charged \$2.00 for a newspaper that is delivered at the guest's request, what tax rate applies to each of the charges?

A. The \$80.00 room charge is taxed at 7%. The newspaper is not an additional guest charge since it is not one of the services specifically listed in the statute as an "additional guest charge." The newspaper that is provided for \$2.00 is the sale of tangible personal property; however, sales of newspapers are exempt from the sales tax under Code Section 12-36-2120(8).³¹

Valet Parking

21. Q. If a hotel charges \$80.00 for a room, and there is no additional charge to the customer for valet parking, what tax rate applies to the charge?

A. The \$80.00 room charge is taxed at 7%.

22. Q. If a hotel charges \$80.00 for a room, and the customer is also charged \$15.00 for valet parking, what tax rate applies to each of the charges?

A. The \$80.00 room charge is taxed at 7%, while the \$15.00 charge for the valet parking is not an additional guest charge and is not subject to the 6% sales tax.

³¹ Room service is generally considered a service provided to a guest that allows the guest to order food or drink that will be bought to the guest's room. As such, newspapers brought to a guest's room do not fall within the customary definition of room service. Therefore, the \$2 charge to the guest for the newspaper is not an additional guest charge.

23. Q. If a person is not a guest at a hotel, but is attending an event at the hotel, is a \$15.00 charge for valet parking subject to the tax as an additional guest charge?
- A. The \$15.00 charge for valet parking is not subject to the sales tax.

Meeting Rooms

24. Q. If a hotel charges \$80.00 for a guest room, and there is no additional charge to the customer for the use of a meeting room, what tax rate applies to the charge?
- A. The \$80.00 guest room charge is taxed at 7%.
25. Q. If a hotel charges \$80.00 for a guest room, and the customer is also charged \$35.00 for the use of a meeting room, what tax rate applies to each of the charges?
- A. The \$80.00 guest room charge is taxed at 7%, while the \$35.00 charge for the meeting room, as an additional guest charge, is taxed at 6%.
26. Q. Is a \$35.00 charge for the use of the meeting room by a person who is not a guest at the hotel, subject to the tax as an additional guest charge?
- A. The \$35.00 charge for the meeting room is not subject to the sales tax. It is not an additional guest charge since, in order to be taxable, the charge must be in addition to a room rental charge. This charge is not in addition to another charge.

Note: If the meeting room is being rented by an organization that is conducting a seminar, workshop, conference, or similar meeting at the hotel, the charge for the meeting room is taxed at 6% as an additional guest charge if the organization is also renting guest rooms at the hotel for officers or members of the organization, invited speakers, or others.

Room Refreshment Bar or Refrigerator

27. Q. If a hotel charges \$100.00 for a room, and the room contains a refreshment bar so the guest may avail himself of alcoholic drinks, non-alcoholic drinks, or snacks at no extra cost, what tax rate applies to the \$100.00?
- A. The \$100.00 room charge is taxed at 7%.
28. Q. If a hotel charges \$80.00 for a room, and the room contains a refreshment bar so the guest may avail himself of alcoholic drinks, non-alcoholic drinks, or snacks at a set price per item, what tax rate applies to each of the charges?

- A. The \$80.00 room charge is taxed at 7%, while the charges for each item the guest consumes from the refreshment bar is taxed at a rate of 6% as a sale of tangible personal property under Code Section 12-36-910. These charges are not additional guest charges since they are "otherwise taxed" under Chapter 36.

Safes

29. Q. If a hotel charges \$100.00 for a room, and that price includes the room and use of the safe in the room, what tax rate applies to the \$100.00?
- A. The \$100.00 charge would be subject to a tax rate of 7%. The use of the safe is a part of the services offered and provided with the room for the \$100.00.
30. Q. If a hotel charges \$80.00 per day for a room, and the customer is also charged \$5.00 per day for the availability of the safe in the room, what tax rate applies to each of the charges?
- A. The \$80.00 room charge and the \$5.00 charge for the safe are taxed at 7%. The availability of a safe is a part of the services offered and provided with a room. The \$5.00 is charged whether or not the guest uses the safe.
31. Q. If a hotel charges \$80.00 per day for a room, and the customer is also charged \$5.00 if the guest uses the safe in the room, what tax rate applies to each of the charges?
- A. The \$80.00 room charge is taxed at 7%. The \$5.00 charge for actually using the safe is not subject to the tax. The availability of a safe is a part of the services offered and provided with the room; however, the use of the safe is over and above the services customarily provided with the room. In this case, guests expect to pay a charge for use of the safe. Therefore, the \$5.00 charge is not a part of the room charge. It is a charge for a service that is not an additional guest charge under the statute, and therefore, not subject to the tax.

Other Charges (Pet Fees, Smoking Fees, Damage Fees, and Late Check-Out Fees)

32. Q. If a hotel charges \$100.00 for a room, and also charges an additional fee of \$20 for having a pet in the room, what tax rate applies to each of the charges?
- A. The \$100.00 charge and the \$20 charge are taxed at 7%. The pet fee is not a charge for a service and it is also not an additional guest charge. It is a mandatory charge for having a pet in the room, and therefore, the actual charge for the room is \$120.

33. Q. If a hotel charges \$100.00 for a room, and also charges an additional fee of \$20 for a room in which the guest is allowed to smoke cigarettes, cigars and other smoking tobacco, what tax rate applies to each of the charges?
- A. The \$100.00 charge and the \$20 charge are taxed at 7%. The smoking room fee is not a charge for a service and it is also not an additional guest charge. It is a mandatory charge for a smoking room, and therefore, the actual charge for the room is \$120.
34. Q. If a hotel charges \$100.00 for a room, and also charges an additional fee of \$35 if a guest smokes cigarettes, cigars and other tobacco in a non-smoking room, what tax rate applies to each of the charges?
- A. The \$100.00 charge and the \$35 charge are taxed at 7%. The fee for smoking in a non-smoking room is not a charge for a service and it is also not an additional guest charge. It is a mandatory charge for smoking in a non-smoking room, and therefore, the actual charge for the room is \$135.
35. Q. If a hotel charges \$100.00 for a room, and also charges an additional fee of \$35 if a guest damages the room, what tax rate applies to each of the charges?
- A. The \$100.00 charge and the \$35 charge are taxed at 7%. The damage fee is not a charge for a service and it is also not an additional guest charge. It is a mandatory charge for causing damage to the room, and therefore, the actual charge for the room is \$135.
36. Q. If a hotel charges \$100.00 for a room, and also charges an additional fee of \$15 if a guest checks out late, past the specified time for check-out, what tax rate applies to each of the charges?
- A. The \$100.00 charge and the \$15 charge are taxed at 7%. The late check-out is not a charge for a service and it is also not an additional guest charge. It is a mandatory charge for checking out past the specified time for check-out, and therefore, the actual charge for the room is \$115.

Cancellations

37. Q. If a person reserves and pays for sleeping accommodations at a hotel, but does not cancel the reservation or does not cancel the reservation by the prescribed time set by the hotel, is the charge for the accommodations retained by the hotel subject to the tax even though he will not use the sleeping accommodations?
- A. While the sleeping accommodations were not used, the person had the right to use such sleeping accommodations. Therefore, the sleeping accommodations were "furnished" and the charge by the hotel for such sleeping accommodations is subject to the tax. See Question #38 for information concerning when accommodations are canceled but an administrative fee or deposit is charged or retained.

38. Q. If a person makes reservations with a hotel for sleeping accommodations, but the reservations are canceled by such person or by the hotel, is an administrative fee or deposit charged or retained by the hotel as a result of the cancellation subject to the tax?

A. An administrative fee or deposit retained or charged by a hotel when reservations for sleeping accommodations are canceled is not subject to the sales tax. See Anonymous v. South Carolina Department of Revenue, 97-ALJ-17-0263-CC (April 24, 1998) and Anonymous v. South Carolina Department of Revenue, 97-ALJ-17-0379-CC (April 24, 1998).

Note: See Question #37 for information concerning when accommodations are canceled or otherwise not used but a charge for the sleeping accommodations is made or retained by the hotel. See also Question #16, Example #1 Note, for the taxation of a tourist package when sleeping accommodations are furnished but the guest does not use a portion of the package (i.e. the guest pays for a golf package but does not play golf).

E. Hurricane Insurance³²

Persons offering sleeping accommodations to transients will typically provide various amenities and services for an additional fee. The charges for many such amenities and services are discussed in SC Revenue Ruling #14-5.

Along the coast of South Carolina, many persons furnishing accommodations offer hurricane rental insurance. For a fee paid to the person offering sleeping accommodations, a guest may obtain hurricane rental insurance. This insurance will protect the vacationer against a mandatory evacuation due to a hurricane. In most cases, the charge for the hurricane rental insurance is optional.

For example, if a vacationer has rented a home for one week beginning on a Saturday and a mandatory evacuation order is issued on Monday, then the insurance will cover the vacationer for the time lost as a result of the evacuation order. In addition, the insurance may also cover circumstances in which the vacationer is not even able to take occupancy of the home and must forego the vacation because of the mandatory evacuation and subsequent damage caused by a hurricane.

An optional charge for hurricane rental insurance, as described above, is not subject to the sales tax. As an optional charge, it is not a part of the charge for the sleeping accommodations under Code Section 12-36-920(A) and it is not an “additional guest charge” under Code Section 12-36-920(B).

³² South Carolina Revenue Ruling #14-7.

A mandatory charge for hurricane rental insurance, as described above, is subject to the 7% sales tax under Code Section 12-36-920(A) as a part of the charge for furnishing the sleeping accommodations.

Note: Sleeping accommodations are “furnished” if the vacationer takes occupancy, or has the right to take occupancy, of a rental unit for any or all of the time previously agreed to when the reservations were made. If a mandatory evacuation order or hurricane causes the complete cancellation of a person’s vacation because law enforcement will not allow anyone to enter the area during the entire time originally reserved for the vacation, or a hurricane destroys the rental unit and the vacationer cannot take occupancy of the unit or any replacement unit during the entire time originally reserved for the vacation, then the sleeping accommodations were not “furnished” and the charges for the sleeping accommodations are not subject to the tax. In addition, charges for the optional or mandatory hurricane rental insurance are not subject to the tax.

If the sleeping accommodations are furnished because the vacationer actually takes occupancy, or has the right to take occupancy of a rental unit (but chooses not to), for any or all the time previously agreed to when the reservations were made, then the charges for the sleeping accommodations are subject to the tax. If the charges for the hurricane rental insurance are mandatory, then such charges are part of the charge for the accommodations and subject to the tax. If charges for hurricane rental insurance are optional, then such charges are not subject to the sales tax.

F. Cancellations of Accommodations

If a person reserves and pays for sleeping accommodations at a hotel, but does not cancel the reservation or does not cancel the reservation by the prescribed time set by the hotel, the charge for the accommodations retained by the hotel is subject to the tax even though he will not use the sleeping accommodations. While the sleeping accommodations were not used, the person had the right to use such sleeping accommodations. Therefore, the sleeping accommodations were “furnished” and the charge by the hotel for such sleeping accommodations is subject to the tax.

If a person makes reservations with a hotel for sleeping accommodations, but the reservations are canceled by such person or by the hotel, any administrative fee or deposit charged or retained by the hotel as a result of the cancellation is not subject to the tax.

G. Purchases by Persons Furnishing Accommodations³³

Purchases by hotels, motels, etc. of tangible personal property (e.g. beds, sheets, pillows, televisions, plastic cups, toilet paper, etc.) are retail purchases subject to tax. Hotels, motels, etc. use or consume such items in providing accommodations. They do **not** rent or sell such items to their guests. They rent accommodations.

³³ SC Regulation 117-307.2.

12

***Local Sales
And
Use Taxes***

Chapter 12

Local Sales and Use Taxes

A. General Information

The South Carolina Code of Laws allows the imposition of various types of local sales and use taxes. Citizens of a county, depending upon the needs within the county, may impose one or several local sales and use taxes. Municipal councils, or the citizens of a municipality, may impose a sales and use tax¹ for tourism development if the municipality is located in a county where revenue from state accommodations tax is at least \$14 million in a fiscal year.

The Department publishes a chart with the various types of local sales and use taxes collected by the Department and the exemptions allowed under each tax. As of the date of this document, South Carolina Information Letter #14-17 contains the most recently published information; updated information will be published in new information letters on the Department's website (www.dor.sc.gov) as warranted.

Most local taxes administered and collected by the Department of Revenue on behalf of local jurisdictions are administered and collected on a county-wide basis. However, the Catawba Tribal Sales and Use Tax is only imposed on the Catawba Indian Reservation and the Tourism Development Fee is only imposed on a municipal-wide basis. The criteria discussed in this publication, unless otherwise indicated in legislation enacted by the General Assembly, will also apply to any future sales and use taxes administered and collected by the Department of Revenue on behalf of a jurisdiction on a county-wide, municipal-wide or other basis as established by the General Assembly.

Please note that this advisory opinion only addresses the general local sales and use taxes collected by the Department of Revenue on behalf of local jurisdictions (e.g., counties, municipalities, school districts) and the tribal sales tax collected by the Department of Revenue on behalf of the Catawba Indian tribal government². It does not address the local taxes on sales of accommodations or on sales of prepared meals that are collected directly by the counties.

¹ This municipal sales and use tax is actually a fee (Local Option Tourism Development Fee) imposed under Article 9 of Chapter 10 of Title 4. For purposes of simplicity, this fee will be referred to as a sales and use tax in this revenue ruling.

² The tribal use tax is collected directly by the Catawba Indian tribal government.

B. Types of Local Sales and Use Taxes

The following is a list of local sales and use taxes³ that General Assembly has authorized the Department of Revenue to administer and collect on behalf of local jurisdictions that may enact one or more of these local sales and use taxes.

Local Option: The local option sales and use tax is authorized under South Carolina Code §4-10-10 et. seq. This tax is a general sales and use tax on all sales at retail (with a few exceptions) taxable under the state sales and use tax. This tax is imposed to reduce the property tax burden on persons in the counties that impose this type of local tax and is collected by the Department of Revenue on behalf of these counties.

Capital Projects: The local capital projects sales and use tax is authorized under South Carolina Code §4-10-300 et. seq. This tax is a general sales and use tax on all sales at retail (with a few exceptions) taxable under the state sales and use tax. This tax is imposed specifically to defray the debt service on bonds issued for various capital projects in the counties that impose this type of local tax and is collected by the Department of Revenue on behalf of these counties.

Transportation: The local transportation projects sales and use tax is authorized under South Carolina Code §4-37-30 et. seq. This tax is a general sales and use tax on all sales at retail (with a few exceptions) taxable under the state sales and use tax. This tax is imposed specifically to defray the debt service on bonds issued for various transportation projects in the counties that impose this type of local tax and are collected by the Department of Revenue on behalf of these counties.

Personal Property Tax Relief: The personal property tax relief sales and use tax is authorized under South Carolina Code §4-10-540. et. seq. This tax is a general sales and use tax on all sales at retail (with a few exceptions) taxable under the state sales and use tax. This tax is imposed in lieu of the personal property tax imposed on private passenger motor vehicles, motorcycles, general aviation aircraft, boats, and boat motors. The tax may not exceed the lesser of 2% or the amount necessary to replace the property tax on vehicles, motorcycles, general aviation aircraft, boats, and boat motors in the most recently completed fiscal year.

Local Property Tax Credits: The local option sales and use tax for local property tax credits is authorized under South Carolina Code §4-10-720 et. seq. This tax is a general sales and use tax on all sales at retail (with a few exceptions) taxable under the state sales and use tax. This tax is imposed to provide a credit against property tax imposed by a political subdivision for all classes of property subject to the property tax and is collected by the Department of Revenue on behalf of these counties.

³ The General Assembly may authorize other local sales and use taxes in the future. Unless such legislation states otherwise, any such new local sales and use tax will be administered and collected in the same manner as the taxes listed in this advisory opinion. In addition, the Catawba Indian Tribal Sales Tax is not a local tax; however, it is administered and collected by the Department in a similar manner and is therefore included on this list.

Education Capital Improvement Sales and Use Tax. The school district or school districts within a county may impose a 1% sales and use tax within the county for specific education capital improvements for the school district for not more than 15 years.⁴ The tax is authorized under Code Section 4-10-410 et seq. and must be approved by a referendum open to all qualified electors residing in the county. Pursuant to a memorandum of agreement, a portion of the revenue may be shared with the area commission (governing body of a technical college) or higher education board of trustees (governing body of a public institution of higher learning) or both, for specific education capital improvements on the campus of the recipient located in the county listed in the referendum.

The General Assembly has established several criteria that make a county or school district eligible to impose this tax. The county or school district must meet only one of these criteria, established in Code Section 4-10-470, in order for the tax to be imposed within the county.

School District Taxes. The General Assembly has authorized certain school districts to impose a sales and use tax within the county. These taxes are generally imposed to pay debt service on general obligation bonds and/or the cost of capital improvements.

As of the date of this publication, these school district taxes are being imposed at a rate of 1%⁵:

<u>County</u>	<u>Act Authorizing Tax</u>
Cherokee	Act No. 588 Of 1994 ⁶
Chesterfield	Act No. 441 of 2000
Clarendon	Act No. 355 of 2004 and Act No. 195 of 2005
Darlington	Act No. 132 of 2003
Dillon	Act No. 137 of 2007
Jasper	Act No, 146 of 2001
Lexington	Act No. 378 of 2004 and Act No. 88 of 2011
Marlboro	Act No. 204 of 2005

Tourism Development Tax: The local tourism development sales and use tax is authorized under South Carolina Code §4-10-910 et. seq. This tax is a general sales and use tax on all sales at retail (with a few exceptions) taxable under the state sales and use tax and may only be imposed by a municipality located in a county where revenue from the state accommodations tax is at least \$14 million in a fiscal year. This tax may be imposed by an ordinance adopted by a two-thirds majority of the municipal council or by approval by a majority of qualified electors voting in a referendum authorized by a majority of the municipal council. The tax is imposed specifically for tourism

⁴ Under one of the criteria for imposing this tax, the tax may not be imposed for more than 10 years.

⁵ See South Carolina Information Letter #14-17 for the date each school district tax was first imposed.

⁶ The Cherokee School District Tax will end on February 28, 2015. However, a 1% Education Capital Improvement Tax will begin the next day on March 1, 2015.

advertisement and promotion directed at non-South Carolina residents; however, in the third and subsequent years of this tax a portion of the tax may be used for certain property tax rollbacks. The tax collected by the Department of Revenue on behalf of these municipalities.

Note: The Department publishes a chart with the various types of local sales and use taxes collected by the Department and the exemptions allowed under each tax. As of the date of this document, South Carolina Information Letter #14-17 contains the most recently published information. Updated information will be published in new information letters on the Department's website (<http://www.dor.sc.gov>) as warranted.

Catawba Indian Tribal Tax: The Catawba Indian Reservation is located in Lancaster and York counties. The application of either the state sales and use tax or the Catawba Tribal sales and use tax for sales (deliveries) made on the Catawba Indian Reservation are determined by the Catawba Indian Claims Settlement Act. The specific sales and use tax provisions can be found in South Carolina Code §27-16-130(H). The Catawba Tribal sales and use tax expires on November 28, 2022.

The following chart provides a summary of these provisions:

<u>Delivery on the Reservation From:</u>	<u>Type Tax Applicable</u>	<u>Administered and Collected By:</u>
Location On the Reservation	Tribal Sales Tax (Equal to Combined State and Local Rate*)	DOR
Location Off the Reservation But in SC – Sales \$100 or less	State Sales Tax (Local taxes would not be applicable in these circumstances.)	DOR
Location Off the Reservation But in SC – Sales Over \$100	Tribal Sales Tax (Equal to Combined State and Local Rate*)	DOR
Location Off the Reservation and Outside the State – Seller Registered with DOR	State Use Tax (Local taxes would not be applicable in these circumstances.)	DOR
Location Off the Reservation and Outside the State – Seller Not Registered with DOR	Tribal Use Tax (Equal to Combined State and Local Rate*)	Catawba Indian Tribe

* Lancaster County imposes a 1% local option sales and use tax and a 1% Capital Projects Tax. York county imposes a 1% Capital Projects sales and use tax. These local taxes are in addition to the State sales and use tax. Therefore, **effective January 1, 2012**, the tribal sales tax and the tribal use tax are imposed at the following rates:

For sales (deliveries) made on the Reservation within Lancaster County:

- 8% for general sales of tangible personal property
- 9% for sales of accommodations
- 2% for sales of unprepared foods

For sales (deliveries) made on the Reservation within York county:

7% for general sales of tangible personal property

8% for sales of accommodations

0% for sales of unprepared foods

Please note that the rate for the tribal sales tax and the tribal use tax may increase or decrease dependent upon whether the total state and local sales and use tax rates change in Lancaster county or York county in the future.

C. Local Sales and Use Tax Due Dependent on County or Municipality of Delivery

The determination as to which local sales and use tax is due depends on where delivery of the tangible personal property took place.⁷

For purposes of local sales and use taxes, delivery of tangible personal property is defined to occur when and where title or possession of tangible personal property transfers from the retailer to his customer. Following are guidelines to be used in determining when and where delivery occurs:⁸

FOB Destination or Similar Terms: Delivery is considered to take place at the purchaser's location or wherever delivered to the purchaser (at the purchaser's direction).

FOB Shipping Point or Similar Terms: Delivery is considered to take place at the retailer's location. Retailers with multiple retail locations are to maintain their records so as to clearly show which sales are attributable to each location.

Shipping Terms Are Unspecified: Delivery is considered to take place at the purchaser's location or wherever delivered to the purchaser (at the purchaser's direction).

Retailer Uses Own Vehicle: If a retailer uses his own vehicle(s) for making deliveries, delivery is considered to take place at the purchaser's location or wherever delivered at the direction of the purchaser. This applies whether the vehicles are owned or leased by the retailer.

Situations Where Title Transfers, but Not Possession: Delivery is considered to take place at the retailer's location.

⁷ Attorney General Opinion #91-47 (7/30/1991).

⁸ South Carolina Revenue Ruling #09-9.

For example, a printer may produce business cards for a customer. The cards include all needed information except for the employee name. The printer keeps possession of, but not title to, the cards. At the direction of the customer, the printer will imprint the customer's cards with an employee's name and send the imprinted cards to the customer.

Retailers with multiple retail locations are to maintain their records so as to clearly show which sales are attributable to each location.

D. Retailer's Responsibility to Remit Local Sales and Use Taxes⁹

Whether or not a retailer can be required to remit a jurisdiction's tax is dependent upon the controlling facts and the extent of the seller's activities with the jurisdiction into which tangible personal property is delivered.

If a retailer that has established Commerce Clause nexus with South Carolina purposefully avails itself of the benefits of the economic market of a jurisdiction or it has purposefully directed its efforts toward the residents of a jurisdiction, it has a minimal connection with that jurisdiction sufficient to subject it to that jurisdiction's authority and therefore require it to remit the jurisdiction's tax on its deliveries into that jurisdiction, even if it has no physical presence in that particular jurisdiction.

Examples of when a retailer that has established Commerce Clause nexus with South Carolina must remit a jurisdiction's sales and use tax include, but are not limited to:

Retailers Using Their Own Vehicles: A retailer is required to remit a jurisdiction's tax if the retailer is shipping property into the jurisdiction using his own vehicles (whether owned or leased).

Retailers Using a Contract Carrier: A retailer is required to remit a jurisdiction's tax if the retailer is shipping property into the jurisdiction using a contract carrier (an independent or related company working specifically for or otherwise representing the retailer with respect to the delivery.)

Retailers Using a Common Carrier: A retailer is required to remit a jurisdiction's tax if the retailer is shipping property into the jurisdiction using a common carrier (*e.g.*, UPS, the mail), and the retailer is subject to the jurisdiction of delivery's authority (Due Process nexus has been established with the jurisdiction of delivery).

⁹ South Carolina Revenue Ruling #09-9 and South Carolina Revenue Ruling #05-16.

Examples of when a retailer is subject to the jurisdiction of delivery's authority include, but are not limited to, the following:

- (a) The retailer maintains, temporarily or permanently, directly or by subsidiary, an office, warehouse, distribution house, sales house, other place of business, or property of any kind in the jurisdiction of delivery.
- (b) The retailer or a subsidiary has, temporarily or permanently, an agent, representative (including delivery personnel and independent contractors acting on behalf of the retailer), salesman, or employee operating within the jurisdiction of delivery.
- (c) The retailer advertises via advertising media located in the jurisdiction of delivery (*e.g.*, newspapers, television, cable systems, and radio).
- (d) The retailer advertises via advertising media located outside the jurisdiction but which has coverage within the jurisdiction of delivery (*e.g.*, newspapers, television, cable systems, and radio).

Please note that these statements are only examples and that there are other circumstances in which a retailer must remit a jurisdiction's tax with respect to deliveries into that jurisdiction. Retailers must be aware that as the courts address this issue, the requirements for remitting a jurisdiction's tax may evolve and the retailer will be liable for the tax if the retailer fails to remit the tax when it has a connection with that jurisdiction sufficient to require it to remit that jurisdiction's tax. If upon being audited, it is found a retailer has a sufficient connection with a particular jurisdiction so as to require remittance of that jurisdiction's tax, but the retailer has failed to do so, the Department will assess the retailer for that jurisdiction's tax.

E. Purchasers - Reporting Requirements

Purchases of tangible personal property (not for resale) first stored, used or consumed in a local tax county are subject to the local use tax. Such purchases are to be reported on Form ST-389 by county and/or municipality where the property is first stored, used or consumed. Form ST-389 provides information as to which type of local sales and use tax must be reported by county and municipality and which type of local sales and use tax must only be reported by county.

NOTE: The purchaser is not liable for a county's local use tax if he takes delivery in another county and pays the other county's local sales tax, provided the local sales tax he paid is equal to or greater than the local use tax that would otherwise be due. If the local sales tax he paid is less than the local use tax, then the purchaser owes the difference. Also, the purchaser is relieved of the liability for the local use tax if he has a receipt from a retailer showing the retailer has collected the local use tax.

F. Transactions Exempt from Local Sales and Use Taxes

While most local sales and use taxes provide the same exemptions for certain sales and purchases, there are some differences. Exhibit A of this chapter should provide guidance concerning the various types of local sales and use taxes collected by the Department of Revenue and the types of exemptions allowed under each tax.

Exhibit A

Local Tax Charts and Transactions Exempt from Local Sales and Use Taxes

From time to time the Department issues information letters to update the charts and other information found in this exhibit. These information letters can be found on the Department's website (www.dor.sc.gov).

Check the website regularly in order to maintain an up-to-date list of the local sales and use taxes that are being imposed in South Carolina. The most current version of this information, as of the date on this publication, is South Carolina Information Letter #14-17.

In November 2014, voters in several counties approved referendums to impose local sales and use taxes. Chart 1 includes local taxes in effect from May 1, 2014 through February 28, 2015. Chart 2 includes local taxes in effect March 1, 2015 through April 30, 2015. Chart 3 below includes local sales and use taxes in effect May 1, 2015.

Chart 4 Catawba Indian Reservation Tribal Tax and Chart 5 Municipal Sales and Use Taxes remain unchanged during this period.

CHART 1: COUNTY SALES AND USE TAXES IN EFFECT MAY 1, 2014¹⁰

May 1, 2014	SALES AND PURCHASES EXEMPT FROM LOCAL SALES AND USE TAXES								
COUNTY	TYPE OF LOCAL SALES AND USE TAX AND EFFECTIVE DATE	12-36-2120 12-36-2130 STATE EXEMPTIONS	12-36-2110 EXEMPTION FOR MAXIMUM TAX ITEMS	12-36-1710 EXEMPTION FOR CASUAL EXCISE ITEMS	EXEMPTION FOR FOOD STAMP PURCHASES	EXEMPTION FOR CERTAIN FOOD SALES	“GRANDFATHER CLAUSE” EXEMPTION FOR CERTAIN PURCHASES BY CONTRACTORS	NOTE	
Abbeville	Local Option 5/1/92	Yes	Yes	Yes	Yes	No	Yes		
Aiken	Capital Projects 1/1/2013	Yes	Yes	No	Yes	Yes	Yes	1 & 26	
Allendale	Local Option 5/1/92	Yes	Yes	Yes	Yes	No	Yes	5	
	Capital Projects 5/1/09	Yes	Yes	No	Yes	No	Yes	1 & 5	
Anderson	No Local Sales and Use Tax is Imposed in this County								25
Bamberg	Local Option 5/1/92	Yes	Yes	Yes	Yes	No	Yes	29	
	Capital Project 5/1/13	Yes	Yes	No	Yes	Yes	Yes	1 & 29	
Barnwell	Local Option 5/1/99	Yes	Yes	Yes	Yes	No	Yes		
Beaufort	No Local Sales and Use Tax is Imposed in this County								6
Berkeley	Local Option 5/1/97	Yes	Yes	Yes	Yes	No	Yes	17	
	Transportation 5/1/09	Yes	Yes	No	Yes	No	Yes	1 & 17	
Calhoun	Local Option 5/1/05	Yes	Yes	Yes	Yes	No	Yes		
Charleston	Local Option 7/1/91	Yes	Yes	Yes	Yes	No	Yes	8	
	Transportation 5/1/05	Yes	Yes	No	Yes	No	Yes	1 & 8	
	Ed. Capital Imp. 3/1/11	Yes	Yes	No	Yes	Yes	Yes	1 & 8	
Cherokee	Cherokee School 7/1/96	Yes	Yes	No	Yes	Yes	Yes	1 & 18	
	Local Option 5/1/09	Yes	Yes	Yes	Yes	No	Yes	18	
Chester	Local Option 5/1/94	Yes	Yes	Yes	Yes	No	Yes	3	
	Capital Projects 5/1/09	Yes	Yes	No	Yes	No	Yes	1 & 3	

¹⁰ County Sales and Use Taxes" listed in this chart (Chart 1) are imposed county-wide, whether imposed by the county or one or more school districts.

<i>May 1, 2014</i>	SALES AND PURCHASES EXEMPT FROM LOCAL SALES AND USE TAXES							
COUNTY	TYPE OF LOCAL SALES AND USE TAX AND EFFECTIVE DATE	12-36-2120 12-36-2130 STATE EXEMPTIONS	12-36-2110 EXEMPTION FOR MAXIMUM TAX ITEMS	12-36-1710 EXEMPTION FOR CASUAL EXCISE ITEMS	EXEMPTION FOR FOOD STAMP PURCHASES	EXEMPTION FOR CERTAIN FOOD SALES	“GRANDFATHER CLAUSE” EXEMPTION FOR CERTAIN PURCHASES BY CONTRACTORS	NOTE
<i>Chesterfield</i>	Local Option 5/1/97	Yes	Yes	Yes	Yes	No	Yes	4
	Chesterfield School 9-1-00	Yes	Yes	No	Yes	Yes	Yes	1 & 4
<i>Clarendon</i>	Local Option 5/1/97	Yes	Yes	Yes	Yes	No	Yes	11
	Clarendon Schools 6/1/04	Yes	Yes	No	Yes	Yes - until 6/30/05 No - effective 7/1/05	Yes	1 & 11
<i>Colleton</i>	Local Option 7/1/91	Yes	Yes	Yes	Yes	No	Yes	
<i>Darlington</i>	Local Option 5/1/97	Yes	Yes	Yes	Yes	No	Yes	10
	Darlington School 2/1/04	Yes	Yes	No	Yes	Yes	Yes	1 & 10
<i>Dillon</i>	Local Option 5/1/96	Yes	Yes	Yes	Yes	No	Yes	7
	School District 10/1/08	Yes	Yes	No	Yes	Yes	Yes	1 & 7
<i>Dorchester</i>	Transportation 5/1/05	Yes	Yes	No	Yes	No	Yes	1
<i>Edgefield</i>	Local Option 5/1/92	Yes	Yes	Yes	Yes	No	Yes	
<i>Fairfield</i>	Local Option 5/1/06	Yes	Yes	Yes	Yes	No	Yes	
<i>Florence</i>	Local Option 5/1/94	Yes	Yes	Yes	Yes	No	Yes	15
	Capital Projects 5/1/14	Yes	Yes	No	Yes	Yes	Yes	1 & 15
<i>Georgetown</i>	No Local Sales and Use Tax is Imposed in this County							25
<i>Greenville</i>	No Local Sales and Use Tax is Imposed in this County							25
<i>Greenwood</i>	No Local Sales and Use Tax is Imposed in this County							23
<i>Hampton</i>	Local Option 7/1/91	Yes	Yes	Yes	Yes	No	Yes	9
	Capital projects 5/1/13	Yes	Yes	No	Yes	Yes	Yes	1 & 9
<i>Horry</i>	Ed. Capital Imp. 3/1/09	Yes	Yes	No	Yes	Yes	Yes	1 & 16

<i>May 1, 2014</i>	SALES AND PURCHASES EXEMPT FROM LOCAL SALES AND USE TAXES							
COUNTY	TYPE OF LOCAL SALES AND USE TAX AND EFFECTIVE DATE	12-36-2120 12-36-2130 STATE EXEMPTIONS	12-36-2110 EXEMPTION FOR MAXIMUM TAX ITEMS	12-36-1710 EXEMPTION FOR CASUAL EXCISE ITEMS	EXEMPTION FOR FOOD STAMP PURCHASES	EXEMPTION FOR CERTAIN FOOD SALES	“GRANDFATHER CLAUSE” EXEMPTION FOR CERTAIN PURCHASES BY CONTRACTORS	NOTE
<i>Jasper</i>	Local Option 7/1/91	Yes	Yes	Yes	Yes	No	Yes	2
	Jasper School 12/1/02	Yes	Yes	No	Yes	Yes	Yes	1 & 2
<i>Kershaw</i>	Local Option 5/1/97	Yes	Yes	Yes	Yes	No	Yes	
<i>Lancaster</i>	Local Option 5/1/92	Yes	Yes	Yes	Yes	No	Yes	19
	Capital Projects 5/1/09	Yes	Yes	No	Yes	No	Yes	1 & 19
<i>Laurens</i>	Local Option 5/1/99	Yes	Yes	Yes	Yes	No	Yes	
<i>Lee</i>	Local Option 5/1/96	Yes	Yes	Yes	Yes	No	Yes	14
	Capital Projects 5/1/13	Yes	Yes	No	Yes	Yes	Yes	1 & 14
<i>Lexington</i>	Lexington Schools 3/1/12	Yes	Yes	No	Yes	Yes	Yes	1 & 24
<i>Marion</i>	Local Option 7/1/91	Yes	Yes	Yes	Yes	No	Yes	28
	Capital Projects 5/1/13	Yes	Yes	No	Yes	Yes	Yes	1 & 28
<i>Marlboro</i>	Local Option 5/1/92	Yes	Yes	Yes	Yes	No	Yes	27
	Marlboro Schools 2/1/13	Yes	Yes	No	Yes	Yes	Yes	1 & 27
<i>McCormick</i>	Local Option 7/1/91	Yes	Yes	Yes	Yes	No	Yes	
<i>Newberry</i>	Capital Projects 4/1/12	Yes	Yes	No	Yes	No	Yes	1 & 22
<i>Oconee</i>	No Local Sales and Use Tax is Imposed in this County							25
<i>Orangeburg</i>	Capital Projects 4/1/13	Yes	Yes	No	Yes	Yes	Yes	1 & 31
<i>Pickens</i>	Local Option 5/1/95	Yes	Yes	Yes	Yes	No	Yes	
<i>Richland</i>	Local Option 5/1/05	Yes	Yes	Yes	Yes	No	Yes	30
	Transportation 5/1/13	Yes	Yes	No	Yes	No	Yes	1 & 30

<i>May 1, 2014</i>	SALES AND PURCHASES EXEMPT FROM LOCAL SALES AND USE TAXES							
<i>COUNTY</i>	TYPE OF LOCAL SALES AND USE TAX AND EFFECTIVE DATE	12-36-2120 12-36-2130 STATE EXEMPTIONS	12-36-2110 EXEMPTION FOR MAXIMUM TAX ITEMS	12-36-1710 EXEMPTION FOR CASUAL EXCISE ITEMS	EXEMPTION FOR FOOD STAMP PURCHASES	EXEMPTION FOR CERTAIN FOOD SALES	"GRANDFATHER CLAUSE" EXEMPTION FOR CERTAIN PURCHASES BY CONTRACTORS	NOTE
<i>Saluda</i>	Local Option 5/1/92	Yes	Yes	Yes	Yes	No	Yes	
<i>Spartanburg</i>	No Local Sales and Use Tax is Imposed in this County							25
<i>Sumter</i>	Local Option 5/1/96	Yes	Yes	Yes	Yes	No	Yes	20
	Capital Projects 5/1/09	Yes	Yes	No	Yes	No	Yes	1 & 20
<i>Union</i>	No Local Sales and Use Tax is Imposed in this County							25
<i>Williamsburg</i>	Local Option 5/1/97	Yes	Yes	Yes	Yes	No	Yes	
<i>York</i>	Capital Projects 1/1/12	Yes	Yes	No	Yes	Yes	Yes	1 & 21

CHART 2: COUNTY SALES AND USE TAXES IN EFFECT MARCH 1, 2015¹¹

March 1, 2015	SALES AND PURCHASES EXEMPT FROM LOCAL SALES AND USE TAXES								
COUNTY	TYPE OF LOCAL SALES AND USE TAX AND EFFECTIVE DATE	12-36-2120 12-36-2130 STATE EXEMPTIONS	12-36-2110 EXEMPTION FOR MAXIMUM TAX ITEMS	12-36-1710 EXEMPTION FOR CASUAL EXCISE ITEMS	EXEMPTION FOR FOOD STAMP PURCHASES	EXEMPTION FOR CERTAIN FOOD SALES	“GRANDFATHER CLAUSE” EXEMPTION FOR CERTAIN PURCHASES BY CONTRACTORS	NOTE	
Abbeville	Local Option 5/1/92	Yes	Yes	Yes	Yes	No	Yes		
Aiken	Capital Projects 1/1/13	Yes	Yes	No	Yes	Yes	Yes	1 & 26	
	Ed. Capital Imp. 3/1/15	Yes	Yes	No	Yes	Yes	Yes	1 & 26	
Allendale	Local Option 5/1/92	Yes	Yes	Yes	Yes	No	Yes	5	
	Capital Projects 5/1/09	Yes	Yes	No	Yes	No	Yes	1 & 5	
Anderson	Ed. Capital Imp. 3/1/15	Yes	Yes	No	Yes	Yes	Yes	1 & 32	
Bamberg	Local Option 5/1/92	Yes	Yes	Yes	Yes	No	Yes	29	
	Capital Project 5/1/13	Yes	Yes	No	Yes	Yes	Yes	1 & 29	
Barnwell	Local Option 5/1/99	Yes	Yes	Yes	Yes	No	Yes		
Beaufort	No Local Sales and Use Tax is Imposed in this County								6
Berkeley	Local Option 5/1/97	Yes	Yes	Yes	Yes	No	Yes	17	
	Transportation 5/1/09	Yes	Yes	No	Yes	No	Yes	1 & 17	
Calhoun	Local Option 5/1/05	Yes	Yes	Yes	Yes	No	Yes		
Charleston	Local Option 7/1/91	Yes	Yes	Yes	Yes	No	Yes	8	
	Transportation 5/1/05	Yes	Yes	No	Yes	No	Yes	1 & 8	
	Ed. Capital Imp. 3/1/11	Yes	Yes	No	Yes	Yes	Yes	1 & 8	
Cherokee	Local Option 5/1/09	Yes	Yes	Yes	Yes	No	Yes	18	
	Ed. Capital Imp. 3/1/15	Yes	Yes	No	Yes	Yes	Yes	1 & 18	

¹¹ County Sales and Use Taxes” listed in this chart (Chart 1) are imposed county–wide, whether imposed by the county or one or more school districts.

March 1, 2015	SALES AND PURCHASES EXEMPT FROM LOCAL SALES AND USE TAXES								
COUNTY	TYPE OF LOCAL SALES AND USE TAX AND EFFECTIVE DATE	12-36-2120 12-36-2130 STATE EXEMPTIONS	12-36-2110 EXEMPTION FOR MAXIMUM TAX ITEMS	12-36-1710 EXEMPTION FOR CASUAL EXCISE ITEMS	EXEMPTION FOR FOOD STAMP PURCHASES	EXEMPTION FOR CERTAIN FOOD SALES	“GRANDFATHER CLAUSE” EXEMPTION FOR CERTAIN PURCHASES BY CONTRACTORS	NOTE	
Chester	Local Option 5/1/94	Yes	Yes	Yes	Yes	No	Yes	3	
	Capital Projects 5/1/09	Yes	Yes	No	Yes	No	Yes	1 & 3	
Chesterfield	Local Option 5/1/97	Yes	Yes	Yes	Yes	No	Yes	4	
	Chesterfield School 9-1-00	Yes	Yes	No	Yes	Yes	Yes	1 & 4	
Clarendon	Local Option 5/1/97	Yes	Yes	Yes	Yes	No	Yes	11	
	Clarendon Schools 6/1/04	Yes	Yes	No	Yes	Yes - until 6/30/05 No - effective 7/1/05	Yes	1 & 11	
Colleton	Local Option 7/1/91	Yes	Yes	Yes	Yes	No	Yes		
Darlington	Local Option 5/1/97	Yes	Yes	Yes	Yes	No	Yes	10	
	Darlington School 2/1/04	Yes	Yes	No	Yes	Yes	Yes	1 & 10	
Dillon	Local Option 5/1/96	Yes	Yes	Yes	Yes	No	Yes	7	
	School District 10/1/08	Yes	Yes	No	Yes	Yes	Yes	1 & 7	
Dorchester	Transportation 5/1/05	Yes	Yes	No	Yes	No	Yes	1	
Edgefield	Local Option 5/1/92	Yes	Yes	Yes	Yes	No	Yes		
Fairfield	Local Option 5/1/06	Yes	Yes	Yes	Yes	No	Yes		
Florence	Local Option 5/1/94	Yes	Yes	Yes	Yes	No	Yes	15	
	Capital Projects 5/1/14	Yes	Yes	No	Yes	Yes	Yes	1 & 15	
Georgetown	No Local Sales and Use Tax is Imposed in this County								25
Greenville	No Local Sales and Use Tax is Imposed in this County								25
Greenwood	No Local Sales and Use Tax is Imposed in this County								23

March 1, 2015	SALES AND PURCHASES EXEMPT FROM LOCAL SALES AND USE TAXES								
COUNTY	TYPE OF LOCAL SALES AND USE TAX AND EFFECTIVE DATE	12-36-2120 12-36-2130 STATE EXEMPTIONS	12-36-2110 EXEMPTION FOR MAXIMUM TAX ITEMS	12-36-1710 EXEMPTION FOR CASUAL EXCISE ITEMS	EXEMPTION FOR FOOD STAMP PURCHASES	EXEMPTION FOR CERTAIN FOOD SALES	“GRANDFATHER CLAUSE” EXEMPTION FOR CERTAIN PURCHASES BY CONTRACTORS	NOTE	
Hampton	Local Option 7/1/91	Yes	Yes	Yes	Yes	No	Yes	9	
	Capital projects 5/1/13	Yes	Yes	No	Yes	Yes	Yes	1 & 9	
Horry	Ed. Capital Imp. 3/1/09	Yes	Yes	No	Yes	Yes	Yes	1 & 16	
Jasper	Local Option 7/1/91	Yes	Yes	Yes	Yes	No	Yes	2	
	Jasper School 12/1/02	Yes	Yes	No	Yes	Yes	Yes	1 & 2	
Kershaw	Local Option 5/1/97	Yes	Yes	Yes	Yes	No	Yes		
Lancaster	Local Option 5/1/92	Yes	Yes	Yes	Yes	No	Yes	19	
	Capital Projects 5/1/09	Yes	Yes	No	Yes	No	Yes	1 & 19	
Laurens	Local Option 5/1/99	Yes	Yes	Yes	Yes	No	Yes		
Lee	Local Option 5/1/96	Yes	Yes	Yes	Yes	No	Yes	14	
	Capital Projects 5/1/13	Yes	Yes	No	Yes	Yes	Yes	1 & 14	
Lexington	Lexington Schools 3/1/12	Yes	Yes	No	Yes	Yes	Yes	1 & 24	
Marion	Local Option 7/1/91	Yes	Yes	Yes	Yes	No	Yes	28	
	Capital Projects 5/1/13	Yes	Yes	No	Yes	Yes	Yes	1 & 28	
Marlboro	Local Option 5/1/92	Yes	Yes	Yes	Yes	No	Yes	27	
	Marlboro Schools 2/1/13	Yes	Yes	No	Yes	Yes	Yes	1 & 28	
McCormick	Local Option 7/1/91	Yes	Yes	Yes	Yes	No	Yes		
Newberry	Capital Projects 4/1/12	Yes	Yes	No	Yes	No	Yes	1 & 22	
Oconee	No Local Sales and Use Tax is Imposed in this County								25

<i>March 1, 2015</i>	SALES AND PURCHASES EXEMPT FROM LOCAL SALES AND USE TAXES							
<i>COUNTY</i>	TYPE OF LOCAL SALES AND USE TAX AND EFFECTIVE DATE	12-36-2120 12-36-2130 STATE EXEMPTIONS	12-36-2110 EXEMPTION FOR MAXIMUM TAX ITEMS	12-36-1710 EXEMPTION FOR CASUAL EXCISE ITEMS	EXEMPTION FOR FOOD STAMP PURCHASES	EXEMPTION FOR CERTAIN FOOD SALES	“GRANDFATHER CLAUSE” EXEMPTION FOR CERTAIN PURCHASES BY CONTRACTORS	NOTE
<i>Orangeburg</i>	Capital Projects 4/1/13	Yes	Yes	No	Yes	Yes	Yes	1 & 31
<i>Pickens</i>	Local Option 5/1/95	Yes	Yes	Yes	Yes	No	Yes	
<i>Richland</i>	Local Option 5/1/05	Yes	Yes	Yes	Yes	No	Yes	30
	Transportation 5/1/13	Yes	Yes	No	Yes	No	Yes	1 & 30
<i>Saluda</i>	Local Option 5/1/92	Yes	Yes	Yes	Yes	No	Yes	
<i>Spartanburg</i>	No Local Sales and Use Tax is Imposed in this County							
<i>Sumter</i>	Local Option 5/1/96	Yes	Yes	Yes	Yes	No	Yes	20
	Capital Projects 5/1/09	Yes	Yes	No	Yes	No	Yes	1 & 20
<i>Union</i>	No Local Sales and Use Tax is Imposed in this County							
<i>Williamsburg</i>	Local Option 5/1/97	Yes	Yes	Yes	Yes	No	Yes	
<i>York</i>	Capital Projects 1/1/12	Yes	Yes	No	Yes	Yes	Yes	1 & 21

CHART 3: COUNTY SALES AND USE TAXES IN EFFECT MAY 1, 2015¹²

May 1, 2015	SALES AND PURCHASES EXEMPT FROM LOCAL SALES AND USE TAXES								
COUNTY	TYPE OF LOCAL SALES AND USE TAX AND EFFECTIVE DATE	12-36-2120 12-36-2130 STATE EXEMPTIONS	12-36-2110 EXEMPTION FOR MAXIMUM TAX ITEMS	12-36-1710 EXEMPTION FOR CASUAL EXCISE ITEMS	EXEMPTION FOR FOOD STAMP PURCHASES	EXEMPTION FOR CERTAIN FOOD SALES	“GRANDFATHER CLAUSE” EXEMPTION FOR CERTAIN PURCHASES BY CONTRACTORS	NOTE	
Abbeville	Local Option 5/1/92	Yes	Yes	Yes	Yes	No	Yes		
Aiken	Capital Projects 1/1/2013	Yes	Yes	No	Yes	Yes	Yes	1 & 26	
	Ed. Capital Imp. 3/1/15	Yes	Yes	No	Yes	Yes	Yes	1 & 26	
Allendale	Local Option 5/1/92	Yes	Yes	Yes	Yes	No	Yes	5	
	Capital Projects 5/1/09	Yes	Yes	No	Yes	No	Yes	1 & 5	
Anderson	Ed. Capital Imp. 3/1/15	Yes	Yes	No	Yes	Yes	Yes	1 & 32	
Bamberg	Local Option 5/1/92	Yes	Yes	Yes	Yes	No	Yes	29	
	Capital Project 5/1/13	Yes	Yes	No	Yes	Yes	Yes	1 & 29	
Barnwell	Local Option 5/1/99	Yes	Yes	Yes	Yes	No	Yes		
Beaufort	No Local Sales and Use Tax is Imposed in this County								6
Berkeley	Local Option 5/1/97	Yes	Yes	Yes	Yes	No	Yes	17	
	Transportation 5/1/09	Yes	Yes	No	Yes	No	Yes	1 & 17	
Calhoun	Local Option 5/1/05	Yes	Yes	Yes	Yes	No	Yes		
Charleston	Local Option 7/1/91	Yes	Yes	Yes	Yes	No	Yes	8	
	Transportation 5/1/05	Yes	Yes	No	Yes	No	Yes	1 & 8	
	Ed. Capital Imp. 3/1/11	Yes	Yes	No	Yes	Yes	Yes	1 & 8	
Cherokee	Local Option 5/1/09	Yes	Yes	Yes	Yes	No	Yes	18	
	Ed. Capital Imp. 3/1/15	Yes	Yes	No	Yes	Yes	Yes	1 & 18	

¹² County Sales and Use Taxes” listed in this chart (Chart 1) are imposed county–wide, whether imposed by the county or one or more school districts.

May 1, 2015	SALES AND PURCHASES EXEMPT FROM LOCAL SALES AND USE TAXES								
COUNTY	TYPE OF LOCAL SALES AND USE TAX AND EFFECTIVE DATE	12-36-2120 12-36-2130 STATE EXEMPTIONS	12-36-2110 EXEMPTION FOR MAXIMUM TAX ITEMS	12-36-1710 EXEMPTION FOR CASUAL EXCISE ITEMS	EXEMPTION FOR FOOD STAMP PURCHASES	EXEMPTION FOR CERTAIN FOOD SALES	“GRANDFATHER CLAUSE” EXEMPTION FOR CERTAIN PURCHASES BY CONTRACTORS	NOTE	
Chester	Local Option 5/1/94	Yes	Yes	Yes	Yes	No	Yes	3	
	Capital Projects 5/1/09	Yes	Yes	No	Yes	No	Yes	1 & 3	
Chesterfield	Local Option 5/1/97	Yes	Yes	Yes	Yes	No	Yes	4	
	Chesterfield School 9-1-00	Yes	Yes	No	Yes	Yes	Yes	1 & 4	
Clarendon	Local Option 5/1/97	Yes	Yes	Yes	Yes	No	Yes	11	
	Clarendon Schools 6/1/04	Yes	Yes	No	Yes	Yes - until 6/30/05 No - effective 7/1/05	Yes	1 & 11	
Colleton	Local Option 7/1/91	Yes	Yes	Yes	Yes	No	Yes	1 & 33	
	Capital Projects 5/1/15	Yes	Yes	No	Yes	Yes	Yes		
Darlington	Local Option 5/1/97	Yes	Yes	Yes	Yes	No	Yes	10	
	Darlington School 2/1/04	Yes	Yes	No	Yes	Yes	Yes	1 & 10	
Dillon	Local Option 5/1/96	Yes	Yes	Yes	Yes	No	Yes	7	
	School District 10/1/08	Yes	Yes	No	Yes	Yes	Yes	1 & 7	
Dorchester	Transportation 5/1/05	Yes	Yes	No	Yes	No	Yes	1	
Edgefield	Local Option 5/1/92	Yes	Yes	Yes	Yes	No	Yes		
Fairfield	Local Option 5/1/06	Yes	Yes	Yes	Yes	No	Yes		
Florence	Local Option 5/1/94	Yes	Yes	Yes	Yes	No	Yes	15	
	Capital Projects 5/1/14	Yes	Yes	No	Yes	Yes	Yes	1 & 15	
Georgetown	Capital Projects 5/1/15	Yes	Yes	No	Yes	No	Yes	1 & 34	
Greenville	No Local Sales and Use Tax is Imposed in this County								25
Greenwood	No Local Sales and Use Tax is Imposed in this County								23

May 1, 2015	SALES AND PURCHASES EXEMPT FROM LOCAL SALES AND USE TAXES								
COUNTY	TYPE OF LOCAL SALES AND USE TAX AND EFFECTIVE DATE	12-36-2120 12-36-2130 STATE EXEMPTIONS	12-36-2110 EXEMPTION FOR MAXIMUM TAX ITEMS	12-36-1710 EXEMPTION FOR CASUAL EXCISE ITEMS	EXEMPTION FOR FOOD STAMP PURCHASES	EXEMPTION FOR CERTAIN FOOD SALES	“GRANDFATHER CLAUSE” EXEMPTION FOR CERTAIN PURCHASES BY CONTRACTORS	NOTE	
Hampton	Local Option 7/1/91	Yes	Yes	Yes	Yes	No	Yes	9	
	Capital projects 5/1/13	Yes	Yes	No	Yes	Yes	Yes	1 & 9	
Horry	Ed. Capital Imp. 3/1/09	Yes	Yes	No	Yes	Yes	Yes	1 & 16	
Jasper	Local Option 7/1/91	Yes	Yes	Yes	Yes	No	Yes	2	
	Jasper School 12/1/02	Yes	Yes	No	Yes	Yes	Yes	1 & 2	
Kershaw	Local Option 5/1/97	Yes	Yes	Yes	Yes	No	Yes		
Lancaster	Local Option 5/1/92	Yes	Yes	Yes	Yes	No	Yes	19	
	Capital Projects 5/1/09	Yes	Yes	No	Yes	No	Yes	1 & 19	
Laurens	Local Option 5/1/99	Yes	Yes	Yes	Yes	No	Yes		
Lee	Local Option 5/1/96	Yes	Yes	Yes	Yes	No	Yes	14	
	Capital Projects 5/1/13	Yes	Yes	No	Yes	Yes	Yes	1 & 14	
Lexington	Lexington Schools 3/1/12	Yes	Yes	No	Yes	Yes	Yes	1 & 24	
Marion	Local Option 7/1/91	Yes	Yes	Yes	Yes	No	Yes	28	
	Capital Projects 5/1/13	Yes	Yes	No	Yes	Yes	Yes	1 & 28	
Marlboro	Local Option 5/1/92	Yes	Yes	Yes	Yes	No	Yes	27	
	Marlboro Schools 2/1/13	Yes	Yes	No	Yes	Yes	Yes	1 & 27	
McCormick	Local Option 7/1/91	Yes	Yes	Yes	Yes	No	Yes		
Newberry	Capital Projects 4/1/12	Yes	Yes	No	Yes	No	Yes	1 & 22	
Oconee	No Local Sales and Use Tax is Imposed in this County								25

<i>May 1, 2015</i>	SALES AND PURCHASES EXEMPT FROM LOCAL SALES AND USE TAXES							
<i>COUNTY</i>	TYPE OF LOCAL SALES AND USE TAX AND EFFECTIVE DATE	12-36-2120 12-36-2130 STATE EXEMPTIONS	12-36-2110 EXEMPTION FOR MAXIMUM TAX ITEMS	12-36-1710 EXEMPTION FOR CASUAL EXCISE ITEMS	EXEMPTION FOR FOOD STAMP PURCHASES	EXEMPTION FOR CERTAIN FOOD SALES	“GRANDFATHER CLAUSE” EXEMPTION FOR CERTAIN PURCHASES BY CONTRACTORS	NOTE
<i>Orangeburg</i>	Capital Projects 4/1/13	Yes	Yes	No	Yes	Yes	Yes	1 & 31
<i>Pickens</i>	Local Option 5/1/95	Yes	Yes	Yes	Yes	No	Yes	
<i>Richland</i>	Local Option 5/1/05	Yes	Yes	Yes	Yes	No	Yes	30
	Transportation 5/1/13	Yes	Yes	No	Yes	No	Yes	1 & 30
<i>Saluda</i>	Local Option 5/1/92	Yes	Yes	Yes	Yes	No	Yes	
<i>Spartanburg</i>	No Local Sales and Use Tax is Imposed in this County							
<i>Sumter</i>	Local Option 5/1/96	Yes	Yes	Yes	Yes	No	Yes	20
	Capital Projects 5/1/09	Yes	Yes	No	Yes	No	Yes	1 & 20
<i>Union</i>	No Local Sales and Use Tax is Imposed in this County							
<i>Williamsburg</i>	Local Option 5/1/97	Yes	Yes	Yes	Yes	No	Yes	
<i>York</i>	Capital Projects 1/1/12	Yes	Yes	No	Yes	Yes	Yes	1 & 22

Please note that this chart includes only general local option taxes collected by the Department of Revenue on behalf of the counties and school districts. It does not include the local taxes on sales of accommodations or on sales of prepared meals that are collected directly by the counties or municipalities.

CHART 4: CATAWBA INDIAN RESERVATION TRIBAL TAX¹³

	SALES AND PURCHASES EXEMPT FROM LOCAL SALES AND USE TAXES							
RESERVATION LOCATED IN YORK AND LANCASTER COUNTIES	TYPE OF LOCAL SALES AND USE TAX AND EFFECTIVE DATE	12-36-2120 12-36-2130 STATE EXEMPTIONS	12-36-2110 EXEMPTION FOR MAXIMUM TAX ITEMS	12-36-1710 EXEMPTION FOR CASUAL EXCISE ITEMS	EXEMPTION FOR FOOD STAMP PURCHASES	EXEMPTION FOR CERTAIN FOOD SALES	“GRANDFATHER CLAUSE” EXEMPTION FOR CERTAIN PURCHASES BY CONTRACTORS	NOTE
Catawba Indian Reservation	Tribal Tax (See Notes #12 and #13)	Yes	See Note #13	See Note #13	Yes	See Note #12	See Note #13	12 & 13

CHART 5: MUNICIPAL SALES AND USE TAXES¹⁴

	SALES AND PURCHASES EXEMPT FROM LOCAL SALES AND USE TAXES							
Municipality	TYPE OF LOCAL SALES AND USE TAX AND EFFECTIVE DATE	12-36-2120 12-36-2130 STATE EXEMPTIONS	12-36-2110 EXEMPTION FOR MAXIMUM TAX ITEMS	12-36-1710 EXEMPTION FOR CASUAL EXCISE ITEMS	EXEMPTION FOR FOOD STAMP PURCHASES	EXEMPTION FOR CERTAIN FOOD SALES	“GRANDFATHER CLAUSE” EXEMPTION FOR CERTAIN PURCHASES BY CONTRACTORS	NOTE
Myrtle Beach	Tourism Development 8/1/09	Yes	Yes	No	Yes	Yes	Yes	1

LOCAL TAX RATES:

Each local tax listed in the above charts is imposed at a rate of 1%, except for the Charleston County Transportation Tax which is imposed at a rate of 1/2 of 1% (Charts #1, #2, and #3) and the Catawba Tribal Sales and Use Tax (Chart #4). See Notes #12 and #13 for information on the tax rates and the application of either the State sales and use tax or the Catawba Tribal Sales and Use Tax for sales (deliveries) made on the Catawba Indian Reservation.

REMITTANCE OF LOCAL SALES AND USE TAXES BY RETAILERS:

For information on when a retailer is required to remit a local sales and use tax when delivering product to a purchaser in another county, see SC Revenue Ruling #09-9.¹⁵

¹³ Chart 4 concerns the Catawba Tribal Sales and Use Tax; however, see Notes #12 and #13 for information on the tax rates and the application of either the State sales and use tax or the Catawba Tribal sales and use tax for sales (deliveries) made on the Catawba Indian Reservation.

¹⁴ Chart 5 concerns the Local Tourism Development Sales and Use Tax that may only be imposed by municipalities located in a county where revenue from state accommodations tax is at least \$14 million in a fiscal year. As of the date of this publication, only Horry County meets this criterion; therefore, only municipalities in Horry County may impose the Local Tourism Development Sales and Use Tax at this time.

¹⁵ For a detailed discussion of this matter, see also SC Revenue Ruling #05-16. However, please note that SC Revenue Ruling #09-9 modifies SC Revenue Ruling #05-16 since at the time it was issued all local sales and use taxes were administered and collected on a county-wide basis. With the enactment of the Tourism Development Tax, the principles of SC Revenue Ruling #05-16 also apply to local sales and use taxes imposed on a municipal-wide or other basis, such as the Tourism Development Tax.

REMITTANCE OF LOCAL SALES AND USE TAXES BY RETAILERS:

For information on when a retailer is required to remit a local sales and use tax when delivering product to a purchaser in another county, see SC Revenue Ruling #09-9.¹⁶

TYPES OF EXEMPTIONS:

State Exemptions - 12-36-2120: Except for sales of unprepared food exempt from the 6% state sales and use tax under Code Section 12-36-2120(75), sales of tangible personal property exempt from the State sales and use tax are exempt from the local sales and use tax if marked “Yes” under this column.

Note: Sales of unprepared food are only exempt from a local sales and use tax if the local sales and use tax law specifically exempts such sales. For information on the exemption for sales of unprepared food from local sales and use taxes, see the discussion below entitled “Exemption for Certain Food Sales.”

Exemption for Maximum Tax Items- 12-36-2110: Sales of items subject to a maximum tax under the State sales and use tax law [i.e. aircraft, motor vehicles, motorcycles, boats, trailers and semitrailers pulled by truck tractors, horse trailers, recreational vehicles (including tent campers, travel trailers, park models, park trailers, motor homes, and fifth wheels), self-propelled light construction equipment, unassembled aircraft, manufactured homes, musical instruments and office equipment purchased by certain religious organizations and fire safety education trailers] are exempt from the local sales and use tax if marked “Yes” under this column.

Exemption for Casual Excise Tax Items - 12-36-1710: Sales of items subject to the casual excise tax under Code Section 12-36-1710 through Code Section 12-36-1740 (i.e. motor vehicles, motorcycles, boats, motors, and airplanes required to be registered, titled, or licensed) are exempt from the local sales and use tax if marked “Yes” under this column.

Exemption for Food Stamp Purchases: Sales of food purchased with food stamps are exempt from the State sales and use tax; therefore, such sales are exempt from the local sales and use tax if marked “Yes” under this column.

Exemption for Certain Food Sales: Sales of certain foods are exempt from the local sales and use tax if marked “Yes” under this column. Sales of food which are eligible to be purchased with United States Department of Agriculture food stamps come under this exemption. This exemption applies to everyone, not just persons using food stamps.

¹⁶ For a detailed discussion of this matter, see also SC Revenue Ruling #05-16. However, please note that SC Revenue Ruling #09-9 modifies SC Revenue Ruling #05-16 since at the time it was issued all local sales and use taxes were administered and collected on a county-wide basis. With the enactment of the Tourism Development Tax, the principles of SC Revenue Ruling #05-16 also apply to local sales and use taxes imposed on a municipal-wide or other basis, such as the Tourism Development Tax.

Foods which may be purchased with food stamps and are exempt from these local sales and use taxes include:

- * Any food intended to be eaten at home by people, including snacks, beverages and seasonings
- * Seeds and plants intended to grow food (not birdseed or seeds to grow flowers)
- * Cold items, which may include salads or sandwiches, intended to be eaten at home by people

Items which cannot be purchased with food stamps and are, therefore, subject to these local sales and use taxes are:

- * Alcoholic beverages, such as beer, wine, or liquor
- * Hot beverages ready to drink, such as coffee
- * Tobacco
- * Hot foods ready to eat
- * Foods designed to be heated in the store
- * Hot and cold food to be eaten at a lunch counter, in a dining area or anywhere else in the store or in a nearby area such as a mall food court
- * Vitamins and medicines (Note: Sales of certain medicines are exempt from the State sales and use tax, and therefore, are also exempt from all local sales and use taxes.)
- * Pet food
- * Any non-food items such as tissue, soap or other household goods

For more detailed information on this food exemption, see SC Regulation 117-337.

“Grandfather Clause” Exemption for Certain Purchases By Construction

Contractors: All the local sales and use taxes discussed in this publication exempt purchases of building materials for use under a construction contract if both of the following conditions are met:

- A. 1. the construction contract is executed before the imposition date; or
2. a written bid is submitted before the imposition date culminating in a construction contract entered into before or after the imposition date; and

B. a verified copy of the contract is mailed within 6 months of the imposition date to:

SC Department of Revenue
ATTN: Registration
P.O. Box 125
Columbia, SC 29214-0140

A "verified copy" is a copy accompanied by a statement, signed under penalties of perjury, that it is true and correct. If the contractor is a corporation, the statement is to be signed by an officer of the corporation or an employee authorized to sign. If the contractor is a partnership, the statement is to be signed by a general partner. If the contractor is a sole proprietorship, the owner is to sign.

Special Exemption Certificate. In order for a contractor to purchase building materials for a particular contract free of the local tax, the contractor must complete Form ST-10-C ("Application for Exemption from Local Option Tax") and submit it to the Department of Revenue. If the Department determines the contract in question meets the above requirements, the contractor will be issued a special exemption certificate (Form ST-35). The certificate may only be used to purchase building materials for the contract for which it is issued and may not be used to purchase anything other than building material. If the contractor uses this certificate to make purchases free of the local tax, upon which the tax should have been paid, then the contractor will be held liable for the tax. **Also, the certificate does not allow the contractor to make purchases of building materials free of the State tax.**

An exemption certificate (Form ST-35) issued by the Department of Revenue to a prime contractor under this exemption may not be used by a subcontractor nor may a prime contractor use a subcontractor's exemption certificate. Each contractor must obtain his own certificate for each construction contract.

Note #1: Only local option taxes automatically exempt casual excise tax items. All other local taxes would require the county to provide a specific exemption for casual excise tax items. By not exempting items subject to the casual excise tax ("No" in the "Casual Excise Items" column), counties imposing this local sales and use tax will impose the local tax on sales and purchases of trailers that can be pulled by vehicles other than truck tractors, sales of pole trailers and sales of boat motors not attached to a boat at the time of sale, but will not impose the local sales and use tax on items subject to a maximum tax under the State sales and use tax law.

Note #2: Since December 1, 2002, Jasper County has imposed two local sales and use taxes - a 1% Local Option Tax and a 1% Jasper School Tax. Jasper County has imposed the 1% Local Option Tax since July 1, 1991. From May 1, 1999 through November 30, 2002, Jasper County imposed a 1% Capital Projects Tax in addition to the 1% Local Option Tax.

Note #3: Since May 1, 2009, Chester County has imposed two local sales and use taxes - a 1% Local Option Tax and a 1% Capital Projects Tax. Chester County has imposed the 1% Local Option Tax since May 1, 1994. Chester County had previously imposed another 1% Capital Projects Tax for the period of May 1, 1999 through April 30, 2000.

Note #4: Since September 1, 2000, Chesterfield County has imposed two local sales and use taxes - a 1% Local Option Tax and a 1% Chesterfield School Tax. Chesterfield County has imposed the 1% Local Option Tax since May 1, 1997.

Note #5: Since May 1, 2009, Allendale County has imposed two local sales and use taxes - a 1% Local Option Tax and a 1% Capital Projects Tax. Allendale County has imposed the Local Option Tax since May 1, 1992 and previously imposed a 1% Capital Projects Tax from May 1, 2001 until December 31, 2006. In November 2008, the citizens of Allendale County voted to impose a 1% Capital Projects Tax again, but the vote was not timely certified, which would have postponed the imposition of the tax until May 1, 2010. On February 25, 2009, the Governor signed Act No. 84 of 2009, making the 1% Capital Projects Tax in Allendale County effective May 1, 2009.

Note #6: Effective July 1, 2012, Beaufort County imposes no local sales and use tax and only imposes the state sales and use tax. Beaufort County imposed a 1% Transportation Tax from June 1, 1999 until November 30, 2000. In November 2006, the citizens of Beaufort County voted to impose a 1% Transportation Tax again, but the vote was not timely certified, which would have postponed the imposition of the tax until May 1, 2008. On February 19, 2006, the Governor signed Act No. 123 of 2007, making the 1% Transportation Tax in Beaufort County effective May 1, 2007. This 1% Transportation Tax expired at midnight on June 30, 2012.

Note #7: Since October 1, 2008, Dillon County has imposed two local sales and use taxes - a 1% Local Option Tax and a 1% School District Tax. Dillon County has imposed the 1% Local Option Tax since May 1, 1996. From May 1, 2003 until September 30, 2008, Dillon County imposed a 1% Capital Projects Tax in addition to the 1% Local Option Tax.

Note #8: Since March 1, 2011, Charleston County has imposed three local sales and use taxes - a 1% Local Option Tax, a 1/2 of 1% Transportation Tax, and a 1% Education Capital Improvement Tax. Charleston County has imposed the 1% Local Option Tax since July 1, 1991 and the 1/2 of 1% Transportation Tax since May 1, 2005. Prior to enacting the Transportation Tax, Charleston County was scheduled to impose another 0.5% Transportation Tax in May of 2003, but the tax was not imposed as a result of a South Carolina Supreme Court decision.

Note #9: Since May 1, 2013, Hampton County has imposed two local sales and use taxes - a 1% Local Option tax and a 1% Capital Projects Tax. Hampton County has imposed the 1% Local Option Tax since July 1, 1991. Hampton County previously imposed a 1% Capital Projects Tax from May 1, 2003 until December 31, 2009.

Note #10: Since February 1, 2004, Darlington County imposes two local sales and use taxes - a 1% Local Option Tax and a 1% Darlington School Tax. Darlington County has imposed the 1% Local Option Tax since May 1, 1997.

Note #11: Since June 1, 2004, Clarendon County has imposed two local sales and use taxes - a 1% Local Option Tax and a 1% Clarendon Schools Tax. Sales of foods that are eligible to be purchased with United States Department of Agriculture food stamps, which were exempt from the 1% Clarendon School Tax for the period of June 1, 2004 through June 30, 2005, are subject to the 1% Clarendon School Tax effective July 1, 2005, pursuant to Act No. 195 of 2005. Clarendon County has imposed the 1% Local Option Tax since May 1, 1997.

Note #12: Whether the State sales and use tax or the Catawba Tribal sales and use tax for sales (deliveries) made on the Catawba Indian Reservation applies is determined by the Catawba Indian Claims Settlement Act (Chapter 16, Title 27, South Carolina Code of Laws). The provisions specific to sales and use tax are in Code Section 27-16-130(H).

The Catawba Tribal sales and use tax expires on November 28, 2092.

The following chart provides a summary of these provisions:

<u>Delivery on the Reservation From:</u>	<u>Type Tax Applicable</u>	<u>Administered and Collected By:</u>
Location On the Reservation	Tribal Sales Tax (Equal to Combined State and Local Rate*)	DOR
Location Off the Reservation But in SC – Sales \$100 or less	State Sales Tax (Local taxes would not be applicable in these circumstances.)	DOR
Location Off the Reservation But in SC – Sales Over \$100	Tribal Sales Tax (Equal to Combined State and Local Rate*)	DOR
Location Off the Reservation and Outside the State – Seller Registered with DOR	State Use Tax (Local taxes would not be applicable in these circumstances.)	DOR
Location Off the Reservation and Outside the State – Seller Not Registered with DOR	Tribal Use Tax (Equal to Combined State and Local Rate*)	Catawba Indian Tribe

* Lancaster County imposes a 1% local option sales and use tax and a 1% Capital Projects Tax. York County imposes a 1% Capital Projects sales and use tax. These local taxes are in addition to the State sales and use tax. Therefore, **effective January 1, 2012**, the tribal sales tax and the tribal use tax are imposed at the following rates:

For sales (deliveries) made on the Reservation within Lancaster County:

- 8% for general sales of tangible personal property
- 9% for sales of accommodations
- 2% for sales of unprepared foods

For sales (deliveries) made on the Reservation within York County:

- 7% for general sales of tangible personal property
- 8% for sales of accommodations
- 0% for sales of unprepared foods¹⁷

Please note that the rate for the tribal sales tax and the tribal use tax may increase or decrease dependent upon whether the total state and local sales and use tax rates change in Lancaster County or York County in the future.

For additional information, see SC Revenue Ruling #98-18.

Note #13: Maximum Tax Items: For sales (deliveries) made on the Reservation of tangible personal property subject to the maximum tax provisions, the tribal sales and use tax rate is 5% in each county (since the state sales and use tax on maximum tax items is 5% and maximum tax items are exempt from all local sales and use taxes), but the tax may not exceed the maximum tax set forth in Code Section 12-36-2110.

Casual Excise Tax Items: Counties imposing a local sales and use tax that do not exempt casual excise tax items will impose the local tax on sales and purchases of (a) trailers that can be pulled by vehicles other than truck tractors, (b) sales of pole trailers and (c) sales of boat motors not attached to a boat at the time of sale. Therefore, for sales (deliveries) of these trailers and boat motors made on the Reservation within each county, the tribal sales and use tax rate is 7% (since only the local option tax in Lancaster County exempts these casual excise items).

“Grandfather Clause” Exemption for Certain Purchases By Construction Contractors: As a result of any increase in the tribal sales and use tax rate due to the imposition of a new local sales and use tax in either Lancaster county or York county, there is an exemption from the portion of the tribal sales and use tax represented by the new local sales and use tax for certain purchases by construction contractors. For more information about this partial exemption, see the discussion earlier in this chapter concerning *“Grandfather Clause” Exemption for Certain Purchases By Construction Contractors* and the *Special Exemption Certificate*.

Note #14: Since May 1, 2013, Lee County has imposed two local sales and use taxes - a 1% Local Option Tax and a 1% Capital Projects Tax. Lee County has imposed the 1% Local Option Tax since May 1, 1996. Lee County previously imposed a 1% School District Tax from October 1, 2006 until September 30, 2011.

¹⁷ York County “re-imposed” its 1% Capital Projects Tax effective January 1, 2012. The prior 1% Capital Projects Tax imposed in York County expired on December 31, 2011 and the new Capital Projects Tax became effective the next day on January 1, 2012. In addition, the new 1% Capital Projects Tax in York County exempts sales of unprepared food effective January 1, 2012.

Note #15: Since May 1, 2007, Florence County has imposed two local sales and use taxes - a 1% Local Option Tax and a 1% Capital Projects Tax. The original Capital Projects Tax was imposed from May 1, 2007 until April 30, 2014, and a new Capital Projects Tax was “re-imposed” effective the next day on May 1, 2014. Because the referendum was held after June 3, 2009, the new Capital Projects Tax in Florence County exempts sales of unprepared food effective May 1, 2014, pursuant to Act No. 49 of 2009.

Note #16: Since May 1, 2014, Horry County has imposed only a 1% Education Capital Improvement Tax. From March 1, 2009 until April 30, 2014, Horry County imposed two local sales and use taxes - the Education Capital Improvement Tax and a 1% Capital Projects Tax. Horry County first imposed the Capital Projects Tax on May 1, 2007.

Note #17: Since May 1, 2009, Berkeley County has imposed two local sales and use taxes - a 1% Local Option Tax and a 1% Transportation Tax. Berkeley County has imposed the Local Option Tax since May 1, 1997.

Note #18: Beginning March 1, 2015, Cherokee County will impose two local sales and use taxes - a 1% Local Option Tax and a 1% Education Capital Improvement Tax. From May 1, 2009 through February 28, 2015, Cherokee County also had imposed two local sales and use taxes - a 1% School District Tax and a 1% Local Option Tax. Cherokee County began imposing the School District Tax on July 1, 1996.

Note #19: Since May 1, 2009, Lancaster County has imposed two local sales and use taxes - a 1% Local Option Tax and a 1% Capital Projects Tax. Lancaster County has imposed the Local Option Tax since May 1, 1992.

Note #20: Since May 1, 2009, Sumter County has imposed two local sales and use taxes - a 1% Local Option Tax and a 1% Capital Projects Tax. Sumter County has imposed the Local Option Tax since May 1, 1996.

Note #21: York County has “re-imposed” its 1% Capital Projects Tax. The original Capital Projects Tax was imposed from October 1, 2004 until December 31, 2011, and the new Capital Projects Tax went into effect the next day on January 1, 2012. Because the referendum was held after June 3, 2009, the new Capital Projects Tax in York County exempts sales of unprepared food effective January 1, 2012, pursuant to Act No. 49 of 2009.

Note #22: Newberry County has “re-imposed” its 1% Capital Projects Tax. The original Capital Projects Tax was imposed from April 1, 2005 until March 31, 2012, and the new Capital Projects Tax went into effect the next day on April 1, 2012. Because the referendum was held after June 3, 2009, the new Capital Projects Tax in Newberry County exempts sales of unprepared food effective April 1, 2012, pursuant to Act No. 49 of 2009.

Note #23: Effective July 1, 2012, Greenwood County imposes no local sales and use tax and only imposes the state sales and use tax. Greenwood County imposed a 1% Capital Projects Tax from May 1, 2007 through June 30, 2012.

Note #24: Since March 1, 2005, Lexington County has imposed a 1% School District Tax. The School District Tax was scheduled to expire on February 29, 2012 but was extended for seven years by Act No. 88 of 2012.

Note #25: The Counties of Greenville, Oconee, Spartanburg, and Union have never imposed a local sales and use tax. However, this chapter does not address local taxes on sales of accommodations or on sales of prepared meals that are collected directly by the counties or municipalities.

Note #26: Since March 1, 2015, Aiken County has imposed two local sales and use taxes - a 1% Capital Projects Tax and a 1% Education Capital Improvement Tax. Aiken County “re-imposed” its 1% Capital Projects Tax effective January 1, 2013. The original Capital Projects Tax was imposed from April 1, 2006 until December 31, 2012. Because the referendum was held after June 3, 2009, the new Capital Projects Tax in Aiken County exempts sales of unprepared food effective January 1, 2013, pursuant to Act No. 49 of 2009.

Note #27: Since February 1, 2013, Marlboro County has imposed two local sales and use taxes - a 1% Local Option Tax and a 1% School District Tax. Marlboro County has imposed the 1% Local Option Tax since May 1, 1992.

Note #28: Since May 1, 2013, Marion County has imposed two local sales and use taxes - a 1% Local Option Tax and a 1% Capital Projects Tax. Marion County has imposed the Local Option Tax since July 1, 1991.

Note #29: Since May 1, 2013, Bamberg County has imposed two local sales and use taxes - a 1% Local Option tax and a 1% Capital Projects Tax. Bamberg County has imposed the Local Option Tax since May 1, 1992.

Note #30: Since May 1, 2013, Richland County has imposed two local sales and use taxes - a 1% Local Option Tax and a 1% Transportation Tax. Richland County has imposed the Local Option Tax since May 1, 2005.

Note #31: Orangeburg County has “re-imposed” its 1% Capital Projects Tax. The original Capital Projects Tax was imposed from April 1, 2006 until March 31, 2013, and the new Capital Projects Tax went into effect the next day on April 1, 2013. Because the referendum was held after June 3, 2009, the new Capital Projects Tax in Orangeburg County exempts sales of unprepared food effective April 1, 2013, pursuant to Act No. 49 of 2009.

Note #32: Effective March 1, 2015, Anderson County imposes a 1% Education Capital Improvement Tax. This will be the first local sales and use tax imposed by Anderson County.

Note #33: Effective May 1, 2015, Colleton County imposes two local sales and use taxes - a 1% Local Option Tax and a 1% Capital Projects Tax. Because the referendum was held after June 3, 2009, the Capital Projects Tax in Colleton County exempts sales of unprepared food, pursuant to Act No. 49 of 2009. Colleton County has imposed the Local Option Tax since July 1, 1991.

Note #34: Effective May 1, 2015, Georgetown County imposes a 1% Capital Projects Tax. This is the first local sales and use tax imposed by Georgetown County. Because the referendum was held after June 3, 2009, the Capital Projects Tax in Georgetown County exempts sales of unprepared food, pursuant to Act No. 49 of 2009.

These charts include only general local option taxes collected by the Department of Revenue on behalf of the counties, municipalities, school districts, and the Catawba Indian tribal government. They do not include the local taxes on sales of accommodations or on sales of prepared meals that are collected directly by the counties or municipalities.

13

Nexus

Chapter 13

Nexus

A. General Information

Nexus is a sufficient connection between a person and a state, and a sufficient connection between an activity, property, or transaction and a state, that allows the state to subject the person, and the activity, property, or transaction to its taxing jurisdiction. The Due Process and Commerce Clauses of the United States Constitution and other federal statutes provide limitations on a state's powers to tax out of state business.

Over the years, the courts have provided limitations and guidelines in determining whether certain activities create nexus in a taxing state. For example, see *Quill Corp. v. North Dakota* 502 U.S. 808, 112 S. Ct. 1904, 119 L. Ed. 2d 27 (1992), *Complete Auto Transit, Inc. v. Brady*, 430 U.S. 274, 97 S. Ct. 1076, 51 L. Ed. 326 (1977), *Miller Brothers v. Maryland*, 347 U.S. 340, 347, 74 S. Ct. 535, 98 L. Ed. 744 (1954), *Scripto, Inc. v. Carson*, 362 U.S. 207, 80 S. Ct. 52, 4 L. Ed. 2d 54 (1960), *National Bellas Hess, Inc. v. Department of Revenue*, 386 U.S. 753, 87 S.Ct. 1389, 18 L.Ed.2d 505 (1967), *Helicopteros Nacionales de Columbia, S.A. v. Hall*, 104 S. Ct.1868 (1984), and *National Geographic Society v. California Bd. of Equal*, 430 U.S. 551, 97 S. Ct. 1386, 51 L. Ed. 2d 631 (1977).

The purpose of this advisory opinion is to provide written guidance from the Department concerning sales and use tax nexus creating activities.

Because of the importance of this issue to taxpayers, the complexity of nexus issues and the changes taking place in this area, the Department issued its responses to the issues raised in these surveys as an advisory opinion, South Carolina Revenue Ruling #07-3. The provisions of South Carolina Revenue Ruling #14-4 are incorporated into this chapter.

This opinion reflects the Department's official position regarding sales and use tax nexus at this time. Since developments in this area are constantly taking place, any response is subject to change due to a future statute, regulation, court decision, or advisory opinion.

Any change in South Carolina's position as set forth in this document that is not the result of a court case or change in statute or regulation will be prospective. Any change that is the result of a court case will apply to all periods open under the statute unless the court states otherwise and any change in statute or regulation will be applicable as of the effective date established by the General Assembly.

Questions concerning the existence of nexus with South Carolina should be directed to the Department's Nexus/Discovery Section at 803-898-5235 or 803 898-5695.

B. Qualifications to Survey Responses

Each response is based upon the specific facts described in the survey question and the following assumptions:

- The business is selling tangible personal property¹ at retail to residents or others in South Carolina;
- Each specific survey question by itself was the only possible nexus creating activity or relationship a business has in South Carolina;² and,
- The activities described are not “de minimis” unless the question or answer specifically states otherwise.

A “yes” response indicates the activity or relationship will, by itself, create nexus with South Carolina. A “no” response indicates the activity or relationship will, by itself, not create nexus with South Carolina. However, it is important to note that a combination of several different activities or relationships, even if each by itself does not create nexus, may create nexus with South Carolina. In addition, any variance from the facts stated in a survey question, or any additional facts not stated in a survey question, may change the answer set forth in this document.

Each response refers only to sales and use tax nexus. Activities that create nexus for sales and use tax purposes differ from those that create nexus for other tax purposes

¹ See South Carolina Code §12-36-60 for the definition of “tangible personal property” and the various imposition provisions of Chapter 36 of Title 12 (sales and use tax provisions) for information as to services and intangibles that are “tangible personal property” by definition.

² Even though some survey questions specifically state that the activity represents the corporation’s “sole activity” in South Carolina, all other survey questions represent the corporation’s sole activity in South Carolina whether or not such is specifically stated. The difference in wording only represents how each national publication worded its questions.

C. Survey Answers

A. General Activities

	YES	NO
1. The business holds a certificate of authority to conduct business in South Carolina, or is otherwise registered with the Secretary of State or any other regulatory agency in South Carolina.	☐	☒
2. The business maintains a bank account in South Carolina.	☐	☒
3. The business is listed in the local telephone books of cities in South Carolina.	☐	☒
4. The business uses local phone numbers in South Carolina, which are forwarded to its headquarters in another state.	☐	☒

B. Property in South Carolina

	YES	NO
1. The business' sole activity in South Carolina is maintaining or using a place of business for selling tangible personalty.	☒	☐
2. The business' sole activity in South Carolina is maintaining or using a place of business for storing ³ tangible personal property.	☒	☐
3. The business' sole activity in South Carolina is maintaining inventory in South Carolina.	☒	☐
4. The business' sole activity in South Carolina is maintaining or using a distribution facility.	☒	☐

Note: South Carolina enacted a limited "safe harbor" nexus statute for persons who placed a distribution facility in service in South Carolina after December 31, 2010, but before January 1, 2013. This answer does not apply to a person who has met the investment and job requirements of Code Section 12-36-2691 before January 1, 2013. For persons who met these investment and job requirements, this "safe harbor" is applicable until the earlier of (a) January 1, 2016; (b) when the person no longer meets the requirements of the statute; or (c) the effective date of a law enacted by Congress that allows states to require sales tax collection for taxpayers that do not have substantial nexus. For all other person, this "safe harbor" is no longer available and the above answer is applicable.

³ See Question B.4.

	YES	NO
5. The business' sole activity in South Carolina is maintaining tangible personal property for lease through a representative.	☒	☐
6. The business' sole activity in South Carolina is the existence of unrelated in-state office (e.g. advertising).	☒	☐
7. The business' sole activity in South Carolina is licensing software for use in South Carolina and		
(a) the business sold and delivered the licensed software into South Carolina via a tape, disk, flash drive, or some other form of tangible personal property as defined in the South Carolina sales and use tax law; or,	☒	☐
(b) the business sold and delivered the licensed software into South Carolina as an attachment to an e-mail or a download from a website.	☐	☒
Note: See SC Revenue Rulings #12-1, 11-2, 03-5 and 96-3.		
8. The business' sole activity in South Carolina is that of a mail-order catalog seller with property or solicitors in South Carolina.	☒	☐
9. The business' sole activity in South Carolina is the drop shipment of catalogs in South Carolina, for mailing to residents within South Carolina.	☒	☐
Note: See Question D.4 for the application of nexus to a business that uses a company in South Carolina to drop-ship merchandise to customers.		
10. The business sells tangible personal property to residents in South Carolina from outside of South Carolina (e.g., telephone, over the Internet, via catalog/direct mail, or otherwise) and delivers merchandise to customers in South Carolina in returnable containers.	☒	☐
11. The business sells tangible personal property at retail to businesses in South Carolina from outside of South Carolina (e.g., telephone, over the Internet, or otherwise) and delivers the merchandise to customers by the business' tractor-trailers or railcars and leaves the trailer or railcar with the customer for a specified number of days or until the next delivery is made during which the customer will remove the merchandise from the trailer or railcar.	☒	☐
12. The business sells tangible personal property to residents in South Carolina from outside of South Carolina (e.g., telephone, over the Internet, via catalog/direct mail, or otherwise) and provides in-state telephone and kiosks that allow customers to access inventories and purchase merchandise from remote subsidiaries.	☒	☐

C. Activities of an Employee or Third Party (e.g., Sales Representative, Independent Contractor or Affiliated Company)

	YES	NO
1. The business' sole activity in South Carolina is the presence of a representative selling in South Carolina.	☒	☐
2. The business authorizes an employee or third party (e.g., independent contractor, affiliated company or other representative) to install, deliver, service, or repair merchandise in South Carolina or hires independent contractor to perform warranty or repair services on tangible personal property in South Carolina. (The repairs may be under warranty for which there is no separate charge or may be under warranty for which there was a separate charge.)	☒	☐
3. The business uses an employee or third party in South Carolina (e.g., independent contractor, affiliated company, or other representative) to investigate, handle or resolve customer issues, provide training or technical assistance, or otherwise provide customer service to customers in South Carolina.	☒	☐
4. The business' sole activity in South Carolina is an employee/representative providing training to South Carolina customers.	☒	☐
5. The business' sole activity in South Carolina is an employee/representative providing trouble-shooting to South Carolina customers.	☒	☐
6. The business sells tangible personal property to residents in South Carolina from outside the state (e.g., by telephone, over the Internet, via catalog/direct mail, or otherwise) and has an employee visit South Carolina four or more times during the year.	☒	☐
7. The business' sole activity in South Carolina is telemarketing activity into South Carolina (telemarketer not located in South Carolina).	☐	☒
8. The business' sole activity in South Carolina is the use of a telemarketing firm with a South Carolina office.	☒	☐
9. The business hires an unrelated call center or fulfillment center located in South Carolina to process telephone or electronic orders that primarily derive from out-of-state customers.	☒	☐
10. The business' sole activity in South Carolina is using an in-state photographer, if the vendor's products are shipped to South Carolina during the photographic sessions.	☒	☐
11. The business collects delinquent accounts using a collection agency in South Carolina or hires attorneys or other third parties to file collection suits in South Carolina.	☒	☐

	YES	NO
12. The business is affiliated with an entity that sells tangible personal property or services to customers in South Carolina, and		
(a) the South Carolina affiliate sells similar merchandise and uses common trade names, trademarks or logos; or,	☒	☐
(b) uses the South Carolina affiliate to accept returns, take orders, perform customer service or distribute advertising materials on its behalf.	☒	☐
13. The business sells tangible personal property to residents in South Carolina from outside the state and authorizes an employee or third party (e.g., sales representative, independent contractor, or affiliated company) to solicit sales in South Carolina.	☒	☐
14. The business' sole activity in South Carolina is soliciting through independent agents.	☒	☐
15. The business' sole activity in South Carolina is using a broker to arrange rentals of customer mailing lists, that constitute tangible personal property under the South Carolina sales and use tax law, to vendors in South Carolina and other states.	☒	☐
16. The business' in -state representative maintains an in-home office.	☒	☐
Note: This answer applies whether or not the business reimburses the in-state representative for the costs of maintaining the in-home office. In addition, as noted elsewhere in this advisory opinion, it is not necessary that a representative maintain an in-state office in order for nexus to exist.		
17. The business sells tangible personal property to residents in South Carolina from outside of South Carolina (e.g., telephone, over the Internet, via catalog/direct mail, or otherwise) and ships its product for distribution to a third-party distributor located in South Carolina that performs the functions such as labeling, packaging, and shipping.	☒	☐
Note: This answer assumes that the third-party distributor did not purchase the merchandise, but is providing a service on behalf of a retailer selling tangible personal property to South Carolina residents.		
18. The business sells tangible personal property to residents in South Carolina from outside of South Carolina (e.g., telephone, over the Internet, via catalog/direct mail, or otherwise) and makes remote sales of tangible personal property to South Carolina residents and holds two or more one-day seminars in South Carolina.	☒	☐

	YES	NO
19. The business sells tangible personal property to residents in South Carolina from outside of South Carolina (e.g., telephone, over the Internet, via catalog/direct mail, or otherwise) and makes remote sales of tangible personal property to South Carolina residents and holds two or more one-day seminars in South Carolina, and has its employees visit South Carolina five times during the year.	☒	☐
20. The business sells gifts cards in affiliated South Carolina stores.	☒	☐
21. The business makes remote sales of “canned software,” that constitutes tangible personal property under the South Carolina sales and use tax law, to residents of South Carolina and then sends a representative to customize it to meet the customer’s specific needs or to provide other Information Technology services.	☒	☐
22. The business sells tangible personal property while temporarily located in South Carolina for up to three days.	☐	☐

Note: The answer depends on whether or not the business’ presence or sales are de minimis, the business’ intent with respect to returning to the state, the value of the sales, and other facts and circumstances. However, even if nexus is not established, the seller must be licensed and remit the tax on all sales made by the employee during the employee’s time in the state

23. The business sells tangible personal property to residents in South Carolina from outside of South Carolina (e.g., telephone, over the Internet via catalog/direct mail, or otherwise) and produces an “info-commercial” that runs on an in-state television channel and pays commissions to the local TV station based on a percentage of sales to South Carolina customers who made purchases using the phone number or website address displayed on the infomercial.”	☐	☐

Note: The answer depends on the facts and circumstances (e.g., nexus may exist if the advertising consists of a personal endorsement by a local personality)

D. Delivery

	YES	NO
1. The business’ sole activity in South Carolina is in-state delivery via company-owned vehicles.	☒	☐
2. The business’ sole activity in South Carolina is the presence of a representative to deliver merchandise in South Carolina ⁴ .	☒	☐

⁴ See Question B.4.

	YES	NO
3. The business delivers merchandise in South Carolina by means other than common carrier or the U.S. Postal Service.	☒	☐
4. The business uses a company in South Carolina to drop-ship merchandise to customers.	☐	☒

Note: See SC Revenue Ruling #98-8. In addition, see Question B.9 for the application of nexus to a business whose sole activity in South Carolina is the drop shipment of catalogs in South Carolina for mailing to residents within South Carolina.

E. Transactions with South Carolina Printers⁵.

	YES	NO
1. The business' sole activity in South Carolina is using a South Carolina printing company to print catalogs or advertisements, if the vendor's personnel enter the state occasionally (1-3 times per year) during the printing process.	☐	☒

Note: See Code Section 12-36-75

2. The business' sole activity in South Carolina is using a South Carolina printing company to print catalogs or advertisements, if the vendor's personnel do not enter South Carolina during the printing process.	☐	☒

Note: See Code Section 12-36-75.

3. The business' sole activity in South Carolina is using a South Carolina printing company where the taxpayer's printing materials or printed goods are stored.	☐	☒

Note: See Code Section 12-36-75.

F. Advertising

	YES	NO
1. The business' sole activity in South Carolina is spillover advertising from neighboring states.	☐	☒

Note: This answer assumes that the advertiser and retailer have no physical presence in South Carolina.

⁵ See Exhibit A.

	YES	NO
2. The business' sole activity in South Carolina is that of a mail-order catalog seller with only mail communication in the state.	☐	☒

Note: This answer assumes that the retailer has no physical presence in South Carolina and that the catalogs are not mailed from within South Carolina.

3. The business' sole activity in South Carolina is mailing catalogs to South Carolina consumers.	☐	☒

Note: This answer assumes that the retailer has no physical presence in South Carolina and that the catalogs are not mailed from within South Carolina.

4. The business is an Internet-based retailer with an out-of-state home office and enters into an agreement with a South Carolina operator of a website. The website operator hosts advertisements directing consumers to the website of the out-of-state retailer, and is paid each time an ad is displayed (per impression).	☐	☒

5. The business' sole activity in South Carolina is advertising on local media (e.g., newspapers, radio, TV).	☐	☐

Note: The answer depends on the facts and circumstances (e.g., nexus may exist if the advertising consists of a personal endorsement by a local personality)

6. The business' sole activity in South Carolina is advertising on national media, which may be circulated in South Carolina (e.g., national magazines or TV).	☐	☐

Note: The answer depends on the facts and circumstances (e.g., nexus may exist if the advertising consists of a personal endorsement by a local personality)

7. The business' sole activity in South Carolina is advertising on satellite TV.	☐	☐

Note: The answer depends on the facts and circumstances (e.g., nexus may exist if the advertising consists of a personal endorsement by a local personality)

G. Other Issues

	YES	NO
1. The business sells tangible personal property over the Internet and operates a website which is maintained on a server that is owned by the business and located in South Carolina.	☒	☐

	YES	NO
2. The business makes remote sales of digital content such as music and video that is downloaded by residents of South Carolina.	☐	☒
Sales of digital content that is downloaded is not subject to the tax.		
3. The business sells tangible personal property to residents in South Carolina from outside of South Carolina (e.g., telephone, over the Internet, via catalog/direct mail, or otherwise) and is the single member in a single member LLC that is a disregarded entity and is operating in South Carolina.	☒	☐

Note: As stated in the “Introduction,” the above answers are based on the assumption that the business is selling tangible personal property at retail to residents or others in South Carolina and that each specific question by itself was the only possible nexus creating activity or relationship a business has in South Carolina. However, it is important to note that a combination of several different activities or relationships, even if each by itself does not create nexus, may create nexus with South Carolina. In addition, any variance from the facts stated in a question, or any additional facts not stated in a question, may change the answer set forth in this document.

14

***Manufacturers,
Processors,
and
Compounders***

Chapter 14

Manufacturers, Processors, and Compounders

A. General Information

Manufacturers, processors, and compounders are eligible for numerous exclusions and exemptions from sales and use tax.¹ This chapter provides a more detailed discussion of the most common exemptions available to manufacturers, processors, and compounders, such as the sales tax exemption for machinery used in manufacturing, processing, compounding, mining, or quarrying tangible personal property for sale;² ingredient parts;³ electricity;⁴ fuel;⁵ packaging;⁶ and sales for resale.⁷

B. Machines, Parts, and Attachments

General Information. The “machine exemption”⁸ exempts from sales and use tax purchases of machines used in manufacturing, processing, compounding, mining, or quarrying tangible personal property for sale. The term “machines” includes the parts of machines, attachments, and replacements used, or manufactured for use, on or in the operation of the machines and which are necessary to the operation of the machines and are customarily so used or are necessary to comply with the order of an agency of the United States or of South Carolina for the prevention or abatement of pollution of air, water, or noise that is caused or threatened by a machine used in manufacturing, processing, recycling, compounding, mining, or quarrying tangible personal property for sale. This exemption does not include automobiles or trucks.

The applicability of this machine exemption depends on whether the machine is integral and necessary to the manufacturing process⁹ - *i.e.*, is the machine an essential and indispensable component part of the manufacturing process and is it used on an ongoing and continuous basis during the manufacturing process. The court in *Hercules Contractors and Engineers, Inc. v. South Carolina Tax Commission*, 313 S.E. 2d 300 (1984) set forth a test for determining if a machine is integral and necessary to the manufacturing process; two South Carolina court decisions in 2003 have followed and clarified this theory. Each is briefly discussed below.

¹ South Carolina Code §§12-36-2120 and 12-36-120 and SC Regulation 117-302.

² South Carolina Code §12-36-2120(17).

³ South Carolina Code §12-36-120(2).

⁴ South Carolina Code §12-36-2120(19).

⁵ South Carolina Code §12-36-2120(9).

⁶ South Carolina Code §§12-36-2120(14) and 12-36-120(4).

⁷ South Carolina Code §12-36-120(1).

⁸ South Carolina Code §12-36-2120(17).

⁹ References to “manufacturing” include “processing,” “compounding,” “mining,” and “quarrying.”

Hercules Contractors and Engineers, Inc. v. South Carolina Tax Commission, 313 S.E. 2d 300 (1984). *Hercules* involved whether a facility that treated waste on plant property that was produced in connection with the manufacture of textile products for sale was a machine. The Court held that the wastewater treatment facility was a machine and that its various parts and attachments (such as vats, basins, tanks, pumps, other mechanical devices, troughs, and pipes) are integral and necessary to the operation of the system as a whole.

The following test was used by the Court in determining what is an exempt “machine.” Are improvements, either fastened or loose,

1. Used directly in manufacturing the products that the establishment intended to produce;
2. Necessary and integral part of the manufacturing process;
3. Used for the purpose of manufacturing the product it was intended to produce; and
4. Not benefiting the land generally, and will not serve various users of the land.

The Court further defined the term “machine” to include “the concept of combination” (*i.e.*, combination of mechanical powers, parts, attachments and devices to perform some function and produce a certain effect or result integral and necessary to the manufacturing process) and held that the statute “does not require a machine to have moving parts if it is an integral part of the manufacturing process” and that the statute makes no distinction “as to whether a machine is a fixture or personal property.”

Springs Industries, Inc., v. South Carolina Department of Revenue, South Carolina Court of Appeals, No. 2003-UP-029, January 8, 2003 (*unpublished*), *certiorari denied*, October 8, 2003. *Springs* involved the applicability of the machine exemption to “machines used in manufacturing” at a textile plant, and to chemicals used at the plant’s wastewater treatment facilities to purify manufacturing waste. The court held that machinery is exempt if it is integral and necessary to the manufacturing process and used in an ongoing and continuous basis during the manufacturing process.

Anonymous Corporation v. South Carolina Department of Revenue (02-ALJ-17-0350-CC). This case involved whether buildings or parts of buildings could be exempt under the machine exemption. The Administrative Law Court held that building materials, such as paint and sealants, foundations, structural steel, steel decking and checkers plates for buildings, hangers and supports for process piping, and architectural roofing and siding, purchased to construct a manufacturing facility were not exempt as a machine.

The machine exemption does not apply to everything that can be useful to a manufacturer. The applicability of the machine exemption depends on whether the machine is integral and necessary to the manufacturing process.

C. Machine Exemption – General Rule

A machine qualifies for the machine exemption if the machine meets the following three requirements:¹⁰

1. The machine is used at a manufacturing facility whose purpose is manufacturing a product “for sale.” It does not apply to machines used at a facility whose purpose may be retailing, wholesaling, or distributing. For example, machines used by an industrial baker manufacturing breads for sale may be exempt; however, similar machines used by a local retail bakery are not exempt.
2. The machine is used in, and serves an essential and indispensable component part of the manufacturing process and is used on an ongoing and continuous basis during the manufacturing process. Note: A machine “integral and necessary” to the manufacturer, such as a machine used solely for warehouse, distribution, or administrative purposes, is not exempt under the machine exemption since it is not “integral and necessary” to the manufacturing process.
3. The machine must be substantially used (not necessarily exclusively used) in manufacturing tangible personal property for sale, *i.e.*, more than one-third of a machine’s use is for manufacturing.

A machine meeting the above requirements may be exempt even if it does not have moving parts or is a fixture upon the real estate where it stands. However, buildings and parts of buildings, as well as other improvements which benefit the land generally and may serve other users of the land, are not exempt.¹¹

D. Machines - Replacement Parts and Attachments

Parts of machines, attachments, and replacements used, or manufactured for use, on or in the operation of exempt machines are also exempt under the machine exemption if they are

- (1) used on or in the operation of exempt machines,
- (2) manufactured for use on or in the operation of exempt machines,
- (3) integral and necessary to the operation of exempt machines, and
- (4) customarily so used.

¹⁰ SC Regulation 117-302.5.

¹¹ SC Regulation 117-302.5.

In order to be exempt, a part or attachment must be purchased in the form in which it will be used by the manufacturer without any fabrication or alteration by the manufacturer, except the usual and customary minor adjustment. It must be a standard part or attachment customarily used and, further, that the machine or machinery on which it is used would not do the work for which it was designed if it were not used. This exempts all parts and attachments without which the machine would do no work, and exempts parts and attachments designed to increase the efficiency of the machine.¹²

E. Examples of Exempt Machines or Machine Parts

Examples of exempt machines or parts of machines include the following:

- material handling or mechanical conveyor machines feeding the first processing machine; the machine that discharges the finished product from the last machine used in the process; material handling machinery used for transporting in process material from one process stage to another
- chemicals, including greases, oils, lubricants, and coolants, used in an exempt manufacturing machine that are essential to the functioning of the exempt machine during the manufacturing process
- tanks which are a part of the chain of processing operations (the exemption does not include storage tanks)
- transformers, capacitors, and voltage regulators used by manufacturers, processors, or compounders as a part of their manufacturing, processing, or compounding machinery
- machines used to condition air (including humidification systems) for quality control during the manufacturing process of tangible personal property made from natural fibers and synthetic materials
- recording instruments attached to manufacturing machines
- belting purchased for use on a particular machine used in manufacturing tangible personal property for sale
- materials used by manufacturers or contactors in building machines that will manufacture tangible personal property for sale

¹² See SC Regulation 117-302.5 for guidance in determining what qualifies as a part or attachment to a machine.

F. Examples of Non-Exempt Machines or Parts

Examples of taxable machines or parts include the following:

- material handling machinery and/or mechanical conveyors up to the point where the materials go into process
- chemicals used to clean non-exempt machines, such as storage tanks, or the manufacturing facility
- paint used on exempt manufacturing machines to prevent machine corrosion
- greases, oils (*e.g.*, motor oils, gear oils, or chain oils), lubricants, and coolants used in an exempt manufacturing machine when such items are not integral and necessary to the manufacturing process, such as those that are not essential in ensuring the functioning of the machine during the manufacturing process
- machines used for maintenance purposes (*i.e.*, machines used to maintain nonexempt machines that are not integral and necessary to the manufacturing process, or are not used on an ongoing, continuous basis to maintain exempt manufacturing machines that are integral and necessary to the manufacturing process), such as pressure washing machines and ultrasonic cleaning machines used to clean non-exempt machines or parts, such as storage tanks
- storage racks used to store raw materials or finished goods, or storage tanks used to store raw materials, gasses, or water
- warehouse machines used for warehouse purposes, such as loading and unloading, storing, or transporting raw materials or finished products
- storage tanks and piping leading to and from storage tanks and piping bringing gas or water into the plant
- power lines bringing electricity into the plant
- administrative machines, furniture, equipment and supplies such as office computers, paper, or items used for the personal comfort, convenience, or use of employees

G. Machines – A Structure versus A Building

The machine exemption can apply to a machine that is a “structure.” However, a structure that is a building is not a “machine,” and the materials used to construct the building are not exempt from sales and use tax as a machine, part, or attachment used in manufacturing.¹³

¹³ See SC Regulation 117-302.5 and South Carolina Revenue Ruling #04-7 for more details.

The Department held that (1) a settling basin for a wastewater treatment facility was one part of a single entity and that the facility was a “machine”¹⁴ and (2) a gamma irradiator constitutes a machine.¹⁵

See Section S of this chapter for information on an exemption for the sale of construction material used in constructing a manufacturing facility meeting certain investment and job requirements.

H. Pollution Abatement Machines¹⁶

Pollution control machines qualify for the machine exemption when installed and operated for compliance with an order of an agency of the United States or of this state to prevent or abate air, water, or noise pollution caused or threatened by the operation of other exempt machines used in the mining, quarrying, compounding, processing, and manufacturing of tangible personal property for sale.¹⁷

Examples of prior Department determinations illustrate the application of the machine exemption to pollution abatement machines:

1. The Department held that stack liners and ash pond pipes and pumps located at a taxpayer’s electrical generating facility were exempt from sales and use tax as pollution abatement machines on the grounds that these items were “operated exclusively in the abatement of pollution caused by the production of electricity.”¹⁸
2. The Department determined that certain parts, attachments, and components of a chimney stack used in the manufacture of electricity were “machines” required by state and federal law and were necessary and integral to the manufacture of electricity, and, therefore, were exempt from sales and use tax.¹⁹

I. Machines Owned by Someone Other Than a Manufacturer

Ownership of the machine by the manufacturer is not required to qualify for the machine exemption. The use of a machine determines whether it is exempt from sales and use tax.²⁰

This issue was considered in *Hercules*. The Court reviewed whether the machine exemption applied to materials purchased to build a waste treatment facility that was owned by a South Carolina town and used substantially by a manufacturer in the

¹⁴ South Carolina Revenue Ruling #89-7.

¹⁵ South Carolina Private Letter Ruling #90-3.

¹⁶ South Carolina Code §12-36-2120(17) and SC Regulation 117-302.6

¹⁷ South Carolina Code §12-36-2120(17).

¹⁸ South Carolina Commission Decision #92-19.

¹⁹ South Carolina Private Letter Ruling #92-9. See also *Hercules Contractors and Engineers, Inc. v. South Carolina Tax Commission*, 313 S.E.2d 300 (1984).

²⁰ South Carolina Code §12-36-2120(17).

manufacture of tangible personal property for sale. The Court determined that the machine exemption applied to the materials used to construct that facility, without regard to the machine's ownership, since the facility satisfied a pollution control requirement and thereby allowed the manufacturer to remain in operation.²¹

J. Machines Used Substantially in Manufacturing (Dual Usage Machines)

“Substantial” use, but not “exclusive” use, of a machine in the manufacture of tangible personal property for sale is required in order for the machine exemption to apply. Several examples illustrating this principle are provided below.

For example, the purchase of a forklift that is used substantially to move materials from one stage of the production process to another (an exempt purpose) and also used to load trucks (a non-exempt purpose) is allowed the machine exemption from sales and use tax. In addition, purchases of parts for the forklift are also exempt from tax.

Further, this principle was reviewed in *Hercules* where the Court determined that a municipally owned waste treatment facility was a machine used substantially in the manufacture of tangible personal property for sale. At this facility, approximately 35% of the waste treated was from a manufacturing plant and the rest was from ordinary municipal sources. The Court concluded that the machine exemption does not provide that the manufacturing use has to be exclusive nor does it require that the manufacturing use be the primary use to which the facility is devoted. In accordance with a regulation approved by the General Assembly, more than one-third of a machine's use in manufacturing is substantial.²²

K. Tangible Personal Property that is an “Ingredient or Component Part” or “Used Directly” in the Process

South Carolina does not tax the sale of tangible personal property to a manufacturer or compounder that is an ingredient or component part of the tangible personal property or products manufactured or compounded for sale.²³

Further, South Carolina does not tax the sale of tangible personal property “used directly” in manufacturing, compounding, or processing tangible personal property for sale.²⁴ An item is “used directly” if the materials or products so used come in direct contact with and contribute to bring about some chemical or physical change in the ingredient or component properties during the period in which the fabricating, converting, or processing takes place.²⁵

²¹ See also *Southeastern-Kusan v. South Carolina Tax Commission*, 280 S.E. 2d 57 (1981).

²² SC Regulation 117-302.5. See also *Anonymous Corporation v. South Carolina Department of Revenue* (06-CP-40-0103), Court of Common Pleas for the Fifth Judicial Circuit (2008).

²³ South Carolina Code §12-36-120(2).

²⁴ South Carolina Code §12-36-120(3).

²⁵ SC Regulation 117-302.1.

Examples²⁶ of these exclusions from the tax are:

- (1) acetylene, oxygen, and other gases sold to manufacturers or compounders that enter into and become an ingredient or component part of the tangible personal property or products which he manufactures or compounds for sale, or which are used directly in fabricating, converting, or processing the materials or products being manufactured or compounded for sale, or
- (2) plates attached by the manufacturer to his product for identification purposes and which become a part of the product.

L. Electricity

The sale of electricity used by manufacturers, processors, miners, quarriers, or cotton gins to manufacture, mine, or quarry tangible personal property for sale is exempt from the tax.²⁷

This exemption applies to electricity that provides lighting necessary for the operation of machines used in manufacturing tangible personal property for sale and to electricity used to control plant atmosphere as to temperature and/or moisture content, in the quality control of tangible personal property being manufactured or processed for sale.²⁸

This exemption does not apply to sales of electricity used in administrative offices, supervisory offices, parking lots, storage warehouses, maintenance shops, safety control, comfort air conditioning, elevators used in carrying personnel, housekeeping equipment and machinery, machines used in manufacturing tangible personal property not for sale, cafeterias, canteens, first aid rooms, supply rooms, water coolers, drink boxes, unit heaters, and waste house lights.²⁹

M. Coal, Coke, and Other Fuel

The sale of coal, coke, or other fuel to manufacturers and electric power companies for the generation of heat or power used in manufacturing tangible personal property for sale or the generating of electric power or energy for use is exempt from the tax.³⁰ For purposes of this exemption, mining and quarrying are considered to be manufacturing. The sale of coal, coke or other fuel to manufacturers for the production of by-products or for the generation of electric power or energy for use in manufacturing tangible personal property for sale is also exempt.³¹

This exemption applies to fuel used to control plant atmosphere as to temperature and/or moisture content in the quality control of tangible personal property being manufactured or processed for sale.

²⁶ SC Regulation 117-302.1.

²⁷ South Carolina Code §12-36-2120(19).

²⁸ SC Regulation 117-302.4.

²⁹ SC Regulation 117-302.4.

³⁰ South Carolina Code §12-36-2120(9).

³¹ SC Regulation 117-302.3.

N. Fuel Used by Aircraft Manufacturer

Sales of fuel that will be used for test flights of aircraft by the manufacturer of the aircraft, or used in the transportation of an aircraft prior to its completion from one facility of the manufacturer to another facility of the manufacturer, are exempt from the tax if certain requirements are met.³² The exemption does not apply to fuel used for the transportation of major component parts for construction or assembly or fuel used for the transportation of personnel.

In order to qualify for this exemption, the taxpayer must notify the Department in writing before the first month it uses the exemption and must, over a seven year period, invest at least seven hundred fifty million dollars in real or personal property or both comprising or located at a single manufacturing facility and create at least three thousand eight hundred full-time new jobs at the single manufacturing facility.

The exemption only applies to taxpayers that notify the Department prior to October 31, 2015 of their intent to utilize the exemption.³³

O. Packaging

The sale of materials, containers, cores, labels, sacks, or bags that are used incident to the sale and delivery of tangible personal property are not subject to the tax.³⁴ The terms “materials,” “containers,” and “cores” are defined as follows:³⁵

“Materials” include wrapping paper, twine, strapping, nails, staples, wire, lumber, cardboard, adhesives, tape, waxed paper, plastic materials, aluminum foils, and pallets used in packaging tangible personal property incident to its sales and delivery and used by manufacturers, processors, or compounders in shipping tangible personal property.

“Containers” include paper, plastic or cloth sacks, bags, boxes, bottles, cans, cartons, drums, barrels, kegs, carboys, cylinders, and crates.

“Cores” include spools, spindles, cylindrical tubes and the like on which tangible personal property is wound.

This sales and use tax exclusion applies to labels affixed to manufactured articles to identify such products only when such labels are passed on to the ultimate consumer of such products, and to excelsior, cellulose wadding, paper stuffing, sawdust and other packing materials used to protect products in transit. This exclusion does not apply to address stickers and shipping tags, and materials used to preserve property during shipment, such as dry ice and rust preventives.

³² South Carolina Code §12-36-2120(9)(e) and (f).

³³ Act No. 124 of 2009, Section 2B.

³⁴ South Carolina Code §§12-36-120(4) and 12-36-2120(14).

³⁵ SC Regulation 117-302.2.

P. Sales for Resale or Wholesale Sales

Sales by manufacturers and compounders of tangible personal property are not taxable if the property is sold for resale (*e.g.*, a wholesale sale).³⁶ Further, a manufacturer is considered to be making a wholesale sale and not liable for South Carolina sales and use tax when the manufacturer, at the request of a retailer, drop ships its product in South Carolina and bills the retailer for the product. See South Carolina Revenue Ruling #98-8 for further information on drop shipments.

A resale certificate, Form ST-8A, can be used by retailers to purchase tangible personal property for resale. It is not necessary that a resale certificate be obtained for each purchase; the seller must maintain only one resale certificate per customer. By accepting the resale certificate and having it on file, the seller is relieved of the tax liability. Sales to users or consumers are taxable. It is not required that Form ST-8A be used. A letter from the purchaser to the seller or a resale certificate from another state is acceptable provided it contains the same information requested on Form ST-8A. In addition, the "Uniform Sales and Use Tax Certificate" published by the Multistate Tax Commission ("MTC") may be used by a purchaser for the purpose of purchasing tangible personal property that will be resold, leased, or rented in the normal course of the purchaser's retail business.³⁷

Q. Material Handling Systems and Equipment³⁸

Sales of material handling systems and equipment for use in the operation of a manufacturing facility³⁹ are exempt from the tax if certain requirements are met. This exemption includes, but is not limited to, racks used in the operation of a manufacturing facility, whether or not used to support all or part of the facility structure.

The following are examples of material handling systems and material handling equipment that qualify for the exemption when used in the operation of a manufacturing facility or a distribution facility that meets the requirement of the exemption:

- Automated storage and retrieval systems
- Carts
- Conveyors
- Cranes
- Dollies Forklifts (including battery chargers designed for the forklift)⁴⁰
- Hand Trucks
- Hoppers

³⁶ South Carolina Code §12-36-120(1).

³⁷ See South Carolina Revenue Procedure #08-2 for further information on the acceptance of a resale certificate, Form ST-8A, and the liability for the tax.

³⁸ See South Carolina Code § 12-36-2120(51) and SC Revenue Ruling #13-3 for a detailed analysis of what qualifies for the material handling exemption.

³⁹ This exemption also applies to distribution facilities complying with the notice requirements and meeting the investment requirements of the exemption.

⁴⁰ The battery charger qualifies for the exemption since the forklift, and the battery charger designed for it, are two parts of a material handling system. See South Carolina Revenue Ruling #13-3.

Piping
Pumps
Racks
Shelving
Stackers
Tanks

The exemption does not apply to any material handling systems or material handling equipment that is not used in the operation of a manufacturing facility or a distribution facility (e.g., mail carts, shelving used in the office for books and records, office computers, copiers, and similar office equipment) and does not apply to any material handling systems or material handling equipment used in a manufacturing facility or distribution facility that does not meet all the requirements of the exemption.

In order to qualify for this exemption, the taxpayer must notify the Department in writing before the first month it uses the exemption and must, over a five year period, invest at least thirty-five million dollars in real or personal property in South Carolina.

R. Computer Equipment

Sales of computer equipment that will be used in connection with a manufacturing are exempt from the tax if certain requirements are met.⁴¹

In order to qualify for this exemption, the taxpayer must notify the Department in writing before the first month it uses the exemption and must, over a seven year period, invest at least seven hundred fifty million dollars in real or personal property or both comprising or located at a single manufacturing facility and create at least three thousand eight hundred full-time new jobs at the single manufacturing facility.

“Computer equipment” means original or replacement servers, routers, switches, power units, network devices, hard drives, processors, memory modules, motherboards, racks, other computer hardware and components, cabling, cooling apparatus, and related or ancillary equipment, machinery, and components, the primary purpose of which is to store, retrieve, aggregate, search, organize, process, analyze, or transfer data or any combination of these, or to support related computer engineering or computer science research.⁴²

The exemption only applies to taxpayers that notify the Department prior to October 31, 2015 of their intent to utilize the exemption.⁴³

⁴¹ South Carolina Code §12-36-2120(65)(b). An exemption for computer equipment also applies to technology intensive facilities, as defined in South Carolina Code §12-6-3360(M)(14)(b), complying with the notice requirements and investment requirements set forth in South Carolina Code §12-36-2120(65)(a).

⁴² South Carolina Code §12-36-2120(65)(c).

⁴³ Act No. 124 of 2009, Section 3B.

S. Construction Material

Sales of construction materials used in the construction of a single manufacturing facility are exempt from the tax if certain requirements are met.⁴⁴

The taxpayer must meet one of two sets of investment and job requirements:

- (1) The taxpayer must make a capital investment of at least one hundred million dollars in real and personal property at a single site in the State over an eighteen month period.⁴⁵
- (2) The taxpayer must make a capital investment of at least seven hundred fifty million dollars in real and personal property at the facility over a seven year period and must create at least three thousand eight hundred full-time new jobs at the facility over a seven year period. This exemption for this investment became effective November 1, 2009 and only applies to taxpayers that notify the Department prior to October 31, 2015 of their intent to utilize the exemption.⁴⁶

In order to qualify for this exemption, the taxpayer must notify the Department in writing before the first month it uses the exemption.

⁴⁴ South Carolina Code §12-36-2120(67).

⁴⁵ This exemption, requiring a capital investment of at least one hundred million dollars in real and personal property at a single site in the State over an eighteen month period, also applies to distribution facilities or combined manufacturing and distribution facilities.

⁴⁶ Act No. 124 of 2009, Section 4B.

15

Agriculture

Chapter 15

Agriculture

A. General Information

The agriculture industry enjoys numerous exclusions and exemptions from sales and use tax. This chapter will provide a more detailed discussion of the common exclusions and exemptions available to persons in the agriculture industry.

B. Machines, Parts and Attachments¹

The sale of farm machinery that is used in planting, cultivating or harvesting farm crops for sale is exempt from the tax. The exemption also applies to replacement parts and attachments.

Planting includes all necessary steps in the preparation of the soil prior to, and including, the planting and sowing of the seed.

Cultivation includes the loosening of the soil around growing plants, control of moisture content in the soil, and weed and pest control.

Harvesting begins with the gathering of the crop and ends when the crop is placed in a temporary or permanent storage area. However, it also includes the additional preparation for storage or sale of certain crops such as the curing of tobacco, grains and peanuts and the grading and packaging of peaches, cucumbers, tomatoes, etc.

The machinery exemption also applies to:

- machinery used in constructing terraces, drainage and irrigation ditches; dikes used to control the water level in cultivated fields; and land clearing prior to cultivation of the soil;
- machinery specially designed for irrigation purposes, including pumps, pipes, spigots, etc. when sold for use in the cultivation of farm crops;
- farm dairy tanks used in the production and preservation of milk on dairy farms;
- farm wagons substantially used in planting, cultivating or harvesting farm crops (i.e., hay, corn, peaches) for sale in their original state of production or preparation for sale; and
- pasteurizing machines, cooling machines, mechanical separators, homogenizing machines and bottling machines used by dairies in the production of milk for sale. Milking machines do not come within the exemption for farm machinery.

¹ SC Regulation 117-301.5.

Various machines used in the production of poultry and poultry products are exempt from the tax. See SC Regulation 117-301.5 for more details.

The machinery exemption does **not** apply to:

- automobiles and trucks;
- farm wagons not substantially used in planting, cultivating or harvesting farm crops (i.e., hay, corn, peaches) for sale in their original state of production or preparation for sale;²
- machinery used in constructing fences and buildings and repairing machinery and equipment; and
- farm implements such as hoes, pitchforks and shovels.

C. Livestock³

The sale of livestock is exempt from the tax.⁴ Livestock is defined as domesticated animals customarily raised on South Carolina farms for use primarily as beasts of burden or food. Livestock also means mammals raised for their pelts or furs.

The practical result of the above is to exempt from the tax horses, mules, cattle, swine, sheep, goats, rabbits, ostriches and any other animals raised as food for human consumption, domesticated fish produced for human consumption, and chinchillas.

Animals such as dogs, cats, reptiles, fowls (except baby chicks and poults), minnows, worms, fish (except those cultivated for human consumption), and animals of a wild nature are not considered livestock.

D. Feed⁵

The sale of feed used in the production and maintenance of livestock⁶ is exempt from the tax. Horse feed,⁷ rabbit feed used in the production and maintenance of rabbits for human consumption, and feed used in the production and maintenance of fry, fingerlings and fish are exempt.

² For example, the sale or purchase of a farm wagon for use solely in (a) hauling tractors, harvesting equipment, or cattle; or (b) hauling farm crops (i.e., hay, corn, peaches) from a storage area to market or to a buyer is **not** exempt from the sales and use tax. If a farm wagon is used for both exempt and nonexempt purposes, then the sale or purchase of the farm wagon is exempt from the sales and use tax only if it is used substantially (not merely incidentally) in the planting, cultivating, or harvesting of farm crops (i.e., hay, corn, peaches) for sale in their original state of production or preparation for sale.

³ SC Regulation 117-301.1

⁴ South Carolina Code §12-36-2120(4).

⁵ SC Regulation 117-301.2

⁶ South Carolina Code §12-36-2120(5). For definition of livestock, see SC Regulation 117-301.1.

⁷ South Carolina Private Letter Ruling #99-1.

E. Insecticides, Chemicals, Fertilizers, Soil Conditioners, Seeds and Seedlings⁸

Insecticides, chemicals, fertilizers, soil conditioners, seeds and seedlings used solely in the production for sale of farm, grove, vineyard or garden products are exempt from the tax.⁹ This exemption includes:

- explosives (chemicals) used solely in the production for sale of farm, grove, vineyard or garden products;
- medicines (chemicals) used solely in the production for sale of livestock;
- insecticides, chemicals, fertilizers, soil conditioners, seeds and seedlings used solely in the production for sale of timber and timber products, nursery products, and poultry and poultry products;
- insecticides and chemicals, including washing powder, soap, etc., used by dairy operators at the dairy barn in the production for sale of products of the dairy; and
- bull semen used solely in the production for sale of livestock.

This exemption does not apply to liquid petroleum gas used for burning grass and weeds around farm crops.

F. Containers and Labels¹⁰

Containers and labels used in preparing agriculture products for sale and used in preparing turpentine gum, gum spirits of turpentine, and gum resins for sale are exempt from the tax.¹¹ For the purposes of this exemption, “containers” means boxes, crates, bags, bagging, ties, barrels, and other containers.

This exemption applies to bags sold to:

- wholesale grain and feed dealers for use as furnished containers of corn and oats;
- cotton dealers or ginnerers for use as furnished containers of cotton seed;
- produce dealers for use as furnished containers of potatoes, cabbage, etc;

⁸ SC Regulation 117-301.3.

⁹ South Carolina Code §12-36-2120(6).

¹⁰ SC Regulation 117-301.4.

¹¹ South Carolina Code §12-36-2120(7).

- peanut hullers for use as furnished containers of peanut kernels, hulls, and vines; and
- nurserymen for use as furnished containers of nursery stock.

Wrapping paper, wrapping twine, paper bags, and containers, used incident to the sale and delivery of tangible personal property are exempt.¹²

The above exemptions do not apply to tobacco twine used by farmers incident to the curing of tobacco.

G. Fuel¹³

Fuel used in farm machinery and farm tractors used in planting, cultivating or harvesting farm crops and fuel used to cure agricultural products are exempt from the tax.¹⁴ This applies to fuel used in curing grain in grain elevators for storage or sale.

H. Electricity and Gas¹⁵

Sales of electricity and gas to farmers for use in the production of livestock and milk are exempt from the tax. Sales of electricity for residential purposes and irrigating crops are also exempt. Sales of electricity for other uses are taxable.

The following sales of electricity and gas are exempt:

- sales of electricity and natural and liquefied petroleum gas to farmers for use in the production of livestock or milk;¹⁶
- sales of electricity for irrigating farms crops;¹⁷ and
- sales of electricity and gas for residential purposes.¹⁸

Sale of electricity and gas to farmers for other uses are taxable.

¹² South Carolina Code §12-36-2120(14).

¹³ SC Regulation 117-301.6.

¹⁴ South Carolina Code §12-36-2120, subsections (15) and (18).

¹⁵ SC Regulation 117-301.7.

¹⁶ South Carolina Code §12-36-2120(32).

¹⁷ South Carolina Code §12-36-2120(44).

¹⁸ South Carolina Code §12-36-2120(33).

I. Building Materials, Supplies, Fixtures and Equipment for Commercial Housing of Poultry and Livestock¹⁹

Sales of building material, supplies, fixture, and equipment used in the construction, repair, or improvement a commercial housing of poultry or livestock, or that becomes part of a self-contained enclosure or structure designed, constructed and used for the commercial housing of poultry or livestock, are exempt from the tax.²⁰

This exemption applies to:

- wood chips for use on the floors of self-contained enclosures or structures specifically designed, constructed, and used for the commercial housing of poultry;²¹
- fencing and fencing supplies when used to surround an area on all sides in order to protect livestock or poultry raised or maintained for commercial purposes. The exemption is applicable when the fencing and fencing supplies are used within a building such as a barn or a chicken house or used to surround a field that is specifically set aside and used for livestock or poultry that is raised or maintained for commercial purposes;²² and
- watering tubs, feed troughs, and hay feeders placed within a fenced in area specifically set aside and used for livestock or poultry, provided the livestock and poultry within the enclosure are being raised or maintained for commercial purposes.²³

The exemption does not apply to fencing and fencing supplies used to surround a field where crops are grown.

J. Sales by Farmers²⁴

Sales of farm products are exempt if sold in their original state of production and sold by the farmer or a member of the farmer's immediate family. This exemption not only applies to sales of farm products by individuals; it also applies to sales by corporations and other entities. The exemption applies to food products, ornamental plants, timber, and grass sod.

The exemption is not applicable if the farmer processes his product beyond the usual and customary preparation for sale. For example, where a farmer also operates a processing plant, he cannot claim the exemption for sales of these processed products.

¹⁹ SC Regulation 117-301.8.

²⁰ South Carolina Code §12-36-2120(45).

²¹ South Carolina Information Letter #95-1.

²² South Carolina Revenue Ruling #95-11.

²³ South Carolina Revenue Ruling #95-11.

²⁴ South Carolina Regulation 117-301.9.

K. Hatcheries²⁵

The hatchery operator may purchase under his retail license hatchery eggs for use in hatching baby chicks for sale. Hatchery eggs may be sold free of the tax to a hatchery operator not having a retail license, provided, the seller thereof takes from such operator a certificate that the property is for resale either in the original form or as baby chicks or as full grown chickens. Hatcheries engaged in the business of hatching baby chicks for others from eggs grown by those other persons (custom hatching) are rendering a service which is not subject to the tax.

²⁵ SC Regulation 117-301.10.

16

***Construction
Contractors***

Chapter 16

Construction Contractors

A. General Information

A construction contractor is the user or consumer of everything he buys. A “construction contractor” is a person or business making repairs, alterations, or additions to real property.¹

In general, all purchases by construction contractors, including building materials,² are retail purchases and are subject to South Carolina sales or use tax. A contractor who buys building materials in another state and brings them into South Carolina for use on a construction contract in South Carolina is liable for South Carolina use tax.³ A credit is allowed against South Carolina use tax for the total taxes (state and local) due and paid in another state.⁴

The following are examples of transactions where the contractor is not subject to South Carolina sales and use tax:

- (1) The contractor buys property from a South Carolina supplier and the supplier delivers the property to the contractor (or to an agent or donee of the contractor) outside South Carolina.⁵
- (2) The contractor purchases tangible personal property in South Carolina for use on contracts outside South Carolina. To come within this exclusion, the contractor must perform some work on the property in South Carolina and the property must not be brought back into South Carolina.⁶

¹ SC Regulation 117-314.2.

² SC Regulation 117-314.2 defines “building materials” to mean any material used in making repairs, alterations or additions to real property, including “such tangible personal property as lumber, timber, nails, screws, bolts, structural steel, elevators, reinforcing steel, cement, lime, sand, gravel, slag, stone, telephone poles, fencing, wire, electric cable, brick, tile, glass, plumbing supplies, plumbing fixtures, pipe, pipe fittings, prefabricated buildings, electrical fixtures, built-in cabinets and furniture, sheet metal, paint, roofing materials, road building materials, sprinkler systems, air conditioning systems, built-in-fans, heating systems, floorings, floor furnaces, crane ways, crossties, railroad rails, railroad track accessories, tanks, builders hardware, doors, door frames, window frames, water meters, gas meters, well pumps, and any and all other tangible personal property which becomes a part of real property.”

³ South Carolina Code §12-36-1310(A) and South Carolina Revenue Ruling #89-16.

⁴ South Carolina Code §12-36-1310(C).

⁵ South Carolina Code §12-36-120(36).

⁶ South Carolina Code §12-36-110(2).

B. Retailer vs. Contractor

In making the determination as to whether a person is a retailer making sales and installations or a contractor, the following must be considered:

South Carolina Code §12-36-910(A) imposes the sales tax and reads:

A sales tax, equal to [six] percent of the gross proceeds of sales, is imposed upon every person engaged or continuing within this State in the business of selling tangible personal property at retail.

South Carolina Code §12-36-1310(A) imposes the use tax and reads:

A use tax is imposed on the storage, use, or other consumption in this State of tangible personal property purchased at retail for storage, use, or other consumption in this State, at the rate of [six] percent of the sales price of the property, regardless of whether the retailer is or is not engaged in business in this State.

South Carolina Code §12-36-1340 concerns the collection of the use tax by the retailer, and states:

Each seller making retail sales of tangible personal property for storage, use, or other consumption in this State shall collect and remit the tax in accordance with this chapter and shall obtain from the department a retail license as provided in this chapter, if the retail seller:

- (1) maintains a place of business;
- (2) qualifies to do business;
- (3) solicits and receives purchases or orders by an agent or salesman; or
- (4) distributes catalogs, or other advertising matter, and by reason of that distribution receives and accepts orders from residents within the State.⁷

South Carolina Code §12-36-70 defines, in part, the term “retailer” to include every person:

- (1)(a) selling or auctioning tangible personal property whether owned by the person or others;
- (b) furnishing accommodations to transients for a consideration, except an individual furnishing accommodations of less than six sleeping rooms on the same premises, which is the individuals [sic] place of abode;

⁷ The retailer can only be required to register and collect the use tax if the retailer has nexus with South Carolina. See Chapter 13 for information on nexus.

- (c) renting, leasing, or otherwise furnishing tangible personal property for a consideration;
- (d) operating a laundry, cleaning, dyeing, or pressing establishment for a consideration;
- (e) selling electric power or energy;
- (f) selling or furnishing the ways or means for the transmission of the voice or of messages between persons in this State for a consideration. A person engaged in the business of selling or furnishing the ways or means for the transmission of the voice or messages as used in this subitem (f) is not considered a processor or manufacturer;...

South Carolina Code §12-36-110 defines the term “retail sale” to mean in part:

Sale at retail and retail sale mean all sales of tangible personal property except those defined as wholesale sales. The quantity or sales price of goods sold is immaterial in determining if a sale is at retail.

South Carolina Code §12-36-120 defines the term “wholesale sale,” in part, to mean

a sales of...tangible personal property to licensed retail merchants, jobbers, dealers, or wholesalers for resale, and do not include sales to users or consumers not for resale.

However, South Carolina Code §12-36-110(1) further defines the term “retail sale” to include in part:

- (a) sales of building materials⁸ to construction contractors, builders, or landowners for resale or use in the form of real estate;

* * * *

⁸ SC Regulation 117-314.2 states: “Building materials” when purchased by builders, contractors, or landowners for use in adding to, repairing or altering real property are subject to either the sales or use tax at the time of purchase by such builder, contractor, or landowner. “Building materials” as used in the Sales and Use Tax Law includes any material used in making repairs, alterations or additions to real property. “Builders,” “contractors,” and “landowners” mean and include any person, firm, association or corporation making repairs, or additions to real property. The term “building materials” includes such tangible personal property as lumber, timber, nails, screws, bolts, structural steel, elevators, reinforcing steel, cement, lime, sand, gravel, slag, stone, telephone poles, fencing, wire, electric cable, brick, tile, glass, plumbing supplies, plumbing fixtures, pipe, pipe fittings, prefabricated buildings, electrical fixtures, built-in cabinets and furniture, sheet metal, paint, roofing materials, road building materials, sprinkler systems, air conditioning systems, built-in-fans, heating systems, floorings, floor furnaces, crane ways, crossties, railroad rails, railroad track accessories, tanks, builders hardware, doors, door frames, window frames, water meters, gas meters, well pumps, and any and all other tangible personal property which becomes a part of real property.”

(d) the use within this State of tangible personal property by its manufacturer as building materials in the performance of a construction contract. The manufacturer must pay the sales tax based on the fair market value at the time and place where used or consumed;

(e) sales to contractors for use in the performance of construction contracts;

* * * *

Based on the above, the statute establishes two types of businesses that may deal with the incorporation of tangible personal property into real property – retailers and contractors.

In other words, any person who sells tangible personal property at retail, or who sets himself up as being engaged in selling tangible personal property at retail, is a retailer. A person who makes improvement to real property but who is not engaged in selling tangible personal property at retail is a contractor.

In South Carolina, the determination as to whether a person is a retailer making sales and installations or a contractor depends on the facts and circumstances. Factors used in making this determination include, but are not limited to: how the person advertises his business (as a retailer or contractor); are retail sales made in which installation is not performed by the seller or on behalf of the seller; does the person have a showroom to display his products and how would this showroom be perceived by the general public; is the person licensed as a contractor under state law; does the person perform labor for a general contractor as a “subcontractor;” etc. In addition, the determination as to whether a person is a retailer making sales and installations or a contractor may require a review of the various agreements or contracts between the taxpayer and his customers.

Finally, SC Regulation 117-324, entitled “Dual Business,” states:

Operators of businesses who are both making retail sales and withdrawing for use from the same stock of goods are to purchase at wholesale all of the goods so sold or used and report both retail sales and withdrawals for use under the sales tax law.

This ruling applies only to those who actually carry on a retail business having a substantial number of retail sales and does not apply to contractors, plumbers, repairmen, and others who make isolated or accommodation sales and who have not set themselves up as being engaged in selling. Where only isolated sales are made, tax should be paid on all of the taxable property purchased with no sales tax return being required of the seller making such isolated or “accommodation” sales.
(Emphasis added.)

Based on the above statutes and regulations, if a person is deemed to be a contractor, then the sales and use tax is due at the time all materials are purchased. The sales by a contractor that are isolated or accommodation sales are not subject to the sales and use tax.

If a person is deemed a retailer, then the purchases of materials for resale are not subject to the tax, but the subsequent sales at retail of such material are subject to the tax based on “gross proceeds of sales” or “sales price.” However, installation labor, if separately stated on the bill to the customer and reasonable, would not be subject to the tax.

Furthermore, if a retailer truly serves as a contractor or subcontractor in the traditional sense for some transactions (*e.g.*, bids on a project against others, enters into a contract upon winning the bid process, etc.), then the building materials purchased for those contracts may be purchased tax paid as a contractor. Generally, in order to purchase building material tax paid as a contractor, the retailer would need to demonstrate, based on its books and records and how it operates, that these purchases were purchases at retail for a construction contract. If the retailer is unable to demonstrate that the purchases were for a construction contract, the retailer’s transactions with its customers will be treated either as retail sales and installations subject to the tax at the time of the sale or “withdrawals for use” subject to the tax at the time the tangible personal property is withdrawn from inventory.⁹

C. Construction Contracts with Manufacturers

Unlike most purchases by construction contractors, the purchase of materials that are components of machines which are used in manufacturing tangible personal property for sale may be purchased tax free.¹⁰ Often, a construction contractor will have a contract with a manufacturer, processor or compounder that has an exemption certificate and is entitled to the exemption for machines, parts and attachments.

Since construction contractors usually cannot make tax free purchases, the Department has developed several methods by which a contractor may purchase tax free all items to be used in building machines, parts and attachments for manufacturers that are exempt from tax. These methods are:

Manufacturer Letter to Contractor’s Suppliers – The manufacturer furnishes documentation, in the form of a letter, to the contractor’s suppliers establishing that the item is not subject to the tax. The manufacturer agrees to reimburse the party liable for the tax if a transaction is later determined to be subject to the tax. The contractor does not use the manufacturer’s exemption certificate.

Agency Agreement – The contractor enters into a limited agency agreement with the manufacturer, and the contractor is allowed to use the manufacturer’s exemption certificate. As an agent, the contractor is legally acting for the principal. The manufacturer is liable for any taxes due, so it is important for the agreement to be in writing and clearly state what the contractor can and cannot buy with the certificate. This is usually used for large projects.

⁹ See Chapter 6 (“Gross Proceeds of Sales” and “Sales Price”), Section E for a discussion of “withdrawals for use.” See also SC Regulation 117-309.17.

¹⁰ See SC Regulation 117-302.5.

Department Special Agreement – The Department executes a special agreement with the manufacturer whereby the manufacturer will accept liability and responsibility for payment of all the sales and use tax due on the project. This is only available for large projects and the use of this method is at the sole discretion of the Department. This is referred to as a “Special 19 Agreement.”

Single Sale Exemption Certificate – The contractor completes Form ST-8 and extends it to the supplier indicating the purchase is exempt under the “machine exemption.”¹¹ A certificate must be extended for each purchase. The contractor assumes full liability for the tax if it is determined that the purchase was used for a non-exempt purpose.

D. Light Construction Equipment

The law provides a maximum tax of \$300 on purchases of light construction equipment used for construction purposes, *i.e.*, building or making additions to real property.¹² The equipment must be self-propelled with a maximum of 160 net engine horsepower. Form ST-405 may be completed by the purchaser and given to the retailer in order to limit the tax to \$300. The local option sales and use taxes collected by the Department do not apply to sales subject to the \$300 maximum tax.

If light construction equipment is leased, it is subject to the \$300 maximum tax if the lease is in writing and has a stated term of, and remains in force for, a period in excess of 90 continuous days. The taxpayer may pay the total tax due at the time the lease is executed or with each lease payment until the \$300 is paid.

The Department has concluded that the \$300 maximum tax does not apply to equipment used to maintain or repair property, such as tractors, loaders and other self-propelled equipment used to maintain golf courses, parks and campgrounds.¹³

E. Construction Material Used to Construct a Single Manufacturing or Distribution Facility

South Carolina exempts from sales and use tax construction materials used in the construction of a single manufacturing or distribution facility, or one that serves both purposes, with a capital investment of at least \$100 million in real and personal property at a single site in the State over an 18 month period.¹⁴

¹¹ South Carolina Code §12-36-2120(17).

¹² South Carolina Code §12-36-2110(A)(7).

¹³ South Carolina Technical Advice Memorandum #89-13.

¹⁴ South Carolina Code §12-36-2120(67).

South Carolina also exempts from sales and use tax construction materials used in the construction of a single manufacturing facility where the taxpayer (1) invests at least \$750 million in real and personal property at the facility over a seven year period and (2) creates at least 3,800 new, full-time jobs over a seven year period. This exemption became effective November 1, 2009 and only applies to taxpayers that notify the Department prior to October 31, 2015 of their intent to utilize the exemption.¹⁵

The taxpayer, with respect to either exemption for construction material, must notify the Department in writing before the first month it uses the exemption and must notify the Department in writing that it has met the investment requirement or, after the expiration of the applicable investment period (18 months or seven years), that it has not met the investment requirement. This notification must also include the beginning date of the investment period.

F. Contracts with the Federal Government¹⁶

South Carolina exempts from sales and use tax tangible personal property purchased by a person under written contract with the federal government that

- becomes part of real or personal property owned by the federal government or
- transfers to the federal government, pursuant to a written contract.¹⁷

The exemption does not apply to purchases of items that do not transfer to the federal government, such as tools. Purchases made by contractors under contracts with state, county and municipal governments are not exempt from sales and use tax.

Further, South Carolina Revenue Ruling #04-9 provides that purchases by a construction subcontractor for use in a federal government construction project in South Carolina are exempt if (a) the subcontractor has a written contract with the general construction contractor that in turn has a written contract for the project with the federal government and (b) the subcontractor is an agent for the general contractor. In addition, purchases by a subcontractor of the subcontractor for use in a federal government construction project in South Carolina are not subject to the sales and use tax if the general contractor that has the written contract with the federal government has specifically granted his agent the authority to appoint a subagent that can bind the general contractor. The agency agreements with the subcontractors (as agents or subagents) must be in writing to meet the exemption requirement.¹⁸

¹⁵ Act No. 124 of 2009, Section 4B.

¹⁶ SC Regulation 117-314.11 and South Carolina Revenue Ruling #04-9.

¹⁷ South Carolina Code §12-36-2120(29).

¹⁸ See South Carolina Revenue Ruling #04-9 for the conditions that must be met for a subcontractor to be an agent for a general contractor.

G. Contracts with State, County and Municipal Governments

Sales to, or purchases by, contractors under contracts with state, county and municipal governments generally are **not** exempt from the sales and use taxes.

H. Contractors that Manufacture or Fabricate Items that They Will Use in Constructing Real Property¹⁹

The state sales and use tax applies to businesses that manufacture or fabricate items, that they will use in constructing real property, as follows:

Standard Finished Products:

If the taxpayer produces “standard finished products” that it sells at wholesale or at retail on a regular and continuous basis; creates “a new and substantially different article having a distinctive name and substantially different character or use” than that of the raw materials from which it was made; and, is commonly thought of as a manufacturer, then the taxpayer is a “manufacturer” of “building materials.” As a manufacturer, if the taxpayer uses such building materials in the performance of a construction contract, then the taxpayer is a “manufacturer/contractor,” and is liable for the sales tax based on the fair market value of the building materials at the time and place where used or consumed - the job site. However, if the job site is located outside of South Carolina, then no tax is due.

In addition, as a “manufacturer/contractor,” the taxpayer is entitled, to the extent applicable, to the exemptions and exclusions provided in South Carolina Code §§12-36-2120(9),²⁰ 12-36-2120(17),²¹ 12-36-2120(19)²² and 12-36-120.²³ Also, the credit provisions of South Carolina Code §12-36-1310(C)²⁴ may be applicable.

¹⁹ South Carolina Revenue Ruling #94-2. See also *Metromont Materials Corp. v. South Carolina Tax Commission*, Spartanburg County Court of Common Pleas, No. 84-CP-42-14 (1985).

²⁰ This code section provides exemptions for coal, or coke or other fuel sold to manufacturers for (a) use or consumption in the production of by-products, (b) the generation of heat or power used in manufacturing tangible personal property for sale and (c) the generation of electric power or energy for use in manufacturing tangible personal property for sale.

²¹ This code section provides an exemption for machines used in manufacturing tangible personal property for sale.

²² This code section provides an exemption for electricity used by manufacturers to manufacture tangible personal property for sale.

²³ This code section provides exclusions for the sale of (a) tangible personal property to a manufacturer as an ingredient or component part of the tangible personal property or products manufactured for sale, (b) tangible personal property used directly in manufacturing tangible personal property into products for sale and (c) materials, containers, cores, labels, sacks, or bags used incident to the sale and delivery of tangible personal property, or used by manufacturers in shipping tangible personal property.

²⁴ This code section allows with respect to each purchase a credit against the South Carolina state and local use tax for sales or use taxes paid in another state.

“Standard finished products” are items that are not specifically designed for use on a particular construction project. Such items are standard or interchangeable and have a resale value and a fair market value. These items are generally mass-produced and are suitable for use on many construction projects.

Unique Products:

If the taxpayer produces “unique products” that it uses in the performance of a construction contract, then the taxpayer is a contractor. As such, sales to, and purchases by, the taxpayer of the raw materials used to fabricate (within South Carolina) the unique product are subject to the sales and use tax. However, if the fabricated item will be used, and become a part of realty, at a job site located outside of South Carolina, then the sales to, and purchases by, the taxpayer of the raw materials used in the fabrication of that unique product are not subject to the sales and use tax.

If the unique product is fabricated out-of-state, sales to or purchases by, the contractor of the materials used to fabricate the unique product are not subject to the sales and use tax, provided the materials were not sold and delivered to the contractor within South Carolina.

In addition, as a contractor, the taxpayer is not entitled to the exemptions and exclusions provided in South Carolina Code §§12-36-2120(9),²⁵ 12-362120(17),²⁶ 12-36-2120(19)²⁷ and 12-36-120²⁸, unless a substantial portion of its business also includes the fabrication of “unique products” (and/or standard finished products) that it sells to contractors and other consumers. However, the credit provisions of South Carolina Code §12-36-1310(C)²⁹ may be applicable.

“Unique products” are items that are specifically designed for use on a particular construction project. Such items are not standard or interchangeable in any sense and have no resale value and no reasonable fair market value.

²⁵ This code section provides exemptions for coal, or coke or other fuel sold to manufacturers for (a) use or consumption in the production of by-products, (b) the generation of heat or power used in manufacturing tangible personal property for sale and (c) the generation of electric power or energy for use in manufacturing tangible personal property for sale.

²⁶ This code section provides an exemption for machines used in manufacturing tangible personal property for sale.

²⁷ This code section provides an exemption for electricity used by manufacturers to manufacture tangible personal property for sale.

²⁸ This code section provides exclusions for the sale of (a) tangible personal property to a manufacturer as an ingredient or component part of the tangible personal property or products manufactured for sale, (b) tangible personal property used directly in manufacturing tangible personal property into products for sale and (c) materials, containers, cores, labels, sacks, or bags used incident to the sale and delivery of tangible personal property, or used by manufacturers in shipping tangible personal property.

²⁹ This code section allows with respect to each purchase a credit against the South Carolina state and local use tax for sales or use taxes paid in another state.

Note: Sales of “standard finished products” or “unique products” to contractors and other consumers who use them in the performance of a construction contract, or to otherwise make improvements to realty, are subject to the sales and use tax based upon gross proceeds of sales or sales price, unless otherwise excluded or exempted from the tax.

I. Transient Construction Property³⁰

When a contractor is hired to build an office complex somewhere in South Carolina, the contractor may purchase various machinery, tools and equipment from out-of-state vendors for use at the South Carolina job site. These purchases are subject to the South Carolina sales tax or the use tax.

In addition, the contractor may import or bring into this State other machinery, tools and equipment, owned by the contractor and previously and substantially used on other jobs outside of South Carolina. Such machinery, tools and equipment is known as “transient construction property.”³¹

“Transient construction property” is subject to a special imposition of the South Carolina use tax. This special imposition prorates the use tax to reflect the equipment’s duration of use in South Carolina, provided the other state’s statute has similar provisions for proration of the tax or depreciation of the tax base.³²

In summary, the use tax imposed on the use of transient construction property is computed as follows:

Step #1: Multiply the Original Purchase Price by the State Tax Rate.³³

Step #2: Divide the Duration of Time the Property is Used in South Carolina by the Property’s Total Useful Life.³⁴

³⁰ South Carolina Code §12-36-1320 and South Carolina Revenue Ruling #89-11. Note: South Carolina Revenue Ruling #89-11 references the sales and use tax code sections prior to recodification in 1990; however, the taxation of transient construction property remained the same in South Carolina Code §12-36-1320 after recodification.

³¹ South Carolina Code §12-36-150 defines “transient construction property” to mean “motor vehicles, machines, machinery, tools, or other equipment, other tangible personal property brought, imported, or caused to be brought into this State for use, or stored for use, in constructing, building, or repairing any building, highway, street, sidewalk, bridge, culvert, sewer or water system, drainage or dredging system, railway system, reservoir or dam, power plant, pipeline, transmission line, tower, dock, wharf, excavation, grading or other improvement or structure, or any part of it.”

³² South Carolina Code §12-36-1320.

³³ The State tax rate is 6% on all transient construction property except items that qualify for the maximum tax under South Carolina Code §12-36-2110. Items that qualify for the maximum tax under South Carolina Code §12-36-2110 are taxed at a State rate of 5%. Items subject to the State rate of 6% are also subject to any applicable local taxes administered and collected by the Department of Revenue on behalf of local jurisdictions. Items that qualify for the maximum tax under South Carolina Code §12-36-2110 are not subject to local taxes administered and collected by the Department of Revenue on behalf of local jurisdictions.

³⁴ The same unit of time (*e.g.*, days, weeks, months) used for both the duration of time the property is used in South Carolina and the total useful life of the property.

Step #3: Multiply the Result of Step #1 by the Result of Step #2.

Step #4: The Result of Step #3 is the State Use Tax due South Carolina on the transient construction property.

South Carolina will also allow a credit (prorated to reflect the equipment's duration of use in South Carolina) for sales tax paid another state, against the South Carolina use tax, on equipment previously used in another state if the out-of-state contractor's state will allow a similar credit.

Note: Machinery, tools and equipment purchased for first use in South Carolina is not "transient construction property" and is subject to the full amount of use tax;³⁵ however, such purchases qualify for the credit for sales and use taxes, if any, legally due and paid in another state on the purchase of such machinery, tools and equipment.³⁶

J. Local Sales and Use Taxes

The local sales tax is reportable by the contractor's supplier in the county and municipality where the tangible personal property is delivered.

The local use tax is reportable by county and/or municipality where the property is first stored, used or consumed. Form ST-389 provides information as to which type of local sales and use tax must be reported by county and municipality and which type of local sales and use tax must only be reported by county.

The liability for the local use tax, as with the state use tax, is on the contractor. The supplier may; however, be required to collect the tax from the contractor and remit it to the Department if the supplier has nexus with the county of delivery.

If the contractor takes delivery in one local tax county and pays that county's local sales tax to the supplier, he is not liable for the local use tax if he takes the property to another local tax county and stores, uses or consumes the property in that county, provided the local sales tax he paid is equal to or greater than the local use tax that would otherwise be due. If the local sales tax he paid is less than the local use tax, then the contractor owes the difference. Also, the contractor is relieved of the liability for the local use tax if he has a receipt from a retailer showing the retailer has collected the local use tax.

Construction contracts executed before the imposition date of the local option tax are exempt from the local option sales and use taxes. The exemption from the local tax also applies to written bids that are submitted before the imposition date, and that culminate in a contract executed before or after the imposition date. To come within the exemption, contractors must apply to the Department of Revenue, using Form ST-10-C. If the application is approved, an exemption certificate will be issued (ST-35). An application form must be filed for each contract, accompanied by a copy of each contract. A separate exemption certificate will be issued for each contract.

³⁵ South Carolina Code §12-36-1310(A).

³⁶ South Carolina Code §12-36-1310(C).

17

Communications

Chapter 17

Communications

Communication technology is expanding every day. As such, new and emerging technologies will make available to consumers many new communication services in the future.

Communications are subject to sales and use tax under Chapter 36 of Title 12 pursuant to South Carolina Code §§12-36-910(B)(3) and 12-36-1310(B)(3), which impose the tax on the

gross proceeds accruing or proceeding from the charges for the ways or means for the transmission of the voice or 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 messages[.] [Emphasis added.]

It has been the longstanding position of the Department that charges for the ways or means of communication include charges for access to, or use of, a communication system (the manner, method or instruments for sending or receiving a signal of the voice or of messages), whether this charge is based on a fee per a specific time period or per transmission. This is further supported by the definition of the terms “sale” and “purchase,” which are defined in South Carolina Code §12-36-100 to include “a license to use or consume.”

The South Carolina sales and use tax also addresses two other types of communication services by special imposition. South Carolina Code §§12-36-910(B)(5) and 12-36-1310(B)(5) impose the sales and use tax on the gross proceeds accruing or proceeding from the sale or recharge at retail for prepaid wireless calling arrangements.

“Prepaid wireless calling arrangements” means communication services that

- (i) are used exclusively to purchase wireless telecommunications;
- (ii) are purchased in advance;
- (iii) allow the purchaser to originate telephone calls by using an access number, authorization code, or other means entered manually or electronically; and
- (iv) are sold in units or dollars, which decline with use in a known amount.

All charges for prepaid wireless calling arrangements must be sourced to the (i) location in this State where the over-the-counter sale took place; (ii) shipping address if the sale

did not take place at the seller's location and an item is shipped; or (iii) either the billing address or location associated with the mobile telephone number if the sale did not take place at the seller's location and no item is shipped.¹

South Carolina Code §12-36-2645 imposes the sales and use tax on gross proceeds accruing or proceeding from the business of providing 900/976 telephone service except that the applicable rate of the tax is 11%.

A. Exemptions and Exclusions

The sales and use tax law provides several exemptions and exclusions for the charges taxed under South Carolina Code §§12-36-910(B)(3) and 12-36-1310(B)(3).

South Carolina Code §12-36-2120(11) exempts:

- (a) toll charges for the transmission of voice or messages between telephone exchanges;
- (b) charges for telegraph messages;
- (c) carrier access charges and customers access line charges established by the Federal Communications Commission or the South Carolina Public Service Commission; and
- (d) transactions involving automatic teller machines[.]

South Carolina Code §12-36-60, the definition of “tangible personal property” which by statute includes communications,² states in part:

Tangible personal property does not include the transmission of computer database information by a cooperative service when the database information has been assembled by and for the exclusive use of the members of the cooperative service. [Emphasis added.]

South Carolina Code §12-36-910(C) excludes from the sales and use tax the gross proceeds accruing or proceeding from charges for or use of data processing. “Data processing” means the manipulation of information furnished by a customer through all or part of a series of operations involving an interaction of procedures, processes, methods, personnel, and computers. It also means the electronic transfer of or access to that information. Examples of the processing include, without limitation, summarizing, computing, extracting, storing, retrieving, sorting, sequencing, and the use of computers.

¹ South Carolina Code §§12-36-910(5)(b) and 12-36-1310(5)(b).

² Also, since communications services are by statute “tangible personal property,” there can be “wholesale sales” of communications services. See *PalmettoNet, Inc. v. South Carolina Tax Commission*, 318 S.C. 102, 456 S.E.2d 385 (1995).

South Carolina Code §12-36-2120(3) exempts from the tax:

- (a) textbooks, books, magazines, periodicals, newspapers, and access to on-line information systems used in a course of study in primary and secondary schools and institutions of higher learning or for students' use in the school library of these schools and institutions;
- (b) books, magazines, periodicals, newspapers, and access to on-line information systems sold to publicly supported state, county, or regional libraries;

Items in this category may be in any form, including microfilm, microfiche, and CD ROM; however, transactions subject to tax under South Carolina Code §§12-36-910(B)(3) and 12-36-1310(B)(3) do not fall within this exemption; [Emphasis added.]

B. Taxable Communication Services³

Charges for the following communication services are subject to the sales and use tax pursuant to South Carolina Code §§12-36-910(B)(3) and 12-36-1310(B)(3):

- Telephone services,⁴ including telephone services provided via the traditional circuit-committed protocols of the public switched telephone network (PSTN), a wireless transmission system, a voice over Internet protocol (VoIP) or any of other method
- Teleconferencing services
- Paging services⁵
- Cable television services⁶
- Satellite programming services and other programming transmission services (includes, but is not limited to, emergency communication services and television, radio, music or other programming services)
- Fax transmission services⁷
- E-mail services⁸

³ SC Regulation 117-329 and South Carolina Revenue Ruling #06-8.

⁴ See South Carolina Code §12-36-2120(11) for exemptions specifically related to telephone services.

⁵ See South Carolina Information Letter #89-28.

⁶ Attorney General Opinion #82-41 (6/9/1982).

⁷ See South Carolina Revenue Ruling #89-14.

⁸ See South Carolina Revenue Ruling #89-14.

- Electronic filing of tax returns when the return is electronically filed by a person who did not prepare the tax return⁹
- Database access transmission services (online information services), such as legal research services, credit reporting/research services, charges to access an individual website¹⁰ (including Application Service Providers), etc. (not including computer database information services provided by a cooperative service when the database information has been assembled by and for the exclusive use of the members of the cooperative services)¹¹

Note: It is the Department's opinion that charges for mobile satellite communication services, such as automobile satellite radio programming or other mobile communication services, are sourced to the primary place of use of the customer (e.g., the residence of an individual customer) as defined in the Mobile Telecommunications Sourcing Act. (Pursuant to South Carolina Code §§12-36-910(B)(3) and 12-36-1310(B)(3), "charges for mobile telecommunications services...must be sourced in accordance with the Mobile Telecommunications Sourcing Act as provided in Title 4 of the United States Code.")

⁹ See South Carolina Revenue Ruling #91-20.

¹⁰ Charges for the ways or means for the transmission of the voice or messages are subject to the sales and use tax under Code Sections 12-36-910(B)(3) and 12-36-1310(B)(3). Charges by an Internet Service Provider ("ISP") that allow a customer to access the Internet ("Internet Access") are charges for the ways and means for the transmission of the voice or messages. However, as discussed below, the Department has not enforced the assessment and collection of the sales and use tax on Internet Access.

In 1998 Congress established a tax moratorium in the Internet Tax Freedom Act. The moratorium was later extended in the Internet Nondiscrimination Act. The moratorium prohibited the taxation of Internet Access, unless the tax was generally imposed and actually enforced prior to October 1, 1998. Although a few taxpayers were paying sales and use tax on Internet Access, the Department reviewed its enforcement of the tax with respect to Internet Access and determined in 1998 that it had not issued an advisory opinion specifically stating that charges for Internet Access were taxable, and did not have an audit policy to enforce the assessment and collection of the tax on Internet Access. Therefore, the Department determined that the collection of the sales and use tax was not grandfathered under the Congressional moratorium and therefore it could not tax Internet Access. Since charges to access or use an individual database, such as a website, did not constitute an access to the Internet, these charges did not come within the moratorium and were subject to the tax. In addition, charges to access or use an individual database, such as a website, were previously held subject to the tax in SC Revenue Ruling #89-14 as a "database access transmission."

An extension of the moratorium was enacted by Congress. In addition, the combination of past Department policies and the Congressional moratorium has created the equivalent of a longstanding administrative policy not to impose the sales and use tax on Internet Access. Therefore, the Department will only enforce collection of the sales and use tax, on Internet Access if Congress does not extend the moratorium again and the General Assembly enacts legislation or approves a regulation to impose the sales and use tax upon Internet Access. However, charges by a third party to access or use that third party's individual website will continue to be subject to the sales and use tax (e.g. monthly charges to access a sports website).

¹¹ See South Carolina Revenue Ruling #89-14, South Carolina Private Letter Ruling #10-2, and South Carolina Private Letter Ruling #89-21.

Charges for the following communication services are subject to the sales and use tax pursuant to South Carolina Code §§12-36-910(B)(5) or 12-36-2645:

- Prepaid wireless calling arrangements (sale or recharge at retail) as defined in South Carolina Code §12-36-910(B)(5) (For information on prepaid telephone calling cards that do not come within the definition of prepaid wireless calling arrangements, see South Carolina Revenue Ruling #04-4.)
- 900/976 telephone services (The State tax rate on this type of communication service is 11%, not 6%)

C. Non-Taxable Communication Services¹²

Charges for the following communication services are **not** subject to the sales and use tax imposed under South Carolina Code §§12-36-910(B)(3) and 12-36-1310(B)(3)

- Telephone services specifically exempted from the tax, such as toll charges between telephone exchanges and carrier access charges and customers access line charges established by the Federal Communications Commission or the South Carolina Public Service Commission¹³
- Telegraph messages¹⁴
- Communication services involving automatic teller machines¹⁵
- Data processing services¹⁶
- Computer database information services provided by a cooperative service when the database information has been assembled by and for the exclusive use of the members of the cooperative services¹⁷
- Electronic filing of tax returns when the return is electronically filed by a person who prepared the tax return¹⁸
- Non-Automated Voice Mail Messaging Services, including Non-Automated Answering and Messaging Services
- Other charges specifically exempt from the tax under State law or federal law

¹² SC Regulation 117-329 and South Carolina Revenue Ruling #06-8.

¹³ South Carolina Code §12-36-2120(11).

¹⁴ South Carolina Code §12-36-2120(11).

¹⁵ South Carolina Code §12-36-2120(11).

¹⁶ SC Regulation 117-329; South Carolina Revenue Ruling #06-8; South Carolina Private Letter Ruling #13-1; South Carolina Private Letter Ruling #12-2; South Carolina Private Letter Ruling #04-1.

¹⁷ South Carolina Code §12-36-60.

¹⁸ See South Carolina Revenue Ruling #91-20.

The Department has also determined that charges for electronically monitoring a customer's home or business for the purpose of burglary and fire protection were not subject to the sales and use taxes since such charges were not charges for access to, or use of, a communication system (ways or means for the transmission of the voice or messages). The sale or lease of equipment to the customer, or the use of the equipment by the monitoring company, was held subject to the tax based on the specific facts and circumstances.¹⁹

D. “Bundled Transactions”

For a customer bill rendered on or after January 1, 2004 that includes telecommunications services in a bundled transaction, where the nonitemized price is attributable to properties or services that are taxable and nontaxable, the portion of the price attributable to any nontaxable property or service is subject to tax unless the provider can reasonably identify that portion from its books and records kept in the regular course of business for purposes other than sales taxes.

Note: A “bundled transaction” is “a transaction consisting of distinct and identifiable properties or services, which are sold for one nonitemized price but which are treated differently for [sales and use] tax purposes.”

Note: This publication attempts to list as many communication services as possible that the Department has held in the past as subject to the tax, whether through formal advisory opinions, audits or informal advice provided to taxpayers. Charges for other communication services not listed in this publication are still subject to the tax if they constitute charges for the ways or means for the transmission of the voice or messages and are not otherwise exempted under the law.

¹⁹ See South Carolina Private Letter Ruling #97-4 and South Carolina Technical Advice Memorandum #95-1

18

***Catawba Indian
Reservation –
State and Tribal
Sales and Use Taxes***

Chapter 18

Catawba Indian Reservation - State and Tribal Sales and Use Taxes

A. The Catawba Indian Claims Settlement Act

Chapter 16, Title 27 of the South Carolina Code of Laws is known as “The Catawba Indian Claims Settlement Act” (“The Act”). The Act is based on the agreement in principle reached between the State of South Carolina and the Catawba Indian Tribe to settle differences between the two parties.

This act took effect on November 29, 1993 when the Governor certified that the Counties of York and Lancaster had taken all actions required of them by the Settlement Agreement and that the federal implementing legislation enacted by Congress and signed in law by the President was consistent with the Settlement Agreement.

South Carolina Code §27-16-130 of the Catawba Indian Claims Settlement Act reads, in part:

(H) The Tribe, its members, and the Tribal Trust Funds are liable for the payment of all state and local sales and use taxes to the same extent as any other person or entity in the State, except as specifically provided as follows:

- (1) Purchases made by the Tribe for tribal government functions during ninety-nine years from the effective date of this chapter are exempt from state and local sales and use taxes.
- (2) Catawba pottery and artifacts made by members of the Tribe and sold on or off the Reservation by the Tribe or members of the Tribe are exempt from state and local sales and use taxes.
- (3) During ninety-nine years from the effective date of this chapter, the sale on the Reservation of all other items, made on or off the Reservation, are exempt from state and local sales and use taxes but are subject to a special tribal sales tax levied by the Tribe equal to the state and local sales tax that would be levied in the jurisdiction encompassing the Reservation but for this exemption.
 - (a) The South Carolina sales and use tax laws, regulations, and rulings apply to the special tribal sales tax, and the special tribal sales tax must be administered and collected by the South Carolina Tax Commission.¹

¹ The South Carolina Tax Commission is now the South Carolina Department of Revenue.

- (b) The South Carolina Tax Commission separately shall account for the special tribal sales tax, and the State Treasurer shall remit the special tribal sales tax revenues periodically to the Tribe at no cost to the Tribe.
- (c) The tribal sales tax does not apply to retail sales occurring on the Reservation as a result of delivery from outside the Reservation when the gross proceeds of sale are one hundred dollars or less. If it does not apply, the state sales tax applies.
- (d) The Tribe shall impose a tribal use tax on the storage, use, or other consumption on the Reservation of tangible personal property purchased at retail outside the State when the vendor does not collect the tax. However, use taxes collected by a vendor which is not located in the State are subject to state use taxes, and the use tax must be remitted to the State and not the Tribe. Use taxes not collected by the vendor and remitted to the State are subject to the tribal use tax and must be collected directly by the Tribe.

B. Application of State and Tribal Sales and Use Taxes to Sales of Tangible Personal Property Delivered on the Reservation

Based on the Catawba Indian Claims Settlement Act, the following chart outlines the application of sales and use taxes to sales to individual members of the Catawba Indian Tribe:

<u>Delivery on the Reservation From:</u>	<u>Type Tax Applicable</u>	<u>Administered and Collected By:</u>
Location On the Reservation	Tribal Sales Tax (Equal to Combined State and Local Rate)	DOR
Location Off the Reservation But in SC – Sales \$100 or less	State Sales Tax (6%) *	DOR
Location Off the Reservation But in SC – Sales Over \$100	Tribal Sales Tax (Equal to Combined State and Local Rate)	DOR
Location Off the Reservation and Outside the State – Seller Registered with DOR	State Use Tax (6%) *	DOR
Location Off the Reservation and Outside the State – Seller Not Registered with DOR	Tribal Use Tax (Equal to Combined State and Local Rate)	Catawba Indian Tribe

*Local taxes would not be applicable in these circumstances.

Effective January 1, 2012, Lancaster County imposes a 1% local option sales and use tax and a 1% Capital Projects Tax. York County imposes a 1% Capital Projects sales and use tax. These local taxes are in addition to the State sales and use tax. Therefore, **effective January 1, 2012**, the tribal sales tax and the tribal use tax are imposed at the following rates:

For sales (deliveries) made on the Reservation within Lancaster County:

- 8% for general sales of tangible personal property
- 9% for sales of accommodations
- 2% for sales of unprepared foods

For sales (deliveries) made on the Reservation within York County:

- 7% for general sales of tangible personal property
- 8% for sales of accommodations
- 0% for sales of unprepared foods²

Please note that the rate for the tribal sales tax and the tribal use tax may increase or decrease dependent upon whether the total state and local sales and use tax rates change in Lancaster County or York County in the future.

C. Purchases by the Tribe for Tribal Government Functions³

Sales to, or purchases by, the Catawba tribal government for tribal government functions are exempt from state and local sales and use taxes until November 28, 2092 (99 years after the Act took effect on November 29, 1993). Sales to, or purchases by, the Catawba tribal government for tribal government functions will be subject to state and local sales and use taxes beginning November 29, 2092.

D. Artifacts Made by Members of the Tribe⁴

Catawba pottery and artifacts made by members of the Tribe and sold on or off the Reservation by the Tribe or members of the Tribe are exempt from state and local sales and use taxes. Unlike the other exemptions enacted in South Carolina Code §27-16-130(H), this exemption does not automatically expire on November 28, 2092 (99 years after the Act took effect on November 29, 1993).

² York County “re-imposed” its 1% Capital Projects Tax effective January 1, 2012. The prior 1% Capital Projects Tax imposed in York county expired on December 31, 2011 and the new Capital Projects Tax became effective the next day on January 1, 2012. In addition, the new 1% Capital Projects Tax in York County exempts sales of unprepared food effective January 1, 2012.

³ South Carolina Code §27-16-130(H)(1).

⁴ South Carolina Code §27-16-130(H)(2).

For purposes of this exemption, the phrase “artifacts made by members of the Tribe” means objects, including tools, weapons and ornaments, produced or shaped by the workmanship of one or more members of the Catawba Indian Tribe that are associated with the culture or history of the Tribe.

E. Sales on the Reservation⁵

Sales on the Reservation (whether the tangible personal property is made on or off the Reservation) are exempt from state and local sales and use taxes until November 28, 2092 (99 years after the Act took effect on November 29, 1993), except for retail sales occurring on the Reservation as a result of delivery from outside the Reservation when the gross proceeds of sale are one hundred dollars or less. Sales occurring on the Reservation as a result of delivery from outside the Reservation are subject to state and local sales and use taxes when the gross proceeds of the sale are one hundred dollars or less. Sales on the Reservation will be subject to state and local sales and use taxes beginning November 29, 2092.

Sales on the Reservation (whether the tangible personal property is made on or off the Reservation) are subject to the Catawba tribal sales and use tax until November 28, 2092 (99 years after the Act took effect on November 29, 1993), except for retail sales occurring on the Reservation as a result of delivery from outside the Reservation when the gross proceeds of sale are one hundred dollars or less. Sales occurring on the Reservation as a result of delivery from outside the Reservation are subject to state and local sales and use taxes when the gross proceeds of sale are one hundred dollars or less. Sales on the Reservation will no longer be subject to the Catawba tribal sales and use tax beginning November 29, 2092.

F. Tangible Personal Property Made by Members of the Tribe (Other than Artifacts)

Delivered Off the Reservation within South Carolina

When tangible personal property, other than pottery and artifacts made by members of the Tribe, is sold and delivered by a retailer to a location in South Carolina but outside the reservation, sales of these items off the Reservation are subject to state and local sales taxes and are not subject to the tribal sales tax.

Delivered Off the Reservation Outside of South Carolina

When tangible personal property is sold and delivered by a retailer to a location outside of South Carolina, sales of these items off the Reservation and outside of South Carolina are exempt from the tribal tax and the state tax.⁶

⁵ South Carolina Code §27-16-130(H)(3).

⁶ South Carolina Code §12-36-2120(36).

When tangible personal property is sold and delivered by a retailer to the mails or to a common carrier for delivery outside of South Carolina, sales of these items off the Reservation and outside of South Carolina are exempt from the tribal tax and the state tax.⁷

G. Accommodations

Accommodations furnished on the Reservation are subject to the tribal sales tax at a rate of 9% for accommodations furnished in Lancaster County and at a rate of 8% for accommodations furnished in York County. Additional guest charges imposed on the Reservation are subject to the tribal sales tax at a rate of 8% in Lancaster County and at a rate of 7% in York County.

H. Maximum Tax Items

For sales (deliveries) made on the Reservation of tangible personal property subject to the maximum tax provisions, the tribal sales and use tax rate is 5%⁸ in each county (since the state sales and use tax on maximum tax items is 5% and maximum tax items are exempt from all local sales and use taxes), but the tax may not exceed the maximum tax set forth in South Carolina Code §12-36-2110.⁹

⁷ South Carolina Code §12-36-2120(36).

⁸ Since the state sales and use tax rate for maximum tax items is 5%, the tribal tax rate for items subject to the maximum tax must equal the combined state and local rate for the counties in which the reservation is located. At this time, the rate of maximum tax items would be 5% (equal to the 5% state rate and the 0% local rate since maximum tax items are not subject to local taxes).

⁹ See Chapter 10 of this publication for information on the maximum tax provisions of South Carolina Code §12-36-2110.

19

***Motion Picture
Production
Companies***

Chapter 19

Motion Picture Production Companies

South Carolina Code Title 12, Chapters 36 and 62 contain two film industry sales and use tax incentives designed to promote South Carolina as a filming location.

The incentive available in Chapter 62 is a sales and use tax exemption for all qualifying tangible personal property used in connection with the South Carolina filming by a “motion picture production company” that is approved by the South Carolina Film Commission at the South Carolina Department of Parks, Recreation and Tourism.

The other incentive is a sales and use tax exemption for certain supplies, machinery, and electricity used by a “motion picture company” for use in filming or producing motion pictures in South Carolina. Since the qualifying requirements and approval process of each incentive differs, the applicable South Carolina law should be carefully reviewed.

A general overview of each incentive is provided below.

A. “Motion Picture Production Company” Comprehensive Exemption

To qualify for the sales and use tax exemption provided in South Carolina Code §12-62-30 on funds expended in South Carolina in connection with the filming or production of motion pictures in South Carolina, a motion picture production company must meet the following criteria:

1. The company must be a “motion picture production company” as defined in South Carolina Code §12-62-20(4). It is a company engaged in the business of producing motion pictures intended for a national theatrical release or for television viewing. It is not a company owned, affiliated, or controlled, in whole or in part, by a company or person that is in default on a loan made by the State or a loan guaranteed by the State.

A “motion picture” is defined in South Carolina Code §12-62-20(3) as a feature-length film, video, television series, or commercial made in whole or in part in South Carolina, and intended for national theatrical or television viewing or as a television pilot produced by a motion picture production company. It does not include the production of television coverage of news and athletic events or a production produced by a motion picture production company if records, as required by 18 U.S.C. 2257, are to be maintained by that motion picture production company with respect to any performer portrayed in that single media or multimedia program.

2. The company must intend to spend \$250,000 or more in the aggregate in connection with the filming or production of one or more motion pictures in South Carolina within a consecutive 12-month period.
3. The company must complete an application and obtain approval as a certified motion picture production company from the South Carolina Department of Parks, Recreation and Tourism. An estimate of the total expenditures expected to be made in South Carolina in connection with the filming or production must be filed with the South Carolina Department of Parks, Recreation and Tourism before South Carolina filming begins.

The application and certification procedures can be obtained from the South Carolina Film Commission at the South Carolina Department of Parks, Recreation and Tourism at 803-737-0490. There is no application fee.

Important Points to Remember

1. Once the South Carolina Department of Parks, Recreation and Tourism notifies the Department of Revenue that the company is approved and meets the qualifying requirements, the Department of Revenue will issue the motion picture production company a Form ST-433, "Motion Picture Production Company Sales and Use Tax Exemption Certificate." The company should provide a copy of the exemption certificate to the retailer to purchase items used in connection with the South Carolina filming free of sales and use tax.
2. This exemption applies to the 6% state sales and use taxes, the 7% state sales tax on accommodations, the 6% sales tax on additional guest charges, the 5% rental surcharge, the 11% sales and use tax on 900/976 telephone numbers, and any local sales and use taxes collected by the Department of Revenue on behalf of a local jurisdiction.
3. The exemption expires on the date filming or production ends.
4. An approved company that fails to spend \$250,000 within a consecutive 12-month period is liable for the sales and use taxes that would have been paid had the approval not been granted.
5. This incentive does not apply to the production of television coverage of news and athletic events.
6. Expenditures that qualify toward the \$250,000 requirement include purchases of services or intangibles in South Carolina, purchases or rentals of tangible personal property in South Carolina, and purchases or rentals of real property located in South Carolina.

7. The exemption certificate may only be used by the motion picture production company in whose name the exemption certificate has been issued since the exemption only applies to sales to or purchases by, the motion picture production company.

Examples of persons who are not authorized to use the exemption certificate include, but are not limited to, (1) cast and crew purchasing items for their personal use and (2) subcontractors or others providing services to the motion picture production company.

Examples of Exempt Tangible Personal Property¹

Aircraft
Animals
Automobiles and other vehicles²
Cameras and camera parts
Catering
Cleaning supplies
Cleanup equipment
Computer equipment
Construction and hardware materials
Copies
Copy machines
Filming supplies (*e.g.*, film stock, flats (panels of scenery), sandbags, etc.)
Food
Gasoline and other fuels (however, motor fuel taxes may apply)³
Generators/grip and lighting equipment
Hairstyle supplies
Hand tools

¹ The exemption only applies to purchases by the motion picture production company, provided such purchases are used in connection with the filming or production of a motion picture, purchased by the motion picture production company, and all other requirements of the statute are met. For example, the purchase of hairstyling supplies by a motion picture production company are exempt, but the purchase of such supplies by an independently owned hairstyling service company that has been hired by a motion picture production company to provide hairstyling services are subject to the tax.

² The rental for periods of thirty-one days or less of private passenger vehicles, trucks under 26,001 pounds gross vehicle weight (for non-business purposes), and trailers with a gross weight of not more than 6,000 pounds are subject to state and local sales and use taxes and a 5% rental surcharge. By statute, the 5% rental surcharge is a sales tax. Therefore, motion picture production companies meeting the requirements of the incentive in South Carolina Code §§12-62-30 and 12-62-40 are also exempt from the 5% rental surcharge.

³ As a general rule, gasoline and undyed diesel fuel are subject to the \$0.16 a gallon motor fuel tax and are exempt from sales and use taxes and dyed diesel fuel and dyed kerosene are subject to sales and use taxes (unless otherwise exempt under the law) and exempt from the \$0.16 a gallon motor fuel tax. As such, the exemption certificate (Form ST-433) issued to the motion picture production company does not need to be presented upon the purchase of gasoline and undyed diesel fuel, but should be presented to the retailer to purchase dyed diesel fuel and dyed kerosene exempt from the sales and use tax. The statute does not provide an exemption for the motor fuel tax for motion picture production companies.

- Make-up
- Office supplies and equipment
- Portable dressing rooms and offices
- Portable toilets
- Production supplies (*e.g.*, editing supplies)
- Props (*e.g.*, vehicles, furniture, books, paintings, clothing, shrubbery)
- Technical equipment and machinery (*e.g.*, boom, cables, cranes, dolly, editing equipment, grip truck, matte, tape, teleprompter)
- Telephones
- Vehicles (*e.g.*, props, dressing room vehicles, camera cars, equipment vehicles)
- Walkie talkies
- Wardrobe

Examples of Exempt Services and Charges⁴

Communication services, such as

- Cable and satellite programming televisions services
- Database access transmission services (On-line information services)
- E-mail services
- Fax transmission services
- Paging services
- Prepaid wireless calling arrangements
- Teleconferencing services
- Telephone services, including cell phone service

Additional guest charges at places furnishing sleeping accommodations, such as

- In-room movies
- Laundering and drycleaning services
- Rental of meeting rooms
- Room Service
- Telephone charges

Electricity

Laundering, drycleaning, dyeing or pressing services⁵

⁴ The services and charges listed in this category are normally subject to the tax under South Carolina Code §§12-36-910(B), 12-36-920, 12-36-1310(B), 12-36-1110 and 12-36-2645, but are exempt when purchased by a motion picture production company meeting the requirements of the South Carolina Motion Picture Incentive Act for use in connection with the filming or production of a motion picture.

⁵ Certain drycleaning facilities are participating in the Drycleaning Facility Restoration Trust Fund and are subject to a 1% drycleaning surcharge. While this surcharge is administered and collected in the same manner as the state sales and use tax, it is not a sales tax. As such, drycleaning services purchased by a motion picture production company are not exempt from the 1% drycleaning surcharge.

Sleeping/lodging accommodations/services
900/976 telephone services
Warranty, maintenance and similar service contracts for tangible personal property

Note: For more detailed information concerning the taxation of additional guest charges at places furnishing sleeping accommodations, see SC Regulation 117-307.1. For more detailed information concerning the taxation of certain communication services, see SC Regulation 117-329 and South Carolina Revenue Ruling #06-8.

Examples of Nontaxable Services, Nontaxable Intangibles, and Nontaxable Real Property Transactions⁶

The following are examples of professional and other personal services, intangibles, and real property transactions upon which the South Carolina sales and use tax is not imposed.

Services

- Accounting services
- Airline and aircraft charter services
- Casting services
- Chauffeured limousine services
- Clerical services
- Construction services
- Filming and production services provided by the director, the actors, the crew, writers, editors, choreographers, stunt persons, dialog coaches, musicians, technical advisors, designers, hairstylists, makeup artists, wardrobe persons, and similar persons providing services
- Garbage disposal services
- Hairstyling/cosmetic services
- Janitorial services
- Legal services
- Meteorological services
- Musical services
- Payroll services
- Research services
- Scouting services

⁶ These are examples of professional and other personal services, intangibles, and real property transactions upon which the South Carolina sales and use tax is not imposed. Since the film industry operates in many states and must deal with varying sales and use tax laws, this list merely provides examples of services, intangibles, and real property transactions the charges for which are not taxable in South Carolina. However, it is important to note that purchases by persons providing these services to a motion picture production company or any other person are subject to the tax. For example, charges by a janitorial service company to a motion picture production company or any other person are not subject to the tax; however, the sale to, or purchase by, the janitorial service company of the supplies (mops, floor cleaners, trash bags, etc.) it uses in providing its service are subject to the sales and use tax.

- Security services
- Taxi services
- Typing services
- Intangibles
 - Music royalties
 - Story rights payments
- Real Property Transactions
 - Auditorium rentals
 - Back lot rentals
 - Casting facility rentals
 - Dressing room rentals
 - Location rentals or fees
 - Office space rentals
 - Parking lot rentals
 - Screening room rentals
 - Stage rentals
 - Warehouse rentals

For additional information concerning this exemption, see South Carolina Revenue Ruling #08-12.

B. “Motion Picture Company” Limited Exemption for Supplies and Equipment

South Carolina Code §12-36-2120(43) exempts from sales and use tax supplies, technical equipment, machinery, and electricity sold to motion picture companies for use in filming or producing motion pictures in South Carolina.

The terms “motion picture company” and “motion picture” defined in Chapter 36 of Title 12 differ from the terms “motion picture production company” and “motion picture” defined in Chapter 62 of Title 12, as discussed above in item (a). The definitions applicable to this exemption are:

1. “Motion picture company” is a company generally engaged in the business of filming or producing motion pictures.
2. “Motion picture” is any audiovisual work with a series of related images either on film, tape, or other embodiment, where the images shown in succession impart an impression of motion together with accompanying sound, if any, which is produced, adapted, or altered for exploitation as entertainment, advertising, promotional, industrial, or educational media.

Important Points to Remember

1. To receive an exemption certificate for this limited exemption, the motion picture company must apply to the Department of Revenue on Form ST-10, "Application for Certificate." There is no application fee. Usually, a visit will be made to the company's site to determine if a certificate should be issued.
2. Once approved, the Department of Revenue will issue the company an exemption certificate on Form ST-9. A copy of this certificate should be given to the retailer upon purchase of the exempt item.
3. The exemption applies to all state sales and use taxes and all local sales and use taxes collected by the Department of Revenue on behalf of a local jurisdiction.
4. An application or approval from the South Carolina Film Commission is not needed for this exemption.

20

***Medicines,
Prosthetics
and
Medical Supplies***

Chapter 20

Medicine, Prosthetics and Medical Supplies¹

A. Exemptions for Medicines, Prosthetic Devices, and Other Medical Supplies

The following exemptions are available with respect to medicines, prosthetic devices and certain other medical supplies:

Medicine sold by prescription.² In order for this exemption to be applicable, the medicine must be of a type that requires a prescription, the sale must require a prescription, and must actually be sold by prescription. As such, sales of medicine to a hospital, nursing home, or a similar institution or doctor are not exempt since such sales do not require a prescription.

Prescription medicines used to prevent respiratory syncytial virus.³ In order for this exemption to be applicable, the medicine must be of a type that requires a prescription; however, the medicine does not need to be sold by prescription. As such, sales of these medicines (to be used for the above purposes) to a hospital, nursing home, or a similar institution or doctor are exempt.

Prescription medicines and therapeutic radiopharmaceuticals used in the treatment of rheumatoid arthritis, cancer, lymphoma, leukemia, or related diseases.⁴ In order for this exemption to be applicable, the medicine must be of a type that requires a prescription (other than therapeutic radiopharmaceuticals); however, the medicine does not need to be sold by prescription. As such, sales of these medicines and therapeutic radiopharmaceuticals (to be used for the above purposes) to a hospital, nursing home, or a similar institution or doctor are exempt.

¹ See South Carolina Revenue Ruling #11-3.

² South Carolina Code §12-36-2120(28)(a). See *Home Medical Systems, Inc. v. South Carolina Department of Revenue*, 382 S.C. 556, 677 S.E. 2d 582 (2009). See also *Associated Medical Specialist, P.A. v. South Carolina Tax Commission and South Carolina Department of Revenue*, SC Ct. of App., Unpublished Opinion No. 97-UP-447 (1997). (Note, this case dealt with prescription medicines purchased by doctors to treat cancer; however, the exemption for prescription medicines used in the treatment of cancer, lymphoma, leukemia, or related diseases or used to relieve the effects of any such treatment was not available at the time. It was subsequently enacted by the General Assembly in 1998 and became effective on June 28, 1999. (Act 362, Section 2, of 1998))

³ South Carolina Code §12-36-2120(28)(a).

⁴ South Carolina Code §12-36-2120(28)(a).

Prescription medicines used to relieve the effects of the treatment of rheumatoid arthritis, cancer, lymphoma, leukemia, or related diseases.⁵ In order for this exemption to be applicable, the medicine must be of a type that requires a prescription; however, the medicine does not need to be sold by prescription. As such, sales of these medicines (to be used for the above purposes) to a hospital, nursing home or doctor are exempt.

Free samples of prescription medicine distributed by its manufacturer and any use of these free samples.⁶ In order for this exemption to be applicable, the medicine must be of a type that requires a prescription.

Medicine donated by its manufacturer to a public institution of higher education for research or for the treatment of indigent patients.⁷ This exemption applies to all types of medicines, not just prescription medicines.

Hypodermic needles, insulin, alcohol swabs, blood sugar testing strips, monolet lancets, dextrometer supplies, blood glucose meters, and other similar diabetic supplies.⁸ While a prescription is not required, in order for this exemption to be applicable, these items must be sold to a diabetic under the written⁹ authorization and direction of a physician.

Disposable medical supplies.¹⁰ In order for this exemption to be applicable, disposable medical supplies such as bags, tubing, needles, and syringes, must be dispensed by a licensed pharmacist in accordance with an individual prescription written for the use of a human being by a licensed health care provider, must be used for the intravenous administration of a prescription drug or medicine, and must come into direct contact with the prescription drug or medicine. This exemption applies only to supplies used in the treatment of a patient outside of a hospital, skilled nursing facility, or ambulatory surgical treatment center. The exemption applies to “disposable” medical supplies sold on or after August 17, 2000 and does not apply to items that are reusable such as electronic pumps and other medical equipment. In addition, the exemption does not apply to supplies, such as gauze, that do not require a prescription in order to be sold to the patient.

Prosthetic devices sold by prescription.¹¹ In order for this exemption to be applicable, the sale must require a prescription and the device must actually be sold by prescription and the device must replace a missing part of the body. A device that merely replaces a missing function is not exempt.¹² As such, sales of prosthetic devices to a hospital, nursing home, or a similar institution or doctor are not exempt since such sales do not require a prescription.

⁵ South Carolina Code §12-36-2120(28)(a).

⁶ South Carolina Code §12-36-2120(28)(a).

⁷ South Carolina Code §12-36-2120(28)(d).

⁸ South Carolina Code §12-36-2120(28)(b).

⁹ SC Regulation 117-332. See also *Drummond v. State of South Carolina*, Court of Common Pleas, Case No. 02-CP-40-4651 (2010).

¹⁰ South Carolina Code §12-36-2120(28)(c).

¹¹ South Carolina Code §12-36-2120(28)(a).

¹² See *Home Medical Systems, Inc. v. South Carolina Department of Revenue*, 382 S.C. 556, 677 S.E. 2d 582 (2009) wherein the Court held that devices that did not replace missing parts of body but only replaced functions did not meet the approved regulatory definition of prosthetic device.

Dental prosthetic devices.¹³ In order for this exemption to be applicable, the device must pertain to dentistry and must replace a missing part of the body. A device that merely replaces a missing function is not exempt.¹⁴ The sale does not require a prescription.

Prescription drugs – Medicare Part A Nursing Home Patient.¹⁵ In order for this exemption to be applicable, the medicine must be of a type that requires a prescription; however, the medicine does not need to be sold by prescription. It must be sold to a nursing home to be dispensed to a Medicare Part A patient residing in the nursing home.

Prescription and over-the-counter medicines and medical supplies, including diabetic supplies, diabetic diagnostic equipment, and diabetic testing equipment, sold to a health care clinic that provides medical and dental care without charge to all of its patients¹⁶ In order for this exemption to be applicable, the medicine (whether prescription or over-the-counter) and medical supplies must be sold a health care clinic, the clinic must provide both medical and dental care, and the care must be provided without charge to all patients.

Durable medical equipment and related supplies as defined under federal and state Medicaid and Medicare laws. In order for the purchase of the durable medical equipment and related supplies to be exempt, the purchase must be paid directly by funds of South Carolina or the United States under the Medicaid or Medicare programs, state or federal law or regulation authorizing the payment must prohibit the payment of the sale or use tax, and the durable medical equipment and related supplies must be sold by a provider who holds a South Carolina retail sales license and whose principal place of business is located in South Carolina. Note: Effective January 1, 2013, sales meeting the requirements of this exemption are fully exempt from both state and local sales and use taxes.¹⁷

¹³ South Carolina Code §12-36-2120(28)(e).

¹⁴ See *Home Medical Systems, Inc. v. South Carolina Department of Revenue*, 382 S.C. 556, 677 S.E. 2d 582 (2009).

¹⁵ South Carolina Code §12-36-2120(28)(f).

¹⁶ South Carolina Code §12-36-2120(63).

¹⁷ An uncodified provision of the legislation that enacted this exemption in 2007 provided that the exemption would be phased in by reducing the rate of tax based on revenue projections by the Board of Economic Advisors. This uncodified provision was later amended in Act 32 of 2011 to establish a new phase in of the exemption as follows: The rate of tax imposed on the gross proceeds of sales of items meeting the requirements of the exemption in South Carolina Code §12-36-2120(74) is five and one-half percent for such sales from July 1, 2007. The rate of tax imposed on the gross proceeds of sales of items meeting the requirements of the exemption in South Carolina Code §12-36-2120(74) is three and one-half percent for such sales from July 1, 2011. The rate of tax imposed on the gross proceeds of sales of items meeting the requirements of the exemption in South Carolina Code §12-36-2120(74) is one and three-quarters percent for such sales from July 1, 2012. Effective January 1, 2013, the sales tax exemption on the gross proceeds of sales of items meeting the requirements of South Carolina Code §12-36-2120(74) is fully implemented. Local sales and use taxes will continue to apply until the exemption is fully implemented. Once the exemption is fully implemented, sales meeting the requirements of the exemption will be fully exempt from both state and local sales and use taxes.

Injectable Medications and Injectable Biologics. In order for this exemption to be applicable, the medication or biologic must be administered by or pursuant to the supervision of a physician in an office which is under the supervision of a physician, or in a Center for Medicare or Medicaid Services certified kidney dialysis facility.

This exemption will be phased-in depending upon the forecasts of annual general fund revenue growth as determined by the Board of Economic Advisors. On February 19, 2014, the Board of Economic Advisors notified the Department that the requirements have been met to implement this exemption.¹⁸

Accordingly, for July 1, 2014 - June 30, 2015, 50% of the gross proceeds of sales of qualifying sales or purchases are exempt from the State and local sales and use taxes. On or after July 1, 2015, qualifying sales or purchases are fully exempt from the State and local sales and use taxes.

B. Other Relevant Exemptions

The statute also provides several other exemptions that may or may not apply.

Sales to the federal government. South Carolina Code §12-36-2120(2) exempts sales of “tangible personal property...to the federal government. SC Commission Decision #93-2 held that sales paid for via Medicare or Medicaid are not sales to the federal government.

Sales to charitable hospitals. South Carolina Code §12-36-2120(47) exempts sales of tangible personal property to charitable hospitals that are exempt from property taxation under South Carolina Code §12-37-220; predominantly serve children; and where the care is provided without charge to the patient.

Sales of hearing aids. South Carolina Code §12-36-2120(38) exempts sales of “hearing aids, as defined by South Carolina Code §40-25-20(5).” Hearing aid batteries and cords are excluded from the definition of “hearing aid;” therefore, sales of these items are not exempt from the tax.

Sales during the sales tax holiday. South Carolina Code §12-36-2120(57) exempts from the sales and use tax:

- (a) sales taking place during a period beginning 12:01 a.m. on the first Friday in August and ending at twelve midnight the following Sunday of:
 - (i) clothing;
 - (ii) clothing accessories including, but not limited to, hats, scarves, hosiery, and handbags;
 - (iii) footwear;
 - (iv) school supplies including, but not limited to, pens, pencils, paper, binders, notebooks, books, bookbags, lunchboxes, and calculators;

¹⁸ SC Information Letter #14-4.

- (v) computers, printers and printer supplies, and computer software;
- (vi) bath wash clothes, blankets, bed spreads, bed linens, sheet sets, comforter sets, bath towels, shower curtains, bath rugs and mats, pillows, and pillow cases.

(b) The exemption allowed by this item does not apply to:

- (i) sales of jewelry, cosmetics, eyewear, wallets, watches;
- (ii) sales of furniture;
- (iii) a sale of an item placed on layaway or similar deferred payment and delivery plan however described;
- (iv) rental of clothing or footwear;
- (v) a sale or lease of an item for use in a trade or business.

(c) Before July tenth of each year, the department shall publish and make available to the public and retailers a list of those articles qualifying for the exemption allowed by this item.

Note: Since the sales tax holiday applies to clothing and footwear, the exemption may apply to certain clothing and footwear worn for medical reasons.

21

***Unprepared
Food Exemption***

Chapter 21

Unprepared Food Exemption

The gross proceeds of sales or sales price of “unprepared food that lawfully may be purchased with United States Department of Agriculture food coupons” are exempt from the sales and use tax.¹ This exemption does not apply to local sales and use taxes that are administered and collected by the Department on behalf of the counties and other jurisdictions, unless the local tax law specifically exempts the sales of such unprepared food.

Regulation on Unprepared Food Exemption

The following is the regulation concerning the exemption for unprepared foods. This regulation is printed here in its entirety since it is believed that it provides the best explanation of the exemption.

117-337 Sales of Unprepared Food

Effective November 1, 2007, South Carolina Code §12-36-2120(75) exempts from the state sales and use tax the gross proceeds of sales or sales price of “unprepared food that lawfully may be purchased with United States Department of Agriculture food coupons.” This exemption does not apply to local sales and use taxes that are administered and collected by the Department on behalf of the counties and other jurisdictions, unless the local tax law specifically exempts the sales of such unprepared food.

The determination as to whether a sale of unprepared food is exempt from the state sales and use tax is based on whether the food is of a type that is eligible to be purchased with USDA food stamps, the type of location selling the food, and whether the food is being sold for immediate consumption, business or institutional consumption, or home consumption.

In other words, a food must be of a type eligible to be purchased with USDA food stamps and must also be sold for home consumption (based on the type of food and the type of location selling the food) to qualify for the exemption from the state sales and use tax under South Carolina Code §12-36-2120(75). For example, bottled soft drinks are eligible to be purchased with USDA food stamps, but if bottled soft drinks are sold at a concession stand at a festival, then the bottled soft drinks are sold for immediate consumption and not home consumption and the sale at the festival would be subject to the full state sales tax rate.

This regulation will explain which sales of food qualify or do not qualify for the exemption under South Carolina Code §12-36-2120(75).

¹ South Carolina Code §12-36-2120(75).

117-337.1 “Eligible Food” Defined

For purposes of this regulation, the term “eligible food” is food eligible for the exemption under South Carolina Code §12-36-2120(75) that will be defined to include and exclude the following:

- (A) Foods eligible for the exemption under South Carolina Code §12-36-2120(75) include:
 - (1) Any food intended to be eaten at home by people, including snacks, beverages and seasonings;
 - (2) Seeds and plants intended to grow food (not birdseed or seeds to grow flowers); and,
 - (3) Cold items, which may include salads or sandwiches, intended to be eaten at home by people and that are not considered “prepared meals or food” as discussed below.
- (B) Food and other items which are not eligible for the exemption under South Carolina Code §12-36-2120(75) and are, therefore, subject to the full state sales and use tax rate (unless otherwise exempt) include:
 - (1) Alcoholic beverages, such as beer, wine, or liquor;
 - (2) Hot beverages ready-to-drink such as coffee;
 - (3) Tobacco;
 - (4) Hot foods ready to eat;
 - (5) Foods designed to be heated in the store;
 - (6) Hot and cold food to be eaten at a lunch counter, in a dining area or anywhere else in the store or in a nearby area such as a mall food court;
 - (7) Vitamins and medicines;
 - (8) Pet food;
 - (9) Any non-food items such as tissue, soap or other household goods;
 - (10) Meals or food shipped or delivered to businesses or institutions (hospitals, prisons, jails, nursing homes, etc.); and,
 - (11) Prepared meals or food as defined in SC Regulation 117-337.2.

117-337.2 “Prepared Meals or Food” Defined

- (A) “Prepared meals or food” is food for immediate consumption (based on the type of food and the type of location selling the food) and is not eligible for the exemption under South Carolina Code §12-36-2120(75), but is subject to the full state sales and use tax rate.

“Prepared meals or food” are meals or food sold by a business, or from an identifiable location within a business, which advertises, holds itself out to the public (e.g., offers hot food or the ability to heat food, provides seating, or provides utensils with the meal or food), or is perceived by the public as being engaged in the sale of ready-to-eat food or beverages to customers for their immediate consumption on or off the premises. Such a business, or identifiable location within a business, may be mobile or immobile and may or may not provide seating accommodations for its customers. For example, “prepared meals or food” includes, but is not limited to (a) meals or food sold by a restaurant, cafeteria, lunch wagon or cart, lunch counter, cafeteria, ice cream stand, tavern, night club, or other similar places or businesses engaged in the business of selling prepared meals or food for immediate consumption, (b) meals prepared and delivered by a meal delivery service; (c) meals sold to or at congregate meal sites; (d) meals or food sold at a grocery store, convenience store or any other similar store for the purpose of eating at or near the store, such as meals or food sold with eating utensils (e.g., plates, knives, forks, spoons, cups, napkins) provided by the seller, (e) meals or food sold at hotels, motels, or other places furnishing accommodations; (f) meals or food sold at newsstands, gift shops, and snacks bars located in offices or other public or commercial buildings; (g) meals or food sold at movies theaters, opera houses, fairs, carnivals, stadiums, auditoriums, amphitheaters, or similar entertainment or sports facilities; and (h) food sold through vending machines.

- (B) Exception: If a store, or an identifiable location within a store, advertises, holds itself out to the public (e.g., offers hot food or the ability to heat food, provides seating, or provides utensils with the meal or food), or is perceived by the public as being engaged in the sale of ready-to-eat food or beverages to customers for their immediate consumption on or off the premises and also sells food that is prepared for home consumption, sold for home consumption, and is not the type of food intended for immediate consumption, then such “home consumption” food is not considered “prepared meals or food” and would be “eligible food” exempt from the state sales and use tax under South Carolina Code §12-36-2120(75), provided it is not one of the foods listed above in SC Regulation 117-337.1(B) – Items (1) through (10).

The following are examples of this exception:

- (a) A grocery store has a deli/bakery that provides tables, chairs, benches, booths, counters or an area where customers may consume food in or near the store. In addition to other items, this deli/bakery area sells loaves of baked bread (the bread it is not hot at the time of sale)

The sales at retail of the loaves of bread are exempt from the state sales and use tax under South Carolina Code §12-36-2120(75), provided the sale is not for a party or gathering held at the store or delivered to a location other than a private residence.

- (b) A coffee shop sells individual slices of cake to be eaten with the coffee and other drinks sold at the shop. The shop also sells entire sheet cakes.

The sale at retail of the sheet cake is exempt from the state sales and use tax under South Carolina Code §12-36-2120(75), provided the sale is not for a party or gathering held at the shop or delivered to a location other than a private residence.

- (C) Some sales of meals or food may be exempt from the sales and use tax under other exemption provisions. For example, South Carolina Code §12-36-2120(10) provides exemptions from the sales and use tax for (1) meals or foodstuff used in furnishing meals to school children within school buildings on a nonprofit basis; (2) meals or foodstuff provided to elderly or disabled persons at home by certain nonprofit organizations; (3) prepared or packaged foodstuff sold to nonprofit organizations for the homeless and needy; or (4) meals or prepared or packaged foodstuff sold to public and nonprofit organizations for congregated or in-home service to the homeless, needy, disabled adults over eighteen years of age or persons over sixty years of age (provided the meals or packaged foodstuffs in this item (4) are eligible for purchase with USDA food coupons). South Carolina Code §12-36-2120(41) exempts from the sales and use tax tangible personal property, including meals or food, sold by certain nonprofit organizations.

117-337.3 General Rules

- (A) Sales of “Eligible Food” by Grocery, Convenience and Similar Stores Authorized to Accept Food Stamps:

Sales of “*eligible food*” by a grocery, convenience or similar store authorized to accept food stamps shall be deemed to be for home consumption and exempt from the state sales and use tax under South Carolina Code §12-36-2120(75).

However, if the store has an identifiable location which advertises, holds itself out to the public (e.g., offers hot food or the ability to heat food, provides seating, or provides utensils with the meal or food), or is perceived by the public as being engaged in the sale of ready-to-eat food or beverages to customers for their immediate consumption on or off the premises, then all sales of food from that identifiable location shall be deemed to be for immediate consumption and subject to the sales tax at the full state rate, unless the sale falls within the exception noted above in SC Regulation 117-337.2. For example, if a neighborhood grocery store also has a lunch counter, then sales from that lunch counter are for immediate consumption and subject to the tax at the full sales tax rate. If the lunch counter also

sold entire sheet cakes, then the sale at retail of a sheet cake would be exempt from the state sales and use tax under South Carolina Code §12-36-2120(75) provided the sale is not for a party or gathering held at the store or delivered by the store to a business or institution.

(B) Sales of “Eligible Food” by Grocery and Other Stores Not Authorized to Accept Food Stamps:

Sales of “eligible food” by a grocery, convenience or similar store not authorized to accept food stamps but which is engaged in the retail sale of all sorts of canned foods and dry goods (e.g., tea, coffee, spices, sugar, and flour), and may also be engaged in the retail sale of fresh fruits and vegetables and fresh and prepared meats, fish, and poultry, shall be deemed to be for home consumption and exempt from the state sales and use tax under South Carolina Code §12-36-2120(75).

However, if the store has an identifiable location which advertises, holds itself out to the public (e.g., offers hot food or the ability to heat food, provides seating, or provides utensils with the meal or food), or is perceived by the public as being engaged in the sale of ready-to-eat food or beverages to customers for their immediate consumption on or off the premises, then all sales of food from that identifiable location shall be deemed to be for immediate consumption and subject to the sales tax at the full state rate unless the sale falls within the exception noted above in SC Regulation 117-337.2. For example, if a convenience store has an area where a customer can get a hot dog or sandwiches that are intended for immediate consumption (including ones intended to be heated in a microwave), then the sale of the hot dogs and sandwiches are for immediate consumption and subject to the full state rate. Any chips or drinks (whether fountain drinks or bottled drinks) sold with that hot dog or sandwich at the lunch counter are also for immediate consumption and subject to the full state rate.

(C) Sales of “Eligible Foods” to or by Vending Machine Operators for Sale through Vending Machines:

Sales of “*eligible food*” to or by vending machine operators for sale through vending machines are for immediate consumption and subject to the sales tax at the full state rate.

(D) Sales of “Eligible Food” to Institutions:

Sales of “*eligible food*” to the South Carolina Department of Corrections, city or county jails, hospitals, nursing homes, and colleges for use in providing meals to the prisoners, patients, or students are sales to institutions who, under the sales and use tax law, are the users or consumers of such food in carrying out their primary functions of incarcerating convicts, providing medical care or providing an education. As such, sales of such food are not for home consumption and are subject to the sales tax at the full state rate.

(E) Sales of “Eligible Food” Prepackaged with a Non-Eligible Item

Sales of “*eligible food*” that is prepackaged with a non-eligible item, or sales in which a single price is established for a combination of an “*eligible food*” and a non-eligible item, are subject to the tax at the full state rate.

For example, if a grocery store advertises and sells a basket containing fruit and a bottle of wine, the exemption under South Carolina Code §12-36-2120(75) is not applicable. The full state rate applies.

(F) “Eligible Food” Purchased with Food Stamps:

“*Eligible food*” purchased with food stamps from a retailer authorized by the United States Department of Agriculture to accept food stamps are exempt from the sales and use tax.

117-337.4 Examples

The following examples are provided to assist in understanding the above provisions of this regulation:

- (a) Sales at retail of food delivered to offices and businesses are subject to tax at the full state rate.
- (b) Sales at retail of food delivered to day care centers and similar facilities are subject to tax at the full state rate.
- (c) Sales at retail of bottled water delivered to an individual’s home are exempt from the state sales and use tax under South Carolina Code §12-36-2120(75). However, the lease of a water cooler unit to a residential customer is subject to the full state rate.

Sales at retail of bottled water delivered to a commercial enterprise are subject to the tax at the full state rate. The lease of a water cooler unit to a commercial enterprise is also subject to the full state rate.

- (d) Sales at retail of ground coffee, creamer, sugar, tea bags and other “coffee service” products delivered to a commercial enterprise are subject to the tax at the full state rate.
- (e) Sales at retail of drinks, coffee supplies, and snacks by an office supply store are exempt from the state sales and use tax under South Carolina Code §12-36-2120(75), unless shipped or delivered to a location other than a private residence. Shipments or deliveries to a location other than a private residence are subject to the full state rate.

- (f) Sales at retail by a coffee shop of packaged cold sandwiches, salads, and containers of cut fruit, cookies, muffins, donuts, slices of nut bread, cupcakes, brownies, whole fruit, or similar food products sold individually are subject to the tax at the full state rate.

However, sales at retail of these same food products by the loaf or tray are subject exempt from the state sales and use tax under South Carolina Code §12-36-2120(75) unless such loaf or tray is sold for a party or gathering held at or near the coffee shop or is delivered to a location other than a private residence. Sales at retail of these products by the loaf or tray for a party or gathering held at or near the coffee shop or that are delivered a location other than a private residence are subject to the tax at the full state rate.

- (g) Sales at retail at a location that contains both a restaurant and a convenience or similar store under one roof are taxed at the full state rate for sales from the restaurant portion of the business and are exempt from the state sales and use tax under South Carolina Code §12-36-2120(75) for sales from the convenience or similar store portion of the business, unless an exception discussed previously in this regulation applies. For more detailed information, see the above sections of this regulation concerning restaurants and convenience or similar stores.

- (h) Sales at retail of loaves of bread baked in and sold at a bakery in a grocery store are exempt from the state sales and use tax under South Carolina Code §12-36-2120(75), provided the loaf of bread sold is not “hot food.”

117-337.5. Local Taxes

The exemption in South Carolina Code §12-36-2120(75) for “unprepared food that lawfully may be purchased with United States Department of Agriculture food coupons” does not apply to local sales and use taxes that are administered and collected by the Department on behalf of the counties and other jurisdictions, unless the local tax law specifically exempts the sales of such unprepared food.

This regulation is not applicable to any local tax administered and collected by a local jurisdiction.

117-337.6. Records

The seller of “*eligible food*” exempt from the state sales and use tax under South Carolina Code §12-36-2120(75) shall maintain sufficient documentation to substantiate that a sale qualifies for the exemption from the state sales and use tax, using any method of recording that properly reflects all purchases and sales of such items.

22

***Administrative
Requirements***

Chapter 22

Administrative Requirements

Before engaging in any retail business in South Carolina, a retail license must be purchased from the Department.

A. Retail Licenses

The law provides for the following types of retail licenses:

Permanent locations. A \$50 license must be purchased for each permanent retail location.¹

Fairs, Carnivals, and Athletic Events: The single retail license covers sales of tangible personal property made from all stands under the immediate management or control of each operator. A separate license will not be required for each change of location provided the operator furnishes the Department an itinerary giving a schedule of locations and dates.²

Vending Machines: For persons engaged in the business of operating vending or coin-operated machines dispensing cigarettes or soft drinks in closed containers in South Carolina, each point from which the service for such machines or other tangible personal property originates, is considered to be a retail outlet and a retail license must be obtained for each such point of service.³

Also, an out-of-state retailer must purchase a retail license and collect the South Carolina use tax if the retailer has retail locations in South Carolina; maintains an office, warehouse or other place of business in South Carolina; has a salesperson in South Carolina soliciting orders on a regular basis; has an agent located in South Carolina; or delivers his/her goods on his/her own trucks.⁴

Artists and craftsmen. Every artist and craftsman making retail sales at arts and crafts shows and festivals of items they have created or assembled may purchase a \$20 license. This license may only be used at one location at a time.⁵

¹ South Carolina Code §12-36-510(A)(1) and SC Regulation 117-300.

² SC Regulation 117-300.5.

³ SC Regulation 117-300.2.

⁴ This is based on the concept of *nexus* - the minimal connection necessary between an out-of-state retailer and the state which allows the state to require the retailer to collect the use tax. What actually constitutes *nexus* is determined by the courts and may change from time to time, and you are advised to be aware of changes.

⁵ South Carolina Code §12-36-510(A)(2).

Transient or temporary businesses. A \$50 license must be purchased by persons operating a transient or temporary business in South Carolina. A retail license for a transient business may only be used for one location at a time. A retail license for a temporary business may only be used in one location⁶.

A transient business is a business, other than artists and craftsmen, not having a permanent retail location in South Carolina. *A temporary business* is a business that makes retail sales in South Carolina for no more than 30 consecutive days at any one location.

A licensed retailer may, upon written application and approval by the Department, have his retail dealer's license transferred from one location to another without incurring additional license tax liability, but only in cases where there is an abandonment of the licensed business location and a simultaneous moving to a new location. The licensed retailer making application for transfer must surrender his license of original issue and indicate on the license the address of his new location⁷. To notify the Department of a change in business location, the retailer should complete Form SC 8822.⁸

The Department may determine which retail license or licenses a retailer must obtain⁹.

A retail license is not required of:

- (a) persons selling at flea markets or conducting a yard sale no more than once a quarter;¹⁰
- (b) organizations devoted exclusively to public or charitable purposes conducting concession sales at festivals,¹¹ if all the net proceeds are used for those public or charitable purposes and if in advance of the festival its organizers provide the Department information necessary to ensure compliance with the law;¹²
- (c) persons furnishing accommodations to transients for one week or less in any calendar quarter;¹³
- (d) persons furnishing accommodations to transients where the rental income from such accommodations is wholly excluded from the gross income of the taxpayer pursuant to Internal Revenue Code Section 280A(g);¹⁴

⁶ South Carolina Code §12-36-510(A)(3).

⁷ SC Regulation 117-300.4.

⁸ Form SC 8822 can also be used for business name changes and other address changes.

⁹ South Carolina Code §12-36-510(D).

¹⁰ South Carolina Code §12-36-510(B)(1).

¹¹ For purposes of this provision, a festival does not include a recognized state or county fair.

¹² South Carolina Code §12-36-510(B)(2) and South Carolina Code §12-36-2120(39).

¹³ South Carolina Code §12-36-510(B)(3). Persons who rent accommodations for one week or less in any calendar quarter must still remit the sales tax on the accommodations annually by April 15th of the following year unless exempt unless otherwise exempt under South Carolina Code §12-36-920(A).

¹⁴ For this exemption to apply, the taxpayer must rent the dwelling unit for less than 15 days during the taxable year and must use the dwelling unit as a residence (for personal purposes) 14 days or more during the taxable year.

- (e) certain nonprofit organizations exempt from the sales and use tax under South Carolina Code §12-36-2120(41);¹⁵ and,
- (f) persons engaged in the business of operating vending or coin-operated machines dispensing any tangible personal property other than cigarettes or soft drinks in closed containers. If the person either (1) sells cigarettes or soft drinks in closed containers through vending machines or (2) sells any tangible personal property at retail through any means other than vending machines, they must obtain a retail license.

B. Obtaining a Retail License

A retail license may be obtained on-line by visiting the Department's website at www.dor.sc.gov and clicking on "South Carolina Business One Stop."

A retail license may also be obtained by filing an application (Form SCDOR-111) at one of the Department's five Taxpayer Service Centers (located in Greenville,¹⁶ Charleston,¹⁷ Florence,¹⁸ Myrtle Beach¹⁹ and Rock Hill²⁰) or at the main Columbia office.²¹

A completed application with the appropriate license tax amount may also be mailed to: South Carolina Department of Revenue, P.O. Box 125, Columbia, South Carolina 29214.

C. Operating Without a Retail License – Penalty

A person required to obtain a retail license that engages in business as a retailer in this State without a retail license or after the license has been suspended is guilty of a misdemeanor and, upon conviction, must be punished by a fine of not more than two hundred dollars or imprisonment not exceeding thirty days, or both. This offense is triable in magistrate's court. This provision also applies to each officer of a corporation which engages in business without a retail license or after the license is suspended.²² In addition, this provision²³ may be enforced by local law enforcement authorities as well as the Department.²⁴

Also, a person required to obtain a retail license who fails to pay the \$50 license tax or obtain the license within the time provided is liable for a penalty not to exceed five hundred dollars.²⁵

¹⁵ South Carolina Code §12-36-510(B)(4) and South Carolina Code §12-36-2120(41). See also South Carolina Revenue Procedure #03-6 and South Carolina Revenue Ruling #10-1 for a list of the type of nonprofit organizations eligible for this exemption and for other information related to this exemption.

¹⁶ 545 North Pleasantburg Drive, Suite 300, Greenville, SC, 29607; (864) 241-1200.

¹⁷ 2 Southpark Circle, Suite 100, Charleston, SC, 29407; (843) 852-3600.

¹⁸ 1452 West Evans Street, Florence, SC, 29501; (843) 661-4850.

¹⁹ 1330 Howard Parkway, Myrtle Beach, SC, 29577; (843) 839-2960.

²⁰ 454 South Anderson Rd., Business & Technology Ctr., Suite 202, Rock Hill, SC, 29730; (803) 324-7641.

²¹ 300A Outlet Pointe Blvd., Columbia, SC 29210; (803) 898-5000.

²² South Carolina Code §12-36-560.

²³ South Carolina Code §12-36-560.

²⁴ Attorney General Opinion dated 1/29/1996.

²⁵ South Carolina Code §12-36-570.

D. Returning a License²⁶

When a business is closed, sold or otherwise transferred to another person, the retail license, as well as all other licenses issued by the Department, must be returned to the department for cancellation and the taxpayer must remit unpaid or accrued taxes.²⁷

The Department may refuse to issue a license to a person, and may revoke one or more licenses held by a person, who has failed to return a license and remit taxes.

E. Purchaser's Certificate of Registration

A Purchaser's Certificate of Registration is required for those businesses and nonprofit organizations **not** making retail sales who purchase tangible personal property from outside South Carolina and store, use or consume the property in South Carolina.²⁸ Those licensed as retailers do not need a Purchaser's Certificate of Registration.

An application for a Purchaser's Certificate of Registration (Form SCDOR-111) may be obtained at one of the Department's five Taxpayer Service Centers (located in Greenville,²⁹ Charleston,³⁰ Florence,³¹ Myrtle Beach³² and Rock Hill³³) or at the main Columbia office.³⁴

A completed application may also be mailed to: South Carolina Department of Revenue, P.O. Box 125, Columbia, South Carolina 29214. There is no charge for a Purchaser's Certificate of Registration.

F. Special Events Returns³⁵

In lieu of purchasing a retail license, certain retailers may report their sales on a special events return. A special event is any promotional show, trade show, fair or carnival for which an admissions fee is required. Also, the event must operate for less than 12 consecutive days.

A special events return may be used by a retailer who is **not** required to be licensed as an artist or craftsman, or who is **not** already licensed as a transient or temporary retailer.

²⁶ South Carolina Code §12-54-126. See also SC Regulation 117-300.6 for special rules regarding partnerships.

²⁷ Form C-278 is used to closeout an account with the Department for a business that has been sold or closed permanently.

²⁸ For more detailed information on use tax reporting requirements for business and nonprofit organizations, as well as individuals, see South Carolina Revenue Ruling #08-6.

²⁹ 545 North Pleasantburg Drive, Suite 300, Greenville, SC, 29607; (864) 241-1200.

³⁰ 2 Southpark Circle, Suite 100, Charleston, SC, 29407; (843) 852-3600.

³¹ 1452 West Evans Street, Florence, SC, 29501; (843) 661-4850.

³² 1330 Howard Parkway, Myrtle Beach, SC, 29577; (843) 839-2960.

³³ 454 South Anderson Rd., Business & Technology Ctr., Suite 202, Rock Hill, SC, 29730; (803) 324-7641.

³⁴ 300A Outlet Pointe Blvd., Columbia, SC 29210; (803) 898-5000.

³⁵ South Carolina Code §12-36-510(C).

The Department of Revenue does not have a separate form called a *special events return*. A retailer should file Form ST-3 (and Form ST-389 if applicable) and write “**Special Events Return**,” or similar notation, on the face of each form. The discount for prompt payment is not allowed on such returns.

Special events returns are due within five days of the completion of the special event. However, the Department of Revenue may require earlier filing and payment, if deemed necessary.

G. Types of Paper Returns

Most taxpayers who are liable for the state and local taxes that are administered and collected by the Department must file Form ST-3. However, the type of form used depends on the taxpayer’s business. The following forms are used depending on the taxpayer’s business:

<u>Type</u>	<u>Form Number</u>	<u>Local Form Number</u>
General Form	ST-3	ST-389
Accommodations	ST-388	ST-389, ST-3T
Aviation Gasoline	ST-403	ST-389
Maximum Tax	ST-455	ST-389
Individual Use Tax	UT-3/UT-3W	No local form required
Casual Excise/Use Tax	ST-236	No local form required

Note: With respect to local sales and use tax that is administered and collected by the Department, retailers who are located in a county that does not impose a local sales and use tax and do not make deliveries into other counties that do impose a local sales and use tax, do not need to file the ST-389 with the state form.

Retailers that are either located in a county that does impose a local sales and use tax or that make deliveries into counties that do impose a local sales and use tax for which they are responsible for remitting to the Department, must file the ST-389 with the state form. See Chapter 14 and SC Revenue Ruling #09-9 for information on a retailer’s responsibilities for remitting local sales and use taxes.

H. Reporting Requirements

Any tax due must be paid with the return and reported to the Department of Revenue under one of the following methods:

Monthly Returns. Generally, every taxpayer required to file their sales and/or use tax return must file the tax return on a monthly basis, unless permission is granted by the Department of Revenue to use one of the other methods listed below. The return is due by the 20th day of the month following the month in which liability for the tax arises³⁶. For example, sales made in April are reportable to the Department of Revenue by May 20. Any tax due is payable with the return.

³⁶ South Carolina Code §12-36-2570(A) & (B).

28-day returns. The Department of Revenue may allow filing of returns for 28-day periods. If permission is granted, the returns are due by the 20th day following the end of each 28-day period.³⁷

Quarterly returns. The Department of Revenue may allow a taxpayer to file quarterly, instead of monthly; if the taxpayer's monthly tax liability is \$100 or less.³⁸

Other Filing Periods. The Department of Revenue may authorize, in addition to monthly or quarterly, other filing periods.³⁹

Note: With respect to any return due (*e.g.*, monthly, quarterly, etc.), the taxpayer must file the return even if the taxpayer did not make any sales during that tax period or had a zero tax liability for that period.

Where a store has leased departments operated by other persons, each such person operating a leased department must make a separate return, if he keeps his own books and makes his own collections on accounts.⁴⁰

Where the store leasing such department keeps the books and makes collections for the leased department the store may, as agent for the lessee, make returns for such leased department and pay the taxes due. Note, however, the lessee shall not be relieved of his liability until the amount due has been paid. This method of accounting for the tax is authorized only by special permission of the Department.⁴¹

Where the store makes returns as agent for leased departments, it shall make separate returns for each department leased or shall make a consolidated return for both its business and the leased departments using "Schedule of Locations" to show a breakdown of gross proceeds of sales and other required information relating to its business and relating to each leased department. In any case, the lessor must obtain the permission of the Department of Revenue to make returns for his lessee.⁴²

I. Reporting and Paying the Tax Electronically

E-Sales

The South Carolina Department of Revenue Electronic Sales Tax System (ESales) is designed to give taxpayers a fast, free and secure way to file and pay their sales, use, accommodations, local option and special local taxes on-line.

³⁷ South Carolina Code §12-36-2570(D).

³⁸ South Carolina Code §12-36-2580.

³⁹ South Carolina Code §12-36-2590.

⁴⁰ SC Regulation 117-327.

⁴¹ SC Regulation 117-327.

⁴² SC Regulation 117-327.

ESales will allow the filing of the following forms:

ST3 - Sales and Use Tax Return

ST388 - Sales, Use, Accommodations and Local Option Tax Return

ST389 – Schedule for Local Taxes

ST455 – Maximum Tax and Special Filers Tax Return

The Department's ESales System will allow a retailer to make payment by EFW (Electronic Funds Withdrawal/Bank Draft) or credit card (MasterCard and VISA).

For more information, go to www.dor.sc.gov and click on Electronic Services. Then, click on the Sales link to get more details on ESales. For technical questions, call 803-896-1715.

Business Tax TeleFile

The Business Tax Telefile currently offers a convenient and paperless method of filing certain returns via a touchtone telephone. To qualify for this method, the retailer must:

- (1) Have zero in gross proceeds of sales and rentals, zero use tax liability, and zero withdrawals for use for the filing period covered; and
- (2) Be arranged to file Form ST-3, the State Sales and Use Tax Return.

The Business Tax Telefile System is available 24 hours a day/seven days a week.

A first time user is required to register on the Business Tax TeleFile System before filing. Registration can be handled directly on the system during the initial telephone call. The registration and filing process takes less than five minutes. Subsequent filings take less than three minutes. The procedure is completely paperless; mailing additional documentation to the Department of Revenue is not required. However, the retailer should maintain a copy of their report for their files.

To use the Business Tax TeleFile System, dial 803-898-5918 and follow the instructions. If assistance is needed with sales tax related questions, you can contact the DOR Sales Tax Help Line at (803) 896-1370. For all TeleFile support issues, you should contact the Electronic Services Help Line at (803) 896-1715

Electronic Filing Program (EFT/EDI)

The Department has designed an Electronic Filing Program (EFT/EDI) for the transmission of the payment and filing of tax return information for **sales, use, accommodations, local option and/or special local taxes.**

Businesses that have paid \$15,000 or more, during any one filing period during the past year, are required to file and pay electronically.⁴³ Taxpayers with less than \$15,000 in tax due during a filing period may participate voluntarily with the EFT/EDI Program. For further information, call 1-800-476-0311.

A retailer interested in filing and paying one tax (e.g., sales tax, use tax, local sales tax, local use tax,) through EFT/EDI must file and pay all of these taxes through EFT/EDI. For example, a retailer cannot file and pay sales tax through this program and pay local option through a conventional process. Be aware that both the return and the payment must be filed and paid electronically; a retailer cannot choose to do one part electronically and the other by a different method.

Electronic payments can be made by using the ACH (Automated Clearing House) debit or credit method.

Advantages of participating in electronic programs include:

- (1) Eliminates paperwork, no more paper returns and checks;
- (2) Reduces return error potential due to no re-keying; no manual intervention;
- (3) Accurate timing of payment from the retailer's bank account; and
- (4) Comprehensive audit trail for both the return and the payment.

To register, please call 1-800-476-0311 or e-mail EDI@dor.sc.gov

J. Discount for Timely Payment

If returns are filed and the taxes paid in full by the due date, the taxpayer is allowed a discount on taxes due. For taxes less than \$100, you may take a 3% discount of the tax. For taxes of \$100 or more, your discount is 2% of the tax.⁴⁴

The maximum discount allowed per taxpayer (*all locations included*) during the state's fiscal year (*July 1 - June 30*) is \$3,000. The statute was amended (effective July 1, 2002) to increase that discount to a maximum of \$3,100 if the retailer files his sales and use tax returns electronically.⁴⁵

Nonresident retailers not required by law to collect South Carolina sales or use tax, but who voluntarily register to do so, are allowed a maximum discount of \$10,000 each fiscal year.

⁴³ South Carolina Code §12-54-250.

⁴⁴ South Carolina Code §12-36-2610.

⁴⁵ South Carolina Code §12-36-2610.

In calculating the maximum discount (whether \$3,000, \$3,100 or \$10,000), begin with the June return filed in July and end with the May return filed in June.⁴⁶

K. Cash Deposit or Bond

Transient retailers who have no permanent business location from which retail sales are made may be required to make a sufficient cash deposit or bond with the Department of Revenue to cover at least their annual sales tax liability. This cash deposit or bond must be made before receiving a retail license.⁴⁷

L. Recordkeeping

Every person subject to the sales and/or use taxes is required to keep “records, receipts, invoices and other pertinent papers in the form the Department requires.”⁴⁸ This includes records in electronic format.⁴⁹ Purchase invoices must show the names and addresses of vendors from whom purchases are made.⁵⁰

Separate records for wholesale sales and retail sales must be kept. If separate records are not kept, it is presumed all sales are at retail.⁵¹

Records must be kept for a period of **four years**.⁵²

The penalty for failing to keep records as required by the Department is a maximum of \$500 per return.⁵³

M. Assessments

The Department may assess unpaid taxes within three years of the date the taxpayer’s return was filed, or due to be filed, whichever occurs later.⁵⁴

For example, if a taxpayer files the May 2008 sales and use tax return on the due date, June 20, 2008, the Department has until June 20, 2011, to determine if additional taxes are due and assess the taxpayer for those taxes. If the taxpayer filed the May 2008 return late on August 30, 2008, then the Department has until August 30, 2011, to determine if additional taxes are due and assess the taxpayer for those taxes.

⁴⁶ South Carolina Code §12-36-2610.

⁴⁷ South Carolina Code §12-36-520.

⁴⁸ South Carolina Code §12-36-2540(A); South Carolina Code §12-54-210; SC Regulation 117-200; and SC Regulation 117-200.1.

⁴⁹ SC Regulation 117-200.2.

⁵⁰ South Carolina Code §12-36-2540(C).

⁵¹ South Carolina Code §12-36-2540(B).

⁵² SC Regulation 117-200.1.

⁵³ South Carolina Code §12-54-210.

⁵⁴ South Carolina Code §12-54-85(A).

However, there are exceptions to the three-year limitation to assess additional taxes. The Department may assess for additional taxes after the three-year period if:

- (1) The taxpayer has consented in writing to extending the time period for assessing the tax.⁵⁵ This consent form must be completed before the three-year time limit expires. This consent form is usually completed at the beginning of the audit process when the taxpayer and the auditor agree to the period of time to be audited.
- (2) The taxpayer understates 20% of total taxes. In this case, the Department has six years to assess the taxpayer for the unpaid taxes.⁵⁶
- (3) The taxpayer has failed to file the return.⁵⁷ In this case, the Department may go back to August of 1985.⁵⁸
- (4) The taxpayer has filed a fraudulent return with the intent to evade the tax.⁵⁹ In this case, the Department may go back to August of 1985.⁶⁰
- (5) The taxpayer has failed to pay a use tax and the Department assesses the use tax as a result of information received from other state or local taxing authorities, regional or national tax administration organizations, or the federal government. The use taxes may be assessed within 12 months of receiving the information, but no later than 72 months after the last day the use tax may be paid without penalty.⁶¹

The taxpayer who collects from the purchaser a state or local sales or use tax that exceeds the amount allowed or required by state law, may be held liable for a penalty. The penalty could be up to 150% of the tax amount collected that exceeds the authorized amount.⁶²

⁵⁵ South Carolina Code §12-54-85(C)(4).

⁵⁶ South Carolina Code §12-54-85(C)(3).

⁵⁷ South Carolina Code §12-54-85(C)(2).

⁵⁸ South Carolina Code §12-54-85(C). At one time there was a statute that presumed that any tax due for more than 10 years had been paid. That statute was repealed effective August 1, 1995. Now there are no limitations on assessment of taxes where no return was filed and none on fraudulent returns. The Department has consistently taken the position that the former 10 year statute would continue to apply to taxes due before August 1, 1995; therefore it does not seek to make assessments for periods before August 1, 1985 (10 years prior to the August 1, 1995, effective date).

⁵⁹ South Carolina Code §12-54-85(C)(1).

⁶⁰ South Carolina Code §12-54-85(C). At one time there was a statute that presumed that any tax due for more than 10 years had been paid. That statute was repealed effective August 1, 1995. Now there are no limitations on assessment of taxes where no return was filed and none on fraudulent returns. The Department has consistently taken the position that the former 10 year statute would continue to apply to taxes due before August 1, 1995; therefore it does not seek to make assessments for periods before August 1, 1985 (10 years prior to the August 1, 1995, effective date).

⁶¹ South Carolina Code §12-54-85(C)(5).

⁶² South Carolina Code §12-54-196.

N. Refunds

Initial Process

- A. A taxpayer may seek a refund of any state tax by filing a written claim for refund with the Department of Revenue (Department).

Only the taxpayer legally liable for the tax may claim or receive a refund.⁶³ In the case of the sales tax, this is the retailer. In the case of the use tax, this is the purchaser. However,

- (1) with respect to sales tax, a purchaser who has paid the sales tax to the retailer for a specific transaction may claim and receive a refund if the retailer who paid the sales tax to the Department has assigned in writing the right to the refund of the sales tax to the purchaser.⁶⁴
- (2) with respect to the use tax, the retailer who collected the use tax from the purchaser and remitted to the Department may claim and receive the refund if the retailer establishes that the use tax has been repaid to the purchaser or the retailer has obtained written consent from the purchaser to claim and receive the use tax refund.⁶⁵

Also, the taxpayer legally liable for the tax (the retailer for sales tax and the purchaser for use tax) may assign in writing the refund to another person if the taxpayer legally liable for the tax has filed the claim for refund, the Department determines the claim is allowable, the amount of the refund is decided by the Department, and the Department has approved the refund.⁶⁶

For special rules concerning foreign diplomats, see South Carolina Code §12-60-470(C)(3).

- B. The refund claim must specify:⁶⁷

- (a) the taxpayer's name, address, and telephone number;
- (b) the appropriate taxpayer identification number or numbers;
- (c) the tax period or date for which the tax was paid;
- (d) the nature and kind of tax paid;

⁶³ South Carolina Code §12-60-470(C)(1).

⁶⁴ South Carolina Code §12-60-470(C)(1)(b).

⁶⁵ South Carolina Code §12-60-470(C)(1)(a).

⁶⁶ South Carolina Code §12-60-470(C)(2).

⁶⁷ South Carolina Code §12-60-470(B).

- (e) the amount claimed as erroneously paid;
 - (f) a statement of facts supporting the taxpayer's positions; and
 - (g) a statement outlining the reasons for the claim, including any law or other authority upon which the taxpayer relies.
- C. The refund claim must be filed within three years of the time the return was filed, or two years from date of payment, whichever is later. If no return was filed, the claim must be filed within two years from date of payment.⁶⁸
- D. The appropriate division of the Department will decide what refund is due, if any, and give a written notice of its decision.
- E. If a taxpayer's claim for refund is denied, the taxpayer can appeal by filing a written protest with the Department. The protest must be in writing and must be filed within 90 days from the date of the denial. The protest must also provide any information that was previously omitted but required for a refund claim as listed above.
- F. If a refund is due, it must be first applied against other sales or use taxes due by the claimant and then against other state taxes due by the claimant.⁶⁹

Review by the Department of Revenue

- A. After the appeal, the taxpayer will be offered a conference with the person who denied the refund claim, and if requested, that person's supervisor. The purpose of the conference is to give the taxpayer a better understanding of the facts and issues and to also afford the taxpayer the opportunity to present additional information. At the Department's discretion, the conference may be conducted by telephone. After the conference, if the protest is not resolved, the file will be transferred to the Department's Office of General Counsel for Litigation.
- B. The Office of the General Counsel for Litigation will review the file and prepare a written Department Determination addressing the issues raised by the appeal. Once the Department's Director approves the Determination, it will be mailed to the taxpayer.

Contested Case Hearing before the Administrative Law Court

- A. A taxpayer can request a contested case hearing before the Administrative Law Court if the taxpayer disagrees with the Department Determination.

⁶⁸ South Carolina Code §12-54-85(F).

⁶⁹ South Carolina Code §12-60-490.

- B. The request for a contested case hearing must be made in writing within 30 days after the date of the Determination.
- C. The rules of the Administrative Law Court will control the request for a contested case hearing and the hearing.
- D. A refund denial will become final if the taxpayer does not request a contested case hearing within 30 days.

O. Penalties and Interest

Taxpayers who fail to file sales and use tax returns, or fail to pay these taxes when they are due, are subject to certain penalties. Penalties are imposed as follows:

Failure to file - This penalty is imposed at the rate of 5% of the taxes due for each month, or fraction of a month, the return is late. For example, if the May 2003 return is filed on June 30, 2003, it is 10 days late and the taxpayer is subject to a penalty equal to 5% of the tax due on that return. If this same return had not been filed until July 23, 2003, the taxpayer would be subject to a penalty equal to 10% of the tax due on that return.

Failure to pay - This penalty is imposed at the rate of 0.5% of the taxes due for each month, or fraction of a month, the taxes are late. For example, if the May 2003 return is filed on June 30, 2003, it is 10 days late and the taxpayer is subject to a penalty equal to 0.5% of the tax shown as due on that return. If this same return had not been filed until July 23, 2003, then the taxpayer would be subject to a penalty equal to 1% of the taxes shown as due on that return.

If the taxpayer is audited and taxes are found to be due, then the failure to pay penalty is not due if the taxes are paid within 10 days of the Department of Revenue's assessment for such taxes.

If the taxes found to be due under the audit are not paid within 10 days of the Department of Revenue's assessment, then the penalty is imposed at the rate of 0.5% of the taxes due for each month, or fraction of a month, from the 11th day after the assessment is issued until the taxes are paid.

P. Other Penalties

Other penalties, such as those imposed with respect to negligence,⁷⁰ fraud⁷¹ and operating without a retail license,⁷² can be found in Chapter 54 of Title 12 of the South Carolina Code of Laws.

⁷⁰ South Carolina Code §12-54-43(F)(1).

⁷¹ South Carolina Code §12-54-44.

⁷² South Carolina Code §12-36-560.

Q. Interest

The Department, by law, imposes interest if a taxpayer fails to pay any sales and use taxes due. Interest is imposed at the same rate as provided in the Internal Revenue Code. The interest rate changes quarterly and such rate changes may be found on the Department's website (www.dor.sc.gov).⁷³ These are the same interest rates used by the Department in calculating the interest due a taxpayer if that taxpayer is issued a refund; however, two temporary provisos in the current state budget direct the Department to reduce the rate of interest paid on eligible refunds by three percentage points from the above rates for refunds paid from July 1st through June 30th.

R. Waiver of Penalties

The Department of Revenue has the authority to waive penalties imposed if there is reasonable cause to do so. Taxpayers who request a waiver or reduction of penalties imposed should do so in writing, and should set forth the reasons why such penalties should be waived or reduced. The Department of Revenue employee reviewing the request will then determine if a waiver or reduction of penalties is warranted under the guidelines established by the Department of Revenue in South Carolina Revenue Procedure #08-6.

S. Completion of an Audit

Initial Process

- A. When a division of the Department determines a taxpayer owes additional taxes, it will mail or deliver a proposed assessment.
- B. The proposed assessment is the first written notice a taxpayer will receive that says the taxpayers owes or requests that the taxpayer pays additional taxes, interest, or penalties. The term "proposed assessment" does not include the auditor's work papers or draft audit reports. If the taxpayer disagrees with a proposed assessment, the taxpayer is entitled to appeal the findings using the following procedures.
- C. If the taxpayer agrees with the proposed assessment, the amount due should be paid on or before the due date of the proposed assessment to avoid additional interest and penalties, if applicable.

⁷³ Interest rate information is published quarterly in an information letter issued by the Department. To obtain a copy of such an information letter, click on "Dept. Advisory Opinions" on the website, then go to the "Alphabetical Index of Advisory Opinions" and then to the "Administrative" index.

If the taxpayer cannot pay, the taxpayer may request to enter into an installment payment agreement. An installment payment agreement will allow the taxpayer to pay over an agreed period of time. The taxpayer may contact the district manager of the nearest Taxpayer Service Center for additional information about installment agreements.

- D. A taxpayer may agree with portions of the proposed assessment and disagree with others. The portion of the assessment with which the taxpayer agrees may be paid to avoid additional interest and penalties, and the remainder can be appealed.
- E. If the taxpayer disagrees with part or all of the proposed assessment, the taxpayer may appeal by sending a written protest within 90 days from the date on the proposed assessment to the address on the proposed assessment. The written protest must contain:
 - (a) the taxpayer's name, address, and telephone number;
 - (b) the appropriate taxpayer identification number or numbers;
 - (c) the tax period or date for which the tax was proposed;
 - (d) the nature and kind of tax in dispute;
 - (e) a statement of facts supporting the taxpayer's position; and
 - (f) a statement outlining the reasons for the appeal, including any law or other authority upon which the taxpayer relies.

A taxpayer does not need to provide legal or other authority, as provided above, if the total amount of the proposed assessment is less than \$2,500.00, unless the taxpayer is a partnership, "S" corporation, exempt organization, or employee plan and the proposed tax is imposed by Chapters 6, 11, or 13 of Title 12. This exception does not apply to protests involving sales or use taxes.

- F. The Department may extend the time for filing a protest at any time before the period has expired.

Review by the Department of Revenue

- A. After a taxpayer files a protest, the taxpayer will be offered a conference with the person who issued the proposed assessment, and if requested, that person's supervisor. The purpose of the conference is to give the taxpayer a better understanding of the facts and issues and to also afford the taxpayer the opportunity to present additional information. At the Department's discretion, the conference may be conducted by telephone. After the conference, if the protest is not resolved, the taxpayer's file will be transferred to the Department's Office of General Counsel for Litigation.

- B. The Office of the General Counsel for Litigation will review the file and prepare a written Department Determination addressing the issues raised by the appeal. Once the Department's Director approves the Department Determination, it will be mailed to the taxpayer.

Contested Case Hearing Before the Administrative Law Court

- A. A taxpayer can request a contested case hearing before the Administrative Law Court if the taxpayer disagrees with the Department Determination.
- B. The request for a contested case hearing must be made in writing and filed with the Administrative Law Court within 30 days after the date of the Department Determination.
- C. The rules of the Administrative Law Court will control the request for a contested case hearing and the hearing.
- D. A final assessment will be sent to the taxpayer for payment, if the taxpayer does not properly request a contested case hearing within 30 days.

License Revocation

- A. The Department may deny or revoke any license issued by the Department for failure to pay taxes or certain regulatory violations.
- B. Notice will be sent to the taxpayer if a division of the Department proposes to deny or revoke your license.
- C. A taxpayer can appeal the denial or revocation by filing a written protest with the Department within 90 days of the notice. The written protest must contain:
 - (a) the taxpayer's name, address, and telephone number;
 - (b) the appropriate taxpayer identification number or numbers, if any;
 - (c) the kind of license in dispute;
 - (d) a statement of facts supporting the taxpayer's position; and
 - (e) a statement outlining the reasons for the appeal, including any law or other authority upon which the taxpayer relies.

- D. If a protest involves a failure to pay taxes, a written protest should be filed with the Department's District Manager who signed the denial or revocation. The District Manager will transfer the matter to the Department's Office of the General Counsel for Litigation if it cannot be resolved. The Office of the General Counsel for Litigation will review the file and prepare a written Department Determination addressing the issues raised by the appeal. Once the Department's Director approves the Department Determination, it will be mailed to the taxpayer.
- E. If a protest involves a regulatory violation of the alcoholic beverage laws, bingo laws, or other coin operated devices provisions, a written protest should be filed with the Department's Regulatory Division.
- F. A taxpayer can request a contested case hearing before the Administrative Law Court if the taxpayer disagrees with the Department Determination. The request for a contested case hearing must be made in writing and filed with the Administrative Law Court within 30 days after the date of the Department Determination. The rules of the Administrative Law Court will control the request for a contested case hearing and the hearing.

T. The Fairness in Lodging Act

The governing body of a county or municipality may impose, by ordinance, a local accommodations tax, on the gross proceeds derived from the rental or charges for accommodations furnished to transients as provided in South Carolina Code §12-36-920(A), not to exceed 3%. The revenue generated by this additional tax must be used exclusively for certain tourism purposes.⁷⁴

The "Fairness in Lodging Act,"⁷⁵ enacted on June 9, 2014, gives municipalities and counties the option of exercising additional enforcement authority and sharing data with the Department with respect to individuals who rent residential accommodations to tourists and fail to remit the local accommodations tax and the state sales tax on accommodations. The governing body of the municipality or county that imposes the local accommodations tax may implement the provisions of the Act through an ordinance and by providing a certified copy of the ordinance to the Director of the Department.⁷⁶ The provisions of the Act do not apply to any residential real property lawfully assessed for property tax purposes pursuant to South Carolina Code §12-43-220(c) when all rental income on the property is not included in gross income for federal income tax purposes pursuant to Internal Revenue Code §280A(g).⁷⁷

⁷⁴ South Carolina Code §6-1-520.

⁷⁵ South Carolina Code §6-1-810 through 6-1-825.

⁷⁶ South Carolina Code §6-1-815(A).

⁷⁷ South Carolina Code §6-1-815(B).

When the provisions of the Act apply in a jurisdiction, the Department and the implementing municipality or county must share helpful data in determining possible instances of noncompliance using returns and other documents filed with or available to them.⁷⁸ The municipality or county must include a notice with the annual property tax notices provided to owners of residential real property assessed at 6%.⁷⁹ The notice must include: details of local and state accommodations taxes required to be paid by persons renting residential real property to tourists; the intention of the municipality or county to vigorously enforce the requirements; and specific directions for obtaining additional information about the requirements, including names, addresses and telephone numbers of municipal or county officials able to answer questions, provide forms, and assist in compliance.⁸⁰

The implementing municipality or county may impose a one-time civil noncompliance penalty of \$500 to \$2,000 for each seven days that a property was rented. The one-time penalty is in addition to other penalties and interest imposed under the ordinance for failure to comply with local accommodations tax requirements of owners who rent residential accommodations to tourists. The county or municipality may not impose the additional penalty unless the owner received the notice as required under the Act. For purposes of enforcement and collection, the additional penalty is deemed a property tax on the rental property.⁸¹

The Act requires the Department of Revenue to identify websites containing “rent by owner” vacation rental opportunities and to request that the websites post a statement that owners of South Carolina rental properties must be licensed and collect applicable local and state fees and taxes.⁸²

The Act requires the Department to provide data and assistance to municipalities and counties that have implemented the Fairness in Lodging Act.⁸³ The county or municipality⁸⁴ and the Department⁸⁵ may share information in the performance of their duties required under the Fairness in Lodging Act.

⁷⁸ South Carolina Code §6-1-820(A).

⁷⁹ South Carolina Code §12-43-220(e).

⁸⁰ South Carolina Code §6-1-820(B).

⁸¹ South Carolina Code §6-1-820(C).

⁸² South Carolina Code §6-1-825.

⁸³ South Carolina Code §12-4-310(11).

⁸⁴ South Carolina Code §6-1-120(B)(3).

⁸⁵ South Carolina Code §12-54-240(B)(13).

23

*Frequently
Asked
Questions*

Chapter 23

Frequently Asked Questions

The following are some Frequently Asked Questions concerning the sales and use tax law. These questions are listed under the following categories:

- A. [License and Registration](#)
- B. [Filing Returns](#)
- C. [Sales and Use Tax Rates](#)
- D. [What is Subject to the Sales and Use Tax?](#)
- E. [Government](#)
- F. [Churches and Other Nonprofit Organizations](#)
- G. [Internet Sales and Purchases](#)
- H. [Use Tax – Out-of State Purchases](#)
- I. [Construction](#)
- J. [Medicine and Medical Supplies](#)
- K. [Farmers](#)
- L. [Maximum Tax](#)
- M. [Administrative](#)
- N. [Refunds](#)
- O. [Penalties and Interest](#)
- P. [Local Taxes](#)
- Q. [Food](#)
- R. [Resale and Exemption Certificates](#)
- S. [Other](#)
- T. [Accommodations](#)

The answers to these questions were written in a non-technical manner and if you have further questions please contact either the Department of Revenue or your tax professional. However, where deemed necessary, the answer is footnoted to reference code sections, regulations or advisory opinion that may help the reader better understand the issue.

A. License and Registration

1. Who needs a retail license or a use tax registration?

A retail license is required of every person in the business of selling tangible personal property at retail in South Carolina. A license must be obtained for each location of a business selling tangible personal property at retail. (Since the sales tax law applies to certain services, a retail license is required for each location selling at retail any service specifically subject to the sales tax.)

A use tax registration is of any business or nonprofit organization that is not licensed as a retailer and that regularly purchases tangible personal property for its own use from outside the state (not for resale) upon which the South Carolina sales or use tax has not been collected from the purchaser. (Since the use tax law applies to certain services, a use tax registration is required of any business or nonprofit organization that is not licensed as a retailer and that regularly purchases such a service for its own use from outside the state (not for resale) upon which the South Carolina sales or use tax has not been collected from the purchaser.)

Note: Retailers do not need to obtain a separate use tax registration since the sales tax return provides them the opportunity to remit the use tax on any property or service purchased for their own use (not for resale).

2. How do I obtain a retail license?

A retail license may be obtained by mail, online or in person.

To obtain a license by mail, complete Form SCDOR-111 and mail the application, along with \$50.00, to:

SC Department of Revenue
Registration Unit
Columbia, SC 29214-0140

To obtain a license online (via the Internet), go to www.scbos.com.

To obtain a license in person, visit anyone of the following Taxpayer Service Centers of the Department:

Charleston Service Center: 2 Southpark Circle
Suite 100
Charleston, S.C. 29407
Phone: 843-852-3600
Fax: 843-556-1780

Columbia Main Office:	300A Outlet Pointe Boulevard Columbia, S.C. 29210 P.O. Box 125 Columbia, S.C. 29214 Phone: 803-898-5000 Fax: 803-898-5822
Florence Service Center:	1452 West Evans Street P.O. Box 5418 Florence, S.C. 29501 Phone: 843-661-4850 Fax: 843-662-4876
Greenville Service Center:	545 North Pleasantburg Drive, Suite 300 Greenville, SC 29607 Phone: 864-241-1200 Fax: 864-232-5008
Myrtle Beach Service Center:	1330 Howard Parkway P.O. Box 30427 Myrtle Beach, S.C. 29588 Phone: 843-839-2960 Fax: 843-839-2964
Rock Hill Service Center:	454 South Anderson Road Business and Technology Center Suite 202 P.O. Box 12099 Rock Hill, S.C. 29730 Phone: 803-324-7641 Fax: 803-324-8289

3. What is the cost of a retail license and how long is it valid? Do I need to renew it every year?

The cost of each retail license is \$50.00 and the license is valid as long as the same retailer continues to operate the business at that location (unless revoked by the Department). If ownership of the business changes the retail license is no longer valid and the new owner must obtain a new retail license.

4. Do I need a retail license for each location of my retail business? Can I use one license at multiple locations?

A license is required for each location of the business.

5. If I move my business to a new location, do I need to purchase a new retail license?

If a retailer closes a location so as to move the business to a new location, the retailer does not need to purchase a new license. However, the retailer must turn the license over to the Department and provide the information as to the new location so the Department can issue a license with the new address of the business.

6. What qualifications do I have to meet to apply for and obtain a retail license?

To obtain a retail license, a person (a) must be engaged in the business of selling tangible personal property, or one of the specifically taxed services, at retail; (b) must complete an application; (c) must remit the \$50.00 fee with the application; and (d) must not have any outstanding tax liabilities of any kind with the Department of Revenue.

7. Why can I not transfer my retail license from my name to the new owner's name without paying another \$50?

Since the sales and use tax law specifically states that a retail license is not transferable or assignable, a retail license may not be transferred to another person when a business is sold.

8. Why can't I keep a retail license in case I "later on" decide to have a business?

Since a retail license may only be issued to a person engaged in the business of selling tangible personal property, or one of the specifically taxed services, at retail, a person who is no longer in that business must surrender the retail license to the Department immediately upon closing the business.

9. Where and what can I sell with this retail license?

A retail license is only valid for the one specific location; however, the Department also issues (i) a transient license to a business that does not have a permanent location in South Carolina but only operates at one location at a time and (ii) an artist or craftsman license that may only be used at one location at a time.

A retail license is for the purpose of selling as a business tangible personal property, or one of the specifically taxed services, at retail. For example, if a clothing store owner expands to begin selling furniture at the same location, a new retail license is not needed since both clothing and furniture are tangible personal property and the location where the sale takes place has not changed.

10. Do I have to have a retail license for flea market sales even if the items to be sold are used items?

If you sell at flea markets only once a quarter, you do not need a retail license unless making retail sales at flea markets is a regular business in which you are engaged.

11. Do I have to have a license for a yard sale at my house?

If you conduct a yard sale only once a quarter, you do not need a retail license unless conducting yard sales is a regular business in which you are engaged.

12. What do I need to sell beer and wine?

Since beer and wine are tangible personal property, a person selling beer and wine at retail must have a retail license. In addition, the person must also obtain a beer and wine permit from the Department and may need to obtain permits or licenses from other state agencies and local governments.

13. I have a business that is 95% service. Why do I need to purchase a retail license for the small amount of product that I do sell? Is it not legal to just pay the sales tax on those items when purchased from the vendor and be done with it?

If a business is engaged in selling tangible personal property at retail, even if it is a small part of the overall business, the business must obtain a retail license and remit the sales tax on those sales. For example, if 95% of a hair salon's business is the result of the non-taxable service of cutting and styling hair and only 5% is from the sale of hair care products, the salon must still obtain a retail license and remit the sales tax on its sale of the hair care products.

14. I'm a contractor, how can I qualify to get a retail license?

A contractor provides a service and is considered the user or consumer of the building material the contractor buys to provide this construction service. Therefore, a contractor is not entitled to obtain a retail license unless the contractor has a "second" business of regularly selling tangible personal property at retail.

For example, a plumbing business that only contracts to provide the plumbing improvements to a general contractor of residential homes is not entitled to a retail license. However, if this plumbing business also operates a retail plumbing supply store, then it will need a retail license for the store.

15. If I am a landscaper, do I need a retail license?

A landscaper is a contractor that provides a service and is considered the user or consumer of the plants and other supplies the landscaper buys to provide this service. Therefore, a landscaper is not entitled to obtain a retail license unless the landscaper has a "second" business of regularly selling tangible personal property (plants, grass sod, etc.) at retail.

For example, a landscaper that only contracts to provide landscaping improvements to a general contractor of residential homes is not entitled to a retail license. However, if this landscaper also operates a retail nursery or rents indoor, potted plants, then it will need a retail license for the nursery or rental business.

16. If I'm located in North Carolina and purchase products from a South Carolina vendor for resale and request that the product be shipped to my South Carolina customer, do I need a South Carolina license to purchase items to resell — I do not have a business in South Carolina?

If your business has no physical presence in South Carolina, then you are not required to obtain a retail license. However, your South Carolina customer is liable for the use tax on any purchase at retail.

If your business has a physical presence in South Carolina, then you are required to obtain a retail license. Physical presence includes, but is not limited to:

1. Out-of-state seller maintains, either directly or by subsidiary, an office, distribution house, warehouse, other place of business, or property in South Carolina.
2. Out-of-state seller has an agent, salesman, representative, independent contractor, or employee operating in South Carolina, either permanently or temporarily.
3. Out-of-state seller installs the property it sells in South Carolina.
4. Out-of-state seller regularly engages in any activity in connection with the lease or rental or servicing of property located in South Carolina.
5. Out-of-state seller delivers product to South Carolina customers in company vehicles.

17. If I publish a booklet to be given away free (similar to the one used to sell houses and cars) to advertise different businesses and their products, do I need a retail license to collect and pay sales tax?

No. Since you are not selling the booklet, you do not need a retail license (provided you are not selling any other tangible personal property).

18. If I do not make retail sales, but I need to remit the use tax on my out-of-state purchases, do I need a retail license?

No. You would only need to register to remit the use tax. There is no charge for a use tax registration.

19. Do I need a retail license if I provide a service?

If the service you are providing is not one of the specifically taxed services under the sales and use tax, then you would not need a retail license.

If the service you are providing is one of the specifically taxed services under the sales and use tax, then you would need a retail license.

B Filing returns

1. When are sales and use tax returns due?

Sales and use tax returns are due by the 20th of the month following the end of the month, calendar quarter or year, depending on the sellers filing period.

For **monthly filers** (who constitute the vast majority of filers), the return is due on the 20th of the month following the month in which the sales occurred. For example, for sales that occur in March, the March return must be filed by April 20th.

For **calendar quarter filers**, the return is due on the 20th of the month following the end of the calendar quarter in which the sales occurred. For example, for sales that occur in the July through September calendar quarter, the quarterly return must be filed by October 20th.

For **calendar year filers**, the return is due on the 20th of the month following the end of the calendar year in which the sales occurred. For example, for sales that occur in the 2008 calendar year, the calendar year return must be filed by January 20, 2009.

2. Can I file quarterly or annually instead of monthly?

Yes, provided certain requirements are met and filing on a quarterly or annual basis has been approved by the Department.

3. How do I determine if I can file a use tax return monthly, quarterly, or yearly?

To determine if you are eligible to file quarterly or annually, please contact to the Department's Licenses and Registration Section or one of the Department's Taxpayer Service Centers. Generally, if the total tax due (state and local) on any return does not exceed \$100.00 for any month, a quarterly return may be filed provided it has been approved by the Department.

4. Do I need to file a return if I don't make any sales for a particular filing period (e.g., month, quarter)?

Yes.

5. Can I file my return online?

Yes. To file online, visit the Departments website at www.dor.sc.gov for information about filing a sales and use tax return online.

6. When is the sale complete?

A sale is complete, or has occurred, when the seller has delivered the tangible personal property to the customer and the customer has paid or has a binding obligation to pay.

For example, if a customer pays the retailer for a product on October 30th, but the product will not be delivered to the customer by the retailer until November 4th, the sales has occurred in November and should be reported on the retailer's November sales and use tax return.

7. What form or forms do I use to file my sales and use tax return?

Most taxpayers who are liable for the state and local taxes that are administered and collected by the Department must file Form ST-3. However, the type of form used depends on the taxpayer's business. The following forms are used depending on the taxpayer's business:

<u>Type</u>	<u>Form Number</u>	<u>Local Form Number</u>
Retail	ST-3	ST-389
Accommodations	ST-388	ST-389, ST-3T
Aviation Gasoline	ST-403	ST-389
Maximum Tax	ST-455	ST-389
Individual Use Tax	UT-3/UT-3W	No local form required
Casual Excise/Use Tax	ST-236	No local form required

Note: With respect to local sales and use tax that is administered and collected by the Department, retailers who are located in a county that does not impose a local sales and use tax and do not make deliveries into other counties that do impose a local sales and use tax, do not need to file the ST-389 with the state form.

Retailers that are either located in a county that does impose a local sales and use tax or that make deliveries into counties that do impose a local sales and use tax for which they are responsible for remitting to the Department, must file the ST-389 with the state form. See Chapter 14 and SC Revenue Ruling #09-9 for information on a retailer's responsibilities for remitting local sales and use taxes.

8. If I am required to file the local tax form (ST -389, do I have to send all 3 pages of the local tax form, the ST-389?

Yes.

9. Why are the local options forms (ST-389) so complicated? Local option forms are very difficult for some people with small or home-based businesses.

The local sales and use tax form, the ST-389, has admittedly become complicated as a result of the various new local taxes that have been authorized over the years. In addition, while these local taxes are similar, they do not necessarily have the same tax base. This further complicates the form.

However, the Department is always looking to improve its forms. If you have any suggestions for improving sales and use tax return forms, please send your suggestions to Suggestions4forms@dor.sc.gov.

10. Does South Carolina allow a discount for a timely filed return? How is the timely filed discount calculated?

South Carolina will allow a discount for timely filing a sales and use tax return, provided the taxes due on the return are paid in full and by the due date. The discount is calculated based on the total taxes (state and local) due with the return.

For returns showing a total tax due (state and local) of less than \$100.00, the discount is 3% of the total tax due. For example, if a return shows a total tax due (state and local) of \$80.00, the discount allowed for that return is \$2.40 ($\$80.00 \times 3\%$) and the retailer would remit a total payment of \$77.60 ($\$80.00 - \$2.40$) with that return.

For returns showing a total tax due (state and local) of \$100.00 or more, the discount is 2% of the total tax due. For example, if a return shows a total tax due (state and local) of \$200.00, the discount allowed for that return is \$4.00 ($\$200.00 \times 2\%$) and the retailer would remit a total payment of \$196.00 ($\$200.00 - \$4.00$) with that return.

However, in no event may a taxpayer (regardless of the number of retail locations the taxpayer has in the state), receive a discount in excess of \$3,000 during any one state fiscal year (returns filed from July 1st through the following June 30th). This would be the June return filed in July through the May return filed in the following June. For taxpayers who file electronically, the discount maximum for a state fiscal year is \$3,100.00 instead of \$3,000.00. For out-of-state taxpayers who cannot be required to file a sales and use tax return due to a lack of nexus with South Carolina, but who do so voluntarily, the discount maximum for a state fiscal year is \$10,000.00 instead of \$3,000.00.

Common Errors: Over the years, the Department has encountered two common errors taxpayers make when calculating the timely filed/paid discount on a return. When calculating the discount, remember the following:

Do not calculate the discount based on your total sales. The discount is calculated based on the total taxes (state and local) due.

Do not just calculate the discount based on your state tax. Some taxpayers have calculated the state tax and carry this number over to the local tax form (ST-389) and deducted it again. The discount is determined as follows: (1) Calculate the tax on the state tax due; (2) Calculate the discount for each entry on the local tax form; (3) Total all local tax discounts on the appropriate line of the local tax form; and (4) Add the state tax discount and the total of the local tax discounts and place this total state and local tax discount on the appropriate line of the first page of the tax return.

11. What are the deductions that I can take on the worksheet on the return?

Deductions are the exclusions and the exemptions authorized under the sales and use tax law.

Exclusions: While there are several exclusions authorized in the law, the primary exclusions are “sales for resale” – which are also referred to as “wholesale sales.” “Sales for resale” are items sold by a wholesaler or retailer that are not sold to the ultimate user or consumer under the sales and use tax law, but are sold to another wholesaler or retailer who will in turn sell it. The presentation of a resale certificate (Form ST-8A) by a purchaser will relieve the seller of liability for the sales tax and switch the liability to the purchaser, provided (a) the resale certificate presented to the seller by the purchaser contains all the information required by the Department and has been fully and properly completed; (b) the seller did not fraudulently fail to collect or remit the tax, or both; and (c) the seller did not solicit a purchaser to participate in an unlawful claim that a sale was for resale.

For example, if Seller A, a new car dealer, sells a used car that he accepted as a trade-in to Seller B, a used car dealer, the sale of the used car from Seller A to Seller B is a sale for resale by Seller A. Seller A would report the sale on his tax return as part of his total sales and then take a deduction for it as a sale for resale. By taking a deduction, Seller A would not pay tax on the sale since it was not a retail sale but a wholesale sale (sale for resale). Seller B would remit the tax on the used car if and when he sells it to the ultimate consumer.

Exemptions: Exemptions are retail sale that have been specifically exempted from the tax by the General Assembly. Most of the exemptions from the sales and use tax can be found in South Carolina Code §12-36-2120. Examples of sales exempt from the sales and use tax under this section include but are not limited to:

- Sales to the federal government
- Sales of textbooks for use in a course of study in K through 12 as well as colleges
- Sales of livestock
- Sales of unprepared foods

- Sales of certain farm machinery
- Sales of certain manufacturing machines
- Sales of gasoline and diesel fuel subject to the state motor fuel tax
- Sales of prescription medicine sold by prescriptions
- Sales exempt during the Sales Tax Holiday in August

For example, if Seller X sold office supplies to the federal government, then Seller X would report the sale on his tax return as part of his total sales and then take a deduction for it as an exempt retail sale to the federal government. By taking a deduction, Seller A would not pay tax on the sale since it was is an exempt retail sale.

A sale must fall squarely within the requirements of an exemption in order for the exemption to apply. Therefore, please review the wording of the exemptions in South Carolina Code §12-36-2120 carefully.

12. Can I merely report my taxable sales or must I report all sales and then report and deduct the applicable exclusions and exemption using the worksheet on page 2 of the return?

You must report all sales on the worksheet, report and deduct the applicable exclusions and exemptions on the worksheet, calculate the “net taxable sales” (all sales + all withdrawals for use + all out-of-state purchases subject to the use tax - applicable deductions) and remit the tax based upon your net taxable sales

13. What is a sale for resale?

A “sale for resale” is a non-taxable wholesale sale. When a wholesaler or retailer makes a “sale for resale” the wholesaler or retailer is selling the item to another wholesaler or retailer who will in turn sell the item to another person – either another seller or to the ultimate consumer.

The presentation of a resale certificate (Form ST-8A) by a purchaser will relieve the seller of liability for the sales tax and switch the liability to the purchaser, provided (a) the resale certificate presented to the seller by the purchaser contains all the information required by the Department and has been fully and properly completed; (b) the seller did not fraudulently fail to collect or remit the tax, or both; and (c) the seller did not solicit a purchaser to participate in an unlawful claim that a sale was for resale.

14. If I am a retailer and I don't have the money to pay the sales tax due, what should I do?

First of all, it is important that you file your return on time and remit the tax due with the return. However, if you are unable to remit the tax due with the return, it is important that you file your return on time. Separate penalties are imposed for failure to file a return on time and failure to remit taxes on time. By filing your return on time, you can avoid the failure to file penalties. The Department will then assess you for the tax due, plus penalties and interest. However, the sooner you remit the tax due the less penalties and interest you will owe.

15. If a car dealer sells a car and it is returned the next month, is the dealer entitled to a refund for the taxes paid?

If the retailer refunds the buyer the full sales price, no tax is due on the original sale so the dealer is entitled to a refund.

If the retailer does not refund the buyer the full sales price (keeping any portion as a restocking fee or as a rental fee), the original sale is still valid and the dealer is not entitled to a refund.

16. Are "additional guest charges" at hotels and other places that furnish accommodations subject to the tax?

Yes. The sales tax is imposed upon charges and rentals for accommodations and "additional guest charges." The term "additional guest charge" means an amount which is added to the guest's room charge for room service, laundering and dry cleaning services, in-room movies, telephone services, and the rental of meeting rooms.

Charges for rooms, lodgings and accommodations are taxed at 7%, while other charges for room service, laundering and dry cleaning services, in-room movies, telephone services, and the rental of meeting rooms provided at the hotel, when over and above the services customarily provided with the room, are taxed at 6% as an "additional guest charge

It should therefore be noted that the determination as to what services, if any, are over and above the services customarily provided with the room must be based on all of the facts and circumstances.

For more detailed information on "additional guest charges," see SC Revenue Ruling #14-5.

17. Can the Department not identify retailers that will only make sales in their county and streamline the sales tax returns for such retailers? In other words, can the Department eliminate the several pages of the local tax form (ST-389) that would not apply to such retailers?

Since the Department does not know when a retailer will deliver items into other counties, the Department cannot specifically identify such retailers and issue them a streamlined sales tax form that eliminates or reduces the local tax form.

18. How do you fill out the sales tax return?

Since there are several different sales tax returns, depending on the retailer's business, and local sales and use taxes, it is not possible to provide a step-by-step discussion on how to complete a sales and use tax return. However, two sources provided by the Department should assist retailers in completing a return.

First, the instructions for the sales and use tax returns provided detailed information concerning the completion of a return.

Second, and maybe more helpful, the Department conducts free workshops throughout the year that explain how to complete a sales and use tax return. These workshops provide retailers the opportunity to ask questions they may have concerning the return. The information as to these free workshops can be found on the Department's website at www.dor.sc.gov under "Tax Workshops."

However, retailers should remember the following when completing a sales and use tax return:

- (1) Report all sales (taxable and non-taxable) on the worksheet on page 2 of the return, report and deduct the applicable exclusions and exemptions on the worksheet, calculate the "net taxable sales" (all sales + all withdrawals for use + all out-of-state purchases subject to the use tax - applicable deductions) and remit the tax based upon your net taxable sales.
- (2) Always make sure you are using the correct pre-printed return for the tax period. For example, make sure you use the May pre-printed return for May sales.
- (3) Do not calculate the discount for timely filing and pay based on your total sales. The discount is calculated based on the total taxes (state and local) due.

- (4) Do not calculate the discount based on your state tax. Some taxpayers have calculated the state tax and carried this number over to the local tax form (ST-389) and deducted it again. The discount is determined as follows: (1) Calculate the tax on the state tax due; (2) Calculate the discount for each entry on the local tax form; (3) Total all local tax discounts on the appropriate line of the local tax form; and (4) Add the state tax discount and the total of the local tax discounts and list this total state and local tax discount on the appropriate line of the first page of the tax return.
- (5) If you are a new retailer and plan to seek help from one of our employees in completing your sales and use tax, always bring the pre-printed forms to the meeting.
- (6) Keep complete and accurate records. This is always helpful in completing your return.
- (7) Always make sure you place enough postage on the envelope when mailing your return.

19. When do I have to collect local sales and use taxes?

Examples of when a retailer delivering into another county must remit that county's sales and use tax include, but are not limited to:

Retailers Using Their Own Vehicles: A retailer is required to remit a county's tax if the retailer is shipping property into the county using his own vehicles (whether owned or leased).

Retailers Using a Contract Carrier: A retailer is required to remit a county's tax if the retailer is shipping property into the county using a contract carrier (an independent or related company working specifically for or otherwise representing the retailer with respect to the delivery.)

Retailers Using a Common Carrier: A retailer is required to remit a county's tax if the retailer is shipping property into the county using a common carrier (e.g. UPS, the mail), and the retailer is subject to the county of delivery's jurisdiction

Examples of when a retailer is subject to the county of delivery's jurisdiction include, but are not limited to, the following:

- (a) The retailer maintains, temporarily or permanently, directly or by subsidiary, an office, warehouse, distribution house, sales house, other place of business, or property of any kind in the county of delivery.

- (b) The retailer or a subsidiary has, temporarily or permanently, an agent, representative (including delivery personnel and independent contractors acting on behalf of the retailer), salesman, or employee operating within the county of delivery.
- (c) The retailer advertises via advertising media located in the county of delivery (e.g. newspapers, television, cable systems, and radio).
- (d) The retailer advertises via advertising media located outside the county but which has coverage within the county of delivery (e.g. newspapers, television, cable systems, and radio).

Please note that these statements are only examples and that there are other circumstances in which a retailer must remit a county's tax with respect to deliveries into that county. If upon being audited, it is found a retailer has a sufficient connection with a particular county so as to require remittance of that county's tax, but the retailer has failed to do so, the Department will assess the retailer for that county's tax.

20. What form do you use to amend a return for sales tax?

A retailer can use the tax return forms (e.g., ST-3, ST-389) the retailer normally uses to file and remit sales and use taxes and write "AMENDED" across the top of the form.

21. Can you take a credit for overpayment of tax on the next month's return?

No. In order to recover the overpayment, the retailer will need to file a refund claim.

22. How does a retailer apply for a refund if the retailer overpaid tax on a previous sales tax return (e.g., ST-3)?

For sales tax, the taxpayer is the retailer and only the retailer may apply for and receive the refund. However, a purchaser who has paid sales tax to a retailer for a specific transaction may claim a refund if the retailer who paid the sales tax to the Department has assigned, in writing, the right to a refund of that sales tax to the purchaser. For use tax, the taxpayer is the purchaser and only the purchaser may apply for and receive the refund. However, a retailer who collects the use tax from the purchaser and remits the use tax to the Department may claim a refund of the use tax collected, but only if the retailer establishes that he has paid the use tax in question to the Department and either (1) repaid the use tax to the purchaser from whom he collected it or (2) obtained the written consent of the purchaser from whom he collected the use tax to the allowance of the refund.

A taxpayer who is legally liable for the tax may seek a refund of a state tax by filing a written claim for refund with the department. A claim for refund is timely filed if filed within three years.

The refund claim must specify:

- (1) the name, address, and telephone number of the taxpayer;
- (2) the appropriate taxpayer identification number or numbers;
- (3) the tax period or date for which the tax was paid;
- (4) the nature and kind of tax paid;
- (5) the amount which the taxpayer claims was erroneously paid;
- (6) a statement of facts supporting the taxpayer's position;
- (7) a statement outlining the reasons for the claim, including law or other authority upon which the taxpayer relies; and
- (8) other relevant information that the department may reasonably require.

23. Do I have to report these sales on my income tax return?

All income is reported on your income tax return; however, as a business you are entitled to certain deductions for expenses. It is recommended that you discuss this matter with a tax professional to make sure you are properly and accurately completing your income tax returns.

C. Sales and Use Tax Rates

1. What is the state sales and use tax rate?

South Carolina imposes the following state tax rates under the sales and use tax law:

General Sales and Use Tax Rate:	6%
Accommodations Tax Rate:	7%
900 and 976 Tax Rate:	11%

Manufactured Home	5% + 2% for amounts over \$6,000 ¹
Maximum Tax Items ²	5% (Maximum Tax: \$300.00)
Sales to Persons 85 and Older	5%

In addition, the sales tax due on the sale in South Carolina to a nonresident of a motor vehicle, trailer, semitrailer, or pole trailer that is to be registered and licensed in the nonresident purchaser's state of residence is the lesser of (a) the sales tax which would be imposed on the sale in the purchaser's state of residence or (b) the tax that would be imposed under South Carolina law. No sales tax is due in South Carolina if a nonresident purchaser cannot receive a credit in his resident state for sales tax paid to South Carolina

2. What are the local sales and use tax rates?

South Carolina allows the imposition of various types of local sales and use taxes. A county may impose one or several local sales and use taxes. For a list of counties imposing these local sales and use taxes, visit the Department's website (www.dor.sc.gov).

D. What is Subject to the Sales and Use Tax?

1. What sales or transactions are subject to the sales and use tax?

The sales tax is imposed on the sales at retail of tangible personal property and certain services. The use tax is imposed on the storage, use or consumption of tangible personal property and certain services when purchased at retail from outside the state for storage, use or consumption in South Carolina. There are also special imposition sections that tax the fair market value of tangible personal property when used, stored or consumed by its manufacturer and a special imposition section that taxes transient construction property brought into South Carolina.

¹If the manufactured home meets certain energy efficient standards, the 5% tax is capped at \$300 under the maximum tax provisions of South Carolina Code §12-36-2110 and the 2% tax on amounts over \$6,000 does not apply. However, if a manufactured home that is sold anytime from July 1, 2009 to July 1, 2019 meets or exceeds certain other energy saving efficiency requirements, or ENERGY STAR requirements, of the United States Environmental Protection Agency and the United States Department of Energy, then the sale of the manufactured home is exempt.

²The maximum tax applies to aircraft (including unassembled aircraft which is to be assembled by the purchaser), motor vehicles, motorcycles, boats, trailers and semitrailers that can only be pulled by a truck tractor, horse trailers, fire safety education trailers, recreational vehicles (including tent campers, travel trailers, park models, park trailers, motor homes, and fifth wheels), self-propelled light constructions equipment limited to a maximum 160 net engine horsepower, manufactured homes, and certain musical instruments and office equipment sold to religious organizations exempt under IRC Section 501(c)(3).

2. Are any services or intangibles subject to the sales and use tax?

The services and intangibles subject to the sales and use tax are:

- Furnishing of Accommodations (the state rate for this service is 7%)
- Dry Cleaning and Laundering Services
- Electricity
- Communication Services including, but not limited to:
 - * Telephone services (not specifically exempted under South Carolina Code §12-36-2120(11)), including telephone services provided via the traditional circuit-committed protocols of the public switched telephone network (PSTN), a wireless transmission system, a voice over Internet protocol ("VoIP"), or any of other method
 - * Teleconferencing Services
 - * Paging Services
 - * Cable Television Services
 - * Satellite Programming Services and Other Programming Transmission Services (includes, but is not limited to, emergency communication services and television, radio, music or other programming services)
 - * Fax Transmission Services
 - * E-Mail Services
 - * Electronic Filing of Tax Returns when the return is electronically filed by a person who did not prepare the tax return
 - * Database Access Transmission Services (On-Line Information Services), such as legal research services, credit reporting/research services, charges to access an individual website (including Application Service Providers), etc. (not including computer database information services provided by a cooperative service when the database information has been assembled by and for the exclusive use of the members of the cooperative services)
 - * Prepaid Wireless Calling Arrangements (sale or recharge at retail) as defined in South Carolina Code §12-36-910(B)(5) (For information on prepaid telephone calling cards that do not come within the definition of prepaid wireless calling arrangements, see Revenue Ruling #04-4.)
 - * 900/976 Telephone Service (the state tax rate on this type of communication service is 11%, not 6%)

3. Are rentals or leases subject to the sales and use tax?

Yes. Any rental or lease of tangible personal property, or a taxable service, at retail is subject to the tax.

The sales and use tax law defines the term “sale” to include rentals, leases, licenses to use, or any other agreement.

4. Are consignment sales subject to the tax and who is responsible for consignment sales taxes?

Consignment sales are subject to the sales and use tax. The retailer selling the items on consignment is the person responsible for remitting the tax on the consignment sale. For example, if Mr. Smith creates wooden toys and under an agreement with the ABC Crafts Store places his wooden toys in the craft store for sale by the ABC Crafts Store, then ABC Crafts Store is the retailer and responsible for remitting the tax on these sales even though ABC Crafts Stores does not own the wooden toys.

5. Are delivery charges by whatever name (e.g., freight, shipping, transportation, shipping and handling, etc.) subject to the sales and use tax? Who is responsible for delivery charges?

When a retailer sells tangible personal property at retail and charges the customer a delivery charge for delivery via the retailer's own trucks, then the delivery charge is considered part of the tax base upon which the tax is calculated and subject to the sales and use tax.

When a retailer sells tangible personal property at retail and charges the customer a delivery charge for delivery via a common carrier and the delivery terms are F.O.B. Destination, then the delivery charge is considered part of the tax base upon which the tax is calculated and subject to the sales and use tax.

When a retailer sells tangible personal property at retail and charges the customer a delivery charge for delivery via a common carrier and the delivery terms are F.O.B. Shipping Point, then the delivery charge is not considered part of the tax base upon which the tax is calculated and is not subject to the sales and use tax.

When a retailer sells tangible personal property at retail and charges the customer a delivery charge for delivery via a common carrier and the delivery terms are not specified, then the delivery charge is considered part of the tax base upon which the tax is calculated and subject to the sales and use tax.

However, in no event may a seller deduct costs of bringing property to his place of business or costs of delivering property from factory to his customer when such factory-to-customer transportation is paid by the seller either to a transportation company, the manufacturer, or by way of credit to his customer for transportation costs paid by the customer and deducted from seller's invoice.

Note: If the retailer sells tangible personal property at retail and the sale qualifies for an exemption, then the entire tax base upon which the tax is calculated (including any delivery charges associated with the exempt sale) is exempt.

6. Are late fees subject to the sales and use tax?

When a retailer sells tangible personal property or a taxable service at retail and the customer is charged for a late fee associated with the sale, then the charge is considered part of the tax base upon which the tax is calculated and subject to the sales and use tax, unless the late fee is one charged a customer with respect to a late payment of a bill for electricity or natural gas, or both.

In the case of a late fee charged a customer with respect to a late payment of a bill for electricity or natural gas, or both, the charge for the electricity or natural gas, or both is subject to the tax but the late fee is not subject to the tax.

Note: If the retailer sells tangible personal property or a taxable service at retail and the sale qualifies for an exemption, then the entire tax base upon which the tax is calculated (including any late fee charges associated with the exempt sale) is exempt.

7. Are installation charges subject to the sales and use tax?

When a retailer sells tangible personal property at retail and the customer is charged an installation fee associated with the sale, the installation charge is not subject to the sales and use tax provided it is separately stated on the bill to the customer and the installation charge is reasonable based on the books and records of the retailer.

If the installation charge is not separately stated on the bill to the customer or the installation charge is not reasonable based on the books and records of the retailer, then the installation charge is considered part of the tax base upon which the tax is calculated and subject to the sales and use tax.

Note: If the retailer sells tangible personal property at retail and the sale qualifies for an exemption, then the entire tax base upon which the tax is calculated (including any installation charge associated with the exempt sale) is exempt.

8. Are set up charges (e.g., screen printers, personalized items, etc.) subject to the sales and use tax?

When the “true object” of a transaction is the retail sale of tangible personal property or a taxable service and the customer is charged a set-up fee (e.g., screen printers, personalized items, etc.) associated with the sale, then the charge is considered part of the tax base upon which the tax is calculated and subject to the sales and use tax.

Note: If the retailer sells tangible personal property or a taxable service at retail and the sale qualifies for an exemption, then the entire tax base upon which the tax is calculated (including any set up fee associated with the exempt sale) is exempt.

9. Is the sale of food subject to the sales and use tax?

Yes. The sale of food is subject to the sales and use tax; however, the sales and use tax law provides exemptions for the sale of certain foods, including but not limited to:

- (a) meals provided to elderly or disabled persons at home by nonprofit organizations.
- (b) food sold to nonprofit organizations or food sold or donated by the nonprofit organization to another nonprofit organization.
- (c) meals or foodstuffs prepared or packaged that are sold to public or nonprofit organizations for congregate or in-home service to the homeless or needy or disabled adults over 18 or individuals over 60. This exemption only applies to meals and foodstuffs eligible for purchase under the USDA food stamp program.
- (d) unprepared food that lawfully may be purchased with United States Department of Agriculture food coupons. This exemption does not apply to local taxes unless the local tax specifically exempts the sale of such food. Important: See SC Regulation 117-337 for details about what sales do or do not qualify for this exemption.

10. Are charges for warranty contracts subject to the sales and use tax?

Warranty Contracts sold in conjunction with the sale of the tangible personal property are subject to the sales and use tax unless the sale of the tangible personal property is exempt from the tax.

Note: With limited exceptions, effective September 1, 2011, the sales and use tax will no longer apply to a warranty contract purchased after the tangible personal property is purchased.

11. Is canned software subject to the sales and use tax?

Canned software sold and delivered by tangible means (e.g., tape, disk) is subject to the sales and use tax.

Canned software sold and delivered by electronic means via a modem and telephone from a remote location is not subject to the sales and use tax, provided no part of the software, including back-up diskettes and tapes, is delivered by tangible means.

12. Is custom software subject to the sales and use tax?

Custom software sold and delivered by tangible means (e.g., tape, disk) is subject to the sales and use tax.

Custom software sold and delivered by electronic means via a modem and telephone from a remote location is not subject to the sales and use tax, provided no part of the software, including back-up diskettes and tapes, is delivered by tangible means.

13. Is software sold via an Application Service Provider (ASP) model subject to sales and use tax?

Software delivered via an Application Service Provider, where by the seller maintains the software on a website and the purchaser pays to access the software on that website, is subject to the sales and use tax.

For more information, see S.C. Revenue Ruling #03-5 as well as Section D, Question #2, of this Chapter.

14. I'm located in Ohio and purchase products from a manufacturer not located in South Carolina. They are registered with South Carolina to collect sales tax. They are charging me South Carolina sales tax. Do I have to pay them South Carolina sales tax?

If the manufacturer is delivering the product to you in Ohio, then the South Carolina sales and use tax would not apply. If the product is being delivered to a location in South Carolina, then the South Carolina sales and use tax would apply.

15. Are valet laundry services at a hotel subject to the sales and use tax?

Sales of laundry and drycleaning valet services by a hotel to its guest are subject to the sales tax and are taxed at the rate of 6%, plus any applicable local sales and use taxes.

16. If a customer comes to my store, purchases an item and has me ship the item by mail, common carrier or by a company truck to another person out-of-state, is that sale subject to the sales tax?

No.

17. If a customer purchases an item at my store and the customer intends to personally ship the item to another person out-of-state by mail or common carrier, is that sale subject to the sales tax?

Yes.

E. Government

1. Are sales to the government subject to the sales and use tax?

Sales to the federal government of tangible personal property or taxable services are not subject to the sales and use tax,

Sales to the State, counties, municipalities, and other local political subdivisions (e.g. schools, sheriff offices, municipal housing authorities, welfare agencies) of tangible personal property or taxable services are subject to the sales and use tax, unless such sales are otherwise exempt.

2. Are sales by the government subject to the sales and use tax?

Sales by the federal government of tangible personal property or taxable services are not subject to the sales and use tax,

Sales by the State, counties, municipalities and other political subdivisions of the State (e.g. schools, sheriff offices, municipal housing authorities, and welfare agencies) of tangible personal property or taxable services are subject to the sales tax, unless such are otherwise exempt.

3. Are sales by a state agency to another state agency, a county, a municipality or another political subdivision subject to the sales and use tax?

Sales by a state agency to another state agency, a county, a municipality or another political subdivision are subject to the sales and use tax, unless (1) the consideration for the transfer only reimburses the transferring agency for its cost and expenses in conveying the property and the transferring agency has paid tax on the initial purchase of the tangible personal property or (2) the sale is exempt under the sales and use tax law (e.g., textbooks).

4. I have a contract with the federal government to supply and install equipment. I know sales to the federal government are exempt. What must I do to prevent charging them South Carolina sales tax or my paying South Carolina tax?

To exempt the sales to the federal government, report all sales (including the exempt sales to the federal government) on the worksheet on your return, report and deduct the applicable exclusions and exemptions on the worksheet (including the sales to the federal government), calculate the “net taxable sales” (all sales + all withdrawals for use + all out-of-state purchases subject to the use tax - applicable deductions which will include the exempt sales) and remit the tax based upon your net taxable sales.

Note: Your records should document that the sale was to the federal government. In addition, while not required, you may want to ask the federal government to complete and provide you a Form ST-8 Exemption Certificate, which can be found on the Department’s website (www.dor.sc.gov).

F. Churches and Other Nonprofit Organizations

- 1. Are sales of tangible personal property (e.g., computers, office equipment, tables, chairs, religious publications) and taxable services (e.g., electricity, drycleaning) to a church or other nonprofit organization for their own use or consumption subject to the sales and use tax?**

Yes. Sales to churches and other nonprofit organization are subject to the sales and use tax unless specifically exempt under the sales and use tax law.

- 2. Are sales of tangible personal property (e.g., clothing) to a church or other nonprofit organization for the purpose of providing the tangible personal property free of charge to individuals in need subject to the sales and use tax?**

Yes. Sales of tangible personal property (e.g., clothing) to a church or other nonprofit organization for the purpose of providing the tangible personal property free of charge to individuals in need are subject to the sales and use tax?

- 3. May churches and other nonprofit organization purchase building materials and furnishings tax free?**

No. Sales to churches and other nonprofit organization of building materials and furnishings are subject to the sales and use tax unless specifically exempt under the sales and use tax law.

For example, if a church or a nonprofit organization purchases new tables and chairs for use in its assembly or fellowship hall, or purchases a new door for its main entrance, these purchases are subject to the sales and use tax. Also, if a church or nonprofit organization purchases building material to repair or build a home for a person in need, these purchases by the church or nonprofit organization are subject to the sales and use tax.

- 4. Our church has a 501(c)(3) exemption from the Internal Revenue Service. Doesn't this exempt our church from the sales and use tax?**

No. The 501(c)(3) exemption from the Internal Revenue Service relates to incomes taxes only. In order for a sale to or a sale by a church to be exempt, the exemption must be specifically provided for in the sales and use tax law.

- 5. Are sales of accommodations to a church or other nonprofit organization subject to the sales and use tax?**

Yes, unless the purchase of accommodations by the nonprofit organization falls within one of the exemptions in the sales and use tax law.

6. **If a church operates a camp facility and rents cabins to individuals and groups when the camp facility is not used for summer camps or retreats, is the charge for renting the accommodations subject to the sales tax on accommodations?**

No.

7. **If a nonprofit organization other than a church operates a camp facility and rents cabins to individuals and groups when the camp facility is not used for summer camps or retreats, is the charge for renting the accommodations subject to the sales tax on accommodations?**

Yes, if the nonprofit organization does not qualify for the exemption for sales by certain nonprofit organization and the rentals are for less than 90 consecutive days.

No, if the nonprofit organization does qualify for the exemption for sales by certain nonprofit organization or the rentals are for 90 or more consecutive days.

8. **Are sales of tangible personal property (including accommodations) by a church or other nonprofit organization subject to the sales and use tax?**

Sales of tangible personal property by a church are exempt from the sales and use tax. The church may purchase tax free any tangible personal property it intends to resell and may sell tax free any such tangible personal property.

Sales of tangible personal property by certain other nonprofit organizations that are exempt from property taxes are exempt from the sales and use tax. The following nonprofit organizations exempt from property taxes (the property tax exemption is listed next to the type of nonprofit organization) come within the sales and use tax exemption for "sales by" the nonprofit organization:

- (1) public libraries and churches (South Carolina Code §12-37-220(A)(3));
- (2) charitable trusts and foundations used exclusively for charitable and public purposes (South Carolina Code §12-37-220(A)(4));
- (3) The American Legion, the Veterans of Foreign Wars, the Disabled American Veterans, Fleet Reserve Association, the Marine Corps League or any similar Veterans Organization chartered by the Congress of the United States (South Carolina Code §12-37-220(B)(5));
- (4) The Young Women's Christian Association, Young Men's Christian Association and the Salvation Army (South Carolina Code §12-37220(B)(6));
- (5) The Boy Scouts of America and the Girl Scouts of America (South Carolina Code §12-37-220(B)(7));
- (6) The South Carolina Association of Future Farmers of America (South Carolina Code §12-37-220(B)(8));

- (7) Any fraternal society, corporation or association (South Carolina Code §12-37-220(B)(12))
- (8) Any religious, charitable, eleemosynary, educational, or literary society, corporation, or other association (South Carolina Code §12-37-220(B)(16));
- (9) Volunteer Fire Departments and Rescue Squads (South Carolina Code §12-37-220(B)(19));
- (10) All community owned recreation facilities opened to the general public and operated on a nonprofit basis (South Carolina Code §12-37-220(B)(22)); and,
- (11) nonprofit or eleemosynary community theatre companies, symphony orchestras, county and community arts councils and commissions and other such companies, which is used exclusively for the promotion of the arts (South Carolina Code §12-37-220(B)(24)).

An organization whose sales or purchases are exempt as a result of this exemption is also exempt from the retail license tax.

This exemption only applies to sales by organizations which meet three requirements:

- (1) The organization must be eligible for exemption from the property tax under one of the enumerated property tax code sections.
- (2) The net proceeds from the organization's sales must be used for exempt purposes.
- (3) No benefit from the sales may inure to any individual.

9. How can a nonprofit organization determine if the “sales by” the nonprofit organization are exempt from the sales and use tax?

To simplify the administration of the sales tax exemption for “sales by” certain nonprofit organizations and to assist nonprofit organizations in determining if they qualify for the sales tax exemption for “sales by” the nonprofit organizations, the nonprofit organization should complete and file Form ST-387– Application for Sales Tax Exemption under South Carolina Code §12-36-2120(41), “Exempt Organizations.”

The law does not require an organization to obtain an exemption certificate in order to purchase items exempt under this exemption. However, the Department recommends that organizations apply for the exemption certificate. If an organization is issued a certificate, this will simplify for the organization the purchase from suppliers of items tax-free for resale. Otherwise, suppliers may be reluctant to sell items tax-free (for resale) to an organization that does not have a retail license or does not have some other documentation showing that it qualifies for the exemption. The exemption certificate assures the supplier that the

Department has reviewed the matter and determined that the organization qualifies for the exemption and that the supplier may sell items tax-free for resale to the organization.

I. An organization is considered to be “automatically” qualified for an exemption certificate if it is:

- A. Selling tangible personal property;
- B. Exempt from property tax under one of the property tax code sections listed in South Carolina Code §12-36-2120(41); and,
- C. Exempt from Federal income tax under Internal Revenue Code Section 501(c)(3) or (19). The statute does not require that an organization be exempt from Federal income tax under Internal Revenue Code Section 501(c)(3) or (19); however, the purpose of this provision is to meet the requirement that the organization’s net proceeds must be used for an exempt purpose and to insure that no benefit inures to any individual.

NOTE: To be considered as “automatically” qualified, an organization must meet all of the above requirements and file Form ST-387. **However, it should be noted that this “automatic” qualification has been established to simplify the issuance of a certificate. If it is determined that an organization does not meet the requirements of the statute or is not otherwise operating in an exempt manner, then the certificate will not be issued or will be revoked if previously issued.**

II. An organization is not qualified for an exemption certificate if it is:

- A. Only purchasing tangible personal property for its own use or consumption, and not for resale; or,
- B. Exempt from property tax, but under a code section not listed in South Carolina Code §12-36-2120(41).

Note: South Carolina Code §12-37-220 provides specific property tax exemptions for the State of South Carolina, its counties, municipalities, school districts, and other political authorities or subdivisions; private schools, colleges and other institutions of learning; nonprofit hospitals and nonprofit institutions which care for the infirmed, the handicapped, the aged, children or indigent persons; and nonprofit museums. The property tax exemptions for these organizations are not specifically listed in South Carolina Code §12-36-2120(41).

However, some of these organizations may also qualify for a property tax exemption listed in South Carolina Code §12-36-2120(41). For example, a private school may qualify for the property tax exemption under South Carolina Code §12-37-220(B)(16)(a) established for certain religious, charitable, eleemosynary or educational organizations.

III. Organizations, other than those in categories I and II (above), may qualify for an exemption certificate, if the following criteria are met:

- A. The organization must be selling, or will sell, tangible personal property;
- B. The organization must be a type referred to in South Carolina Code §12-36-2120 (41) [i.e., a church, veterans' organization, YMCA, Scouts, etc.]; and,
- C. Documents provided by the organization must conclusively demonstrate that the net proceeds of the organization are used, or will be used, exclusively for exempt purposes; and, that no benefit inures, or will inure, to any individual.

G. Internet Sales and Purchases

- 1. Are sales by or purchases from, a retailer via the Internet subject to the sales and use tax?**

Sales by, and purchases from, a retailer via the Internet of tangible personal property or a taxable service are subject to the sales and use tax.

- 2. Are charges by an Internet Service Provider to access the Internet subject to the sales and use tax?**

No. As a result of federal legislation, charges to access the Internet are not subject to the sales and use tax.

- 3. Are charges by the operator of a website of the Internet to access that individual website subject to the sales and use tax?**

Yes. For example, if a sports website charges a South Carolina resident \$10 per month to access the sports website or to access a "premium" section of the sports website, then the \$10 per month is subject to the sales and use tax.

- 4. If I am located in South Carolina and sell products from my home via the Internet, do I need a retail license? I don't have a store front and customers do not come to my home to purchase the products. I receive the orders via the Internet (customer makes order, calculates tax based upon the state the product is shipped to.) and I forward my orders to my suppliers and request that they deliver the products to my customers. My suppliers will bill me for the products after they are delivered.**

Yes. You are engaged in the business of selling tangible personal property at retail in South Carolina and must obtain and retail license and remit the sales tax on all orders shipped to a South Carolina address.

H. Use Tax – Out-of-State Purchases

1. What is the use tax?

The use tax is a tax that applies to purchases of tangible personal property from out-of-state retailers for use, storage or consumption in South Carolina, and includes purchases from retailers made via the Internet (retailers' websites and retailers' sales on auction sites), through out-of-state catalog companies, or when visiting another state.

2. What is the rate for the use tax?

The tax rate for the use tax is the same as the sales tax. This rate is determined by where the tangible personal property will be used, stored or consumed, regardless of where the sale actually takes place. Therefore, the tax rate for the use tax will be the 6% state rate plus the applicable local use tax rate for the location where the tangible personal property will be used, stored or consumed.

Note: Information concerning local sales and use tax rates can be found on the Department's website (www.dor.sc.gov).

3. What is the difference between the sales tax and the use tax?

The sales tax is imposed on all retailers within South Carolina and applies to all retail sales of tangible personal property within the state. Retailers making sales of tangible personal property in South Carolina are required to remit the sales tax to the Department of Revenue.

The use tax is imposed upon the consumer of tangible personal property that is purchased at retail for use, storage, or consumption in South Carolina. The use tax applies to purchases from out-of-state retailers. The use tax has been around since 1951 – the same year the sales tax law was adopted in South Carolina.

Both the sales tax and the use tax also apply to leases or rentals at retail of tangible personal property (e.g., tuxedos, office equipment, etc.).

It is important to note that either the South Carolina sales tax or the South Carolina use tax applies to a single transaction, but not both.

4. Why would an out-of-state retailer charge a purchaser the South Carolina sales tax or use tax?

An out-of-state retailer must obtain a retail license and remit either the South Carolina sales tax or use tax on retail sales shipped into South Carolina if the out-of-state retailer has a physical presence in South Carolina.

Examples of physical presence include, but are not limited to, maintaining (temporarily or permanently) an office, warehouse, store, other place of business, or property of any kind in the state or having (temporarily or permanently) an agent, representative (including delivery personnel and independent contractors acting on behalf of the retailer), salesman, or employee operating within the state.

An out-of-state retailer that is not required to obtain a retail license and remit the South Carolina sales or use tax may, however, voluntarily obtain the retail license and collect and remit the tax to South Carolina.

5. **If an out-of-state retailer who has obtained a retail license charges the purchaser for the South Carolina sales or use tax on tangible personal property delivered into South Carolina, is the purchaser still liable for the use tax?**

If the purchaser has a receipt showing the proper South Carolina (state and local) sales tax or use tax has been paid to a licensed out-of-state retailer, then the purchaser is no longer liable for the South Carolina use tax.

6. **If a South Carolina purchaser buys merchandise via an Internet or mail-order catalog retailer that has not obtained a South Carolina retail license and therefore does not charge the purchaser for the South Carolina sales or use tax on tangible personal property delivered into South Carolina, is the purchaser liable for the use tax?**

Yes.

7. **If a South Carolina purchaser travels to another state and purchases tangible personal property from a retailer in the other state for use, storage or consumption in South Carolina, does the South Carolina purchaser still owe the South Carolina use tax on the purchase if the other state's sales tax was paid to the retailer at the time of purchase?**

The South Carolina purchaser would only owe the use tax on the difference between the sales tax paid in the other state and the use tax due in South Carolina. In other words, if the state and local sales or use tax due and paid in another state is equal to or greater than the state and local use tax due in South Carolina, then no use tax is due in South Carolina.

Example #1: If a South Carolina purchaser paid \$15.00 sales tax in the other state and the total state and local use tax due in South Carolina was \$18.00, then the South Carolina purchaser would be allowed a credit for the \$15.00 and would only owe a South Carolina use tax of \$3.00.

Example #2: If a South Carolina purchaser paid \$21.00 sales tax in the other state and the total state and local use tax due in South Carolina was \$18.00, then the South Carolina purchaser would be allowed a credit for the \$21.00 and no use tax would be due in South Carolina since the \$21.00 paid exceeds the \$18.00 due in South Carolina. However, the purchaser is not entitled to a refund of the difference between the \$21.00 paid in the other state and the \$18.00 due in South Carolina.

Note: Each transaction must stand on its own. In other words, an “excess” paid to another state on one purchase transaction, as shown in Example #2, cannot be used to offset any South Carolina use tax that may be due on another purchase transaction.

8. If a sale by a South Carolina retailer is exempt from the South Carolina sales tax, is the purchase of the same product from an out-of-state retailer exempt from the South Carolina use tax?

Yes. For example, prescription medicine purchased from a South Carolina pharmacy upon presentation of the prescription written by the physician is exempt from the South Carolina sales tax. The same purchase from an out-of-state mail-order pharmacy is exempt from the South Carolina use tax.

9. How can a person report and pay the use tax to the SC Department of Revenue?

The South Carolina use tax is reported and remitted as follows:

If the purchaser is an individual, then this purchaser may:

- a) pay the use tax online through the SC Department of Revenue’s Electronic Payment System at <https://www3.dor.sc.gov/DOREPAY/>. A username and password is required, but you can easily set up a new user account from the “Pay Online” screen.
- b) report and remit the use tax on the South Carolina Individual Income Tax Return (Form SC 1040 or Form SC 1040A).
- c) report and remit the use tax on a Form UT-3 use tax return. This return can be filed after the purchase or may be filed for a specific period (month, calendar quarter, etc.)

- d) report and remit the use tax on a vehicle, airplane or boat purchased from an out-of-state retailer (1) by filing a Form ST-236 with the SC Department of Revenue or (2) at the time a vehicle, airplane or boat is registered, titled or licensed with the Department of Motor Vehicles, the Department of Aeronautics or the Department of Natural Resources. (Note: Motor vehicles, motorcycles, boats, motors and airplanes purchased from a non-retailer are subject to a separate tax called the “casual excise tax” at the time registered, titled or licensed with one of these agencies. A taxpayer may also report and remit this tax by filing a Form ST-236 with the Department of Revenue.) For information on the “casual excise tax,” see South Carolina Code §§12-36-1710 through 12-36-1740.

If the purchaser is a business or nonprofit organization that is purchasing the tangible personal property for its own use (and not for resale), then this purchaser may:

- a) pay the use tax online through the SC Department of Revenue’s Electronic Payment System at <https://www3.dor.sc.gov/DOREPAY/>. A username and password is required, but you can easily set up a new user account from the “Pay Online” screen.
- b) report and remit the use tax on its sales and use tax return if the purchaser is a licensed South Carolina retailer. The use tax is reported on Line #2 (“Out-of-State Purchases Subject to Use Tax”) of the Worksheet on the SC sales and use tax return (Forms ST-3, ST-388, and ST-403, plus local tax addendum ST-389).

Note: Certain nonprofit organizations that sell tangible personal property are not required to be licensed as retailers since their sales are exempt from the sales tax under South Carolina Code §12-36-2120(41). These nonprofit organizations should report the use tax as discussed below in item “c” through item “d.”

- c) obtain a purchaser’s certificate of registration and report and remit the use tax on its use tax return if the purchaser is not a licensed South Carolina retailer but is a business or nonprofit organization that regularly purchases tangible personal property for its use from an out-of-state retailer. The use tax is reported on Line #2 (“Out-of-State Purchases Subject to Use Tax”) of the Worksheet on the SC sales and use tax return (Forms ST-3, ST-388, and ST-403, plus local tax addendum ST-389).

Note: Persons needing to obtain a purchaser’s certificate of registration in order to file tax returns and remit the use tax on a periodic basis may do so by completing Form SCTC -111 or by contacting the Department’s License and Registration Section at (803) 896-1350.

- d) report and remit the use tax on a Form UT-3 use tax return if the purchaser is a business or nonprofit organization that is not a licensed South Carolina retailer and does not regularly purchases tangible personal property for its own use from an out-of-state retailer.
- e) report and remit the use tax on a vehicle, airplane or boat purchased from an out-of-state retailer (1) by filing a Form ST-236 with the Department of Revenue or (2) at the time a vehicle, airplane or boat is registered, titled or licensed with the Department of Motor Vehicles, the Department of Aeronautics or the Department of Natural Resources. (Note: Motor vehicles, motorcycles, boats, motors and airplanes purchased from a non-retailer are subject to a separate tax called the “casual excise tax” at the time registered, titled or licensed with one of these agencies. A taxpayer may also report and remit this tax by filing a Form ST-236 with the Department of Revenue.) For information on the “casual excise tax,” see South Carolina Code §§12-36-1710 through 12-36-1740.

10. Do other states charge a use tax?

Yes. Every state that imposes a sales tax also imposes a use tax.

11. Why did the out-of-state seller tell me if I picked up the merchandise, rather than have it delivered, that I wouldn't have to pay the tax?

Most likely, the out-of state seller was indicating that if you picked up the merchandise in the other state that you would pay the other state's tax at that time. If so, you would not owe the South Carolina use tax as long as the state and local tax paid in the other state was equal to or greater than the use tax that would be due in South Carolina.

12. Why am I just now getting a notice from Department of Revenue when I purchased the items 3-5 years ago?

The Department receives information from various sources (other state tax departments, US Customs, etc.) concerning purchases by South Carolina residents. This information is not relayed to the Department at the time of purchase but usually several years later as a result of audits conducted of the seller by the other state or information forwarded to the Department by others. The Department does not control when it receives this information; however, the Department does make an effort to issue these notices as soon as possible after the information is received by the Department.

13. Who provides the Department with information about residents making purchases out of state?

This information is provided to the Department by other state tax departments, US Customs, regional and national tax associations, and other sources.

14. My friend buys merchandise all the time from out-of-state sellers and doesn't pay the tax, why doesn't he get a bill for tax?

Assuming your friend does not pay the tax to the out-of-state seller, your friend is liable for the use tax and should remit that tax to the Department. While the Department receives information from sources that allows it to assess residents the use tax with respect to out-of-state purchases, this information does not include information on all out-of state purchases.

15. My accountant never told me about the use tax, so why should I have to pay penalty?

If your accountant also assists you with your individual income tax return, he should ask you about out-of-state purchases upon which the use tax may be due since the individual income tax return contains a line for remitting any use tax due.

However, if you fail to remit the use tax for any reason, the law imposes penalties and interest for failure to pay the use tax as well as all other taxes administered and collected by the Department.

16. Why am I charged a penalty when no one told me I had to pay the use tax when I purchased the merchandise? I thought the seller had to collect the use tax? Why do I have to pay penalty & interest when I didn't know I owed the tax?

If you fail to remit the use tax for any reason, the law imposes penalties and interest for failure to pay the use tax as well as all other taxes administered and collected by the Department. While some sellers are required to remit the use tax on behalf of their customers (the requirements depends on the sellers presence, if any, in South Carolina), the purchaser is ultimately responsible for remitting the use tax if the seller does not remit the use tax.

17. If a South Carolina retailer purchases items from out of state that the retailer does not intend to resell, does the South Carolina retailer owe the use tax on these purchases?

Yes. Since these item are being purchased for use by the retailer and not for resale, then these purchases are subject to the use tax and the South Carolina retailer should remit the use tax on the line provided on the sales and use tax return filed by the retailer for the month these items were purchased.

18. Who can a person contact for additional questions about the use tax?

Persons having questions about the use tax should call the Department at (803) 898-5788 or send an e-mail to usetax@dor.sc.gov.

I. Construction

1. What determines if I am a contractor or a retailer?

The determination is essentially based on whether a person is in the business of “making improvements to real property” or is the business of “selling tangible personal property at retail.”

In South Carolina, the determination as to whether a person is a retailer making sales and installations or a contractor depends on the facts and circumstances. Factors used in making this determination include, but are not limited to: how the person advertises his business (as a retailer or contractor), are retail sales made in which installation is not performed by the seller or on behalf of the seller, does the person have a showroom to display his products and how would this showroom be perceived by the general public, is the person licensed as a contractor under state law, does the person perform labor for a general contractor as a “subcontractor,” etc. In addition, the determination as to whether a person is a retailer making sales and installations or a contractor may require a review of the various agreements or contracts between the taxpayer and his customers.

If you have questions as to whether you are a contractor or a retailer for purposes of the sales and use tax, it may be best to contact one of the Department’s Taxpayer Service Centers for assistance in making this determination.

2. As a contractor, do I owe sales or use tax on materials for jobsites.

If a person is deemed to be a contractor, then the sales and use tax is due at the time all materials are purchased.

3. Are construction contractors allowed to have a retail license for items purchased to use in their construction business?

No. A person whose only business is that of a construction contractor may not obtain a retail license. Only a person engaged in the business of selling tangible personal property at retail is entitled to a retail license.

4. Are landscaping businesses contractors or retail businesses?

The determination is essentially based on whether a person is in the business of “making improvements to real property” or is the business of “selling tangible personal property at retail.”

In South Carolina, the determination as to whether a person is a retailer making sales and installations or a contractor depends on the facts and circumstances. Factors used in making this determination include, but are not limited to: how the person advertises his business (as a retailer or contractor), are retail sales made in which installation is not performed by the seller or on behalf of the seller, does the person have a showroom to display his products and how would this showroom be

perceived by the general public, is the person licensed as a contractor under state law, does the person perform labor for a general contractor as a “subcontractor,” etc. In addition, the determination as to whether a person is a retailer making sales and installations or a contractor may require a review of the various agreements or contracts between the taxpayer and his customers.

If you have questions as to whether you are a contractor or a retailer for purposes of the sales and use tax, it may be best to contact one of the Department’s Taxpayer Service Centers for assistance in making this determination.

J. Medicine and Other Medical Supplies

1. Why are some drugs purchased by a doctor tax exempt and others are not? Why should doctors pay use tax on drugs?

For sales and use tax purposes, a doctor is the user of consumer of prescription medicines and non-prescription medicines the doctor will administer to patients or the doctor will furnish (give) to patients as part of the services rendered. Therefore, the sale to, or purchases by, the doctor of prescription medicines and non-prescription medicines the doctor will administer to patients or the doctor will furnish (give) to patients as part of the services rendered are subject to the sales and use tax.

However, if the medicine is a prescription medicines used to prevent respiratory syncytial virus or used in the treatment of rheumatoid arthritis, cancer, lymphoma, leukemia, or related diseases or used to relieve the effects of the treatment of rheumatoid arthritis, cancer, lymphoma, leukemia, or related diseases and the doctor extends a properly executed single sale exemption certificate (Form ST-8) to the manufacturer, wholesaler or other supplier indicating the doctor will use the prescription medicine for such prevention or treatment, then such sales are exempt from the sales and use tax.

Note: Code Section 12-36-2120(80) was added in 2012 to phase-in an exemption for injectable medications and injectable biologics. The injectable medication or injectable biologic must be administered by or pursuant to the supervision of a physician in an office which is under the supervision of a physician, or in a Center for Medicare or Medicaid Services certified kidney dialysis facility. For purposes of this exemption, “biologics” means the products that are applicable to the prevention, treatment, or cure of a disease or condition of human beings and that are produced using living organisms, materials derived from living organisms, or cellular, subcellular, or molecular components of living organisms. On February 19, 2014, the Board of Economic Advisors notified the Department that the requirements have been met to implement this exemption. Accordingly, for July 1, 2014 - June 30, 2015, 50% of the gross proceeds of sales of qualifying sales or purchases are exempt from the State and local sales and use taxes. On or after July 1, 2015, qualifying sales or purchases are fully exempt from the State and local sales and use taxes.

2. What durable medical equipment sales are taxable and at what rate? I sell durable medical equipment and I want to know what qualifies?

Effective January 1, 2013, Durable medical equipment and related supplies as defined under federal and state Medicaid and Medicare laws are not subject to sales and use tax. Such sales are also not subject to applicable local sales and use tax. In order for the purchase of the durable medical equipment and related supplies to qualify for this exemption, the following conditions must be met:

1. The purchase must be paid directly by funds of South Carolina or the United States under the Medicaid or Medicare programs.
2. State or federal law or regulation authorizing the payment must prohibit the payment of the sale or use tax.
3. The durable medical equipment and related supplies must be sold by a provider who holds a South Carolina retail sales license and whose principal place of business is located in South Carolina.

Sales of durable medical equipment meeting the requirements of this exemption that are made on or after January 1, 2013 are fully exempt. The rate of tax imposed on the gross proceeds of sales of qualifying durable medical equipment and related supplies from July 1, 2007 and thereafter is listed below.

Date of Sale	State Tax Rate	Local Tax Rate
July 1, 2007 to June 30, 2011	5.5%	Applies; rate varies by county
July 1, 2011 to June 30, 2012	3.5%	Applies; rate varies by county
July 1, 2012 to December 31, 2012	1.75%	Applies; rate varies by county
January 1, 2013 and thereafter	0%	0%

Note: For more detailed information as to what qualifies as durable medical equipment and related supplies, retailers should review the definitions of durable medical equipment and related supplies as defined under federal and state Medicaid and Medicare laws.

3. If I'm selling medical products (diapers, diabetic shoes & undergarments) and getting paid by Medicare or another source why do I have to pay sales tax?

When a retailer sells any tangible personal property, including medical products, the sale is subject to the tax regardless of how the payment is made (Medicare, Medicaid, private insurance, or directly by the customer or another person on behalf of the customer), unless the sale is specifically exempted under the sales and use tax law.

Note: Sales paid for via Medicare or Medicaid are not sales to the federal government and are subject to the sales and use tax, unless the sale is specifically exempted under the sales and use tax law.

K. Farmers

1. Why do farmers have to pay sales tax?

Sales of tangible personal property or taxable services at retail to all persons, including farmers, are subject to the sales and use tax unless the sale is specifically exempted under the sales and use tax law.

2. Are sales of farm machinery to a farmer subject to the sales and use tax?

Sales of farm machinery meeting the requirements of the exemption in the sales and use tax law for farm machinery are exempt from the sales and use tax. If the sale of farm machinery does not meet the requirements of the exemption, the sale is taxable.

3. What farm equipment qualifies for exemption from the sales and use tax?

The sale of farm machinery that is used in planting, cultivating or harvesting farm crops for sale is exempt from the tax. The exemption also applies to replacement parts and attachments.

- Planting includes all necessary steps in the preparation of the soil prior to, and including, the planting and sowing of the seed.
- Cultivation includes the loosening of the soil around growing plants, control of moisture content in the soil, and weed and pest control.
- Harvesting begins with the gathering of the crop and ends when the crop is placed in a temporary or permanent storage area. However, it also includes the additional preparation for storage or sale of certain crops such as the curing of tobacco, grains and peanuts and the grading and packaging of peaches, cucumbers, tomatoes, etc.

The machinery exemption also applies to:

- machinery used in constructing terraces, drainage and irrigation ditches; dikes used to control the water level in cultivated fields; and land clearing prior to cultivation of the soil;
- machinery specially designed for irrigation purposes, including pumps, pipes, spigots, etc. when sold for use in the cultivation of farm crops;
- farm dairy tanks used in the production and preservation of milk on dairy farms;
- farm wagons used in planting, cultivating or harvesting farm crops; and
- pasteurizing machines, cooling machines, mechanical separators, homogenizing machines and bottling machines used by dairies in the production of milk for sale. Milking machines do not come within the exemption for farm machinery.

Various machines used in the production of poultry and poultry products are exempt from the tax. See SC Regulation 117-301.5 for more details.

The machinery exemption does not apply to:

- automobiles and trucks;
- machinery used in constructing fences and buildings and repairing machinery and equipment; and
- farm implements such as hoes, pitchforks and shovels.

4. Does the sale of a lawn mower to a farmer qualify for the exemption for farm machinery?

No, unless the lawn mower is used by a farmer in planting, cultivating or harvesting a farm crop for sale (*e.g.*, a farmer in the business of growing grass sod for sale and the mower is used for that purpose). A lawn mower used for the farmer's residential lawn would not qualify for the exemption.

5. Does this exemption apply to equipment for my personal garden where I grow vegetables for my family?

No.

- 6. As a retailer of various items, including farm supplies and machinery, I am being asked by some farmers not to charge sales tax on an item they are purchasing. What should I do?**

Sales to farmers are subject to the sales and use tax unless the sale falls within one of the exemptions established by the General Assembly for farmers.

The General Assembly has authorized the Department to create an exemption certificate specifically for farmers to use in purchasing items the General Assembly has exempted from the sales and use tax. The exemption certificate, Form ST-8F, can be found in the forms section of the Department's website (www.dor.sc.gov).

A farmer can provide you this form to purchase one of the listed items tax free. This shifts the liability for the tax to the farmer so that if the farmer uses an item for a non-exempt purpose, the farmer is liable for the tax plus any applicable penalties and interest.

L. Maximum Tax

- 1. Do golf carts qualify for the maximum tax?**

No.

- 2. Do mopeds qualify for the maximum tax?**

A moped that has pedals that allow for human propulsion does not qualify for the maximum tax.

A moped that does not have pedals and therefore does not allow for human propulsion qualifies for the maximum tax.

M. Administrative

- 1. What is the mailing address for the Department of Revenue?**

Charleston Service Center: 2 Southpark Circle
Suite 100
Charleston, S.C. 29407
Fax: 843-556-1780

Columbia Main Office: 300A Outlet Pointe Boulevard
Columbia, S.C. 29210
P.O. Box 125
Columbia, S.C. 29214
Fax: 803-898-5822

Florence Service Center: 1452 West Evans Street
P.O. Box 5418
Florence, S.C. 29501
Fax: 843-662-4876

Greenville Service Center: 545 North Pleasantburg Drive, Suite 300
Greenville, SC 29607
Fax: 864-232-5008

Myrtle Beach Service Center: 1330 Howard Parkway
P.O. Box 30427
Myrtle Beach, S.C. 29588
Fax: 843-839-2964

Rock Hill Service Center: 454 South Anderson Road
Business and Technology Center
Suite 202
P.O. Box 12099
Rock Hill, S.C. 29730
Fax: 803-324-8289

2. What kind of records do I need to keep if I have a retail license and for how long?

Since every business keeps records in its own manner, the Department does not issue a list of the types of records that must be maintained. However, the law requires all taxpayers to maintain “proper records” and imposes penalties for failure to maintain “proper records.” Records must be retained for at least 4 years after the return was filed or due to be filed, whichever is later.

SC Regulation 117-200 provides addition information concerning recordkeeping and a link to this and other Department regulations can be found on the Department’s website (www.dor.sc.gov).

3. What is the purpose of a resale certificate?

Items that a retailer will resell may be purchased tax free by the retailer. For example, a retailer may purchase computers tax free if the computers are being purchased for resale to customers.

Items that a retailer purchases for use by the retailer are subject to the tax, unless otherwise exempt under the sales and use tax law. For example, computers purchased by a retailer for use in maintaining the records of the retailer are subject to the tax.

A resale certificate is used by a retailer to purchase items tax free that the retailer will resell. The presentation of a resale certificate by a purchaser will relieve the seller of liability for the sales tax and switch the liability to the purchaser, provided all of the following conditions are met:

1. The resale certificate presented to the seller by the purchaser contains all the information required by the Department and has been fully and properly completed.
2. The seller did not fraudulently fail to collect or remit the tax, or both.
3. The seller did not solicit a purchaser to participate in an unlawful claim that a sale was for resale.

A copy of Form ST-8A, Resale Certificate, can be found at the Department's website (www.dor.sc.gov). It is not required that Form ST-8A be used, but the information requested on the form is required on any resale certificate accepted by the seller. Therefore, a letter from the purchaser to the seller or a resale certificate from another state is acceptable provided the letter or certificate contains the same information requested on Form ST-8A. In addition, the "Uniform Sales & Use Tax Certificate" published by the MultiState Tax Commission ("MTC") may be used by a purchaser (since it contains the same information requested on Form ST-8A) for the purpose of purchasing tangible personal property that will be resold, leased or rented in the normal course of the purchaser's retail business. The MTC certificate may also be used by a purchaser of services that are subject to the sales and use tax, such as communications, accommodations, laundry services, and electricity, that will be resold, leased or rented in the normal course of the purchaser's retail business.

If a purchaser uses a resale certificate to purchase tangible personal property tax free which the purchaser knows is not excluded or exempt from the tax, then the purchaser is liable for a penalty of 5% of the amount of the tax for each month, or fraction of a month, during which the failure to pay the tax continues, not exceeding 50% in the aggregate. This penalty is in addition to all other applicable penalties authorized under the law.

Note: It is not necessary that a resale certificate be obtained for each purchase. Only one resale certificate must be maintained on file per customer.

4. My address has changed & I never received the bill (assessment) from the Department. How can I now get the lien off my business?

To discuss a lien, please contact your local Taxpayer Service Center and ask to speak to the Collections Supervisor.

5. A retailer is charging too much sales tax on my purchases. What can the Department do about it?

The best course of action is usually to discuss the matter with the manager at the store. If that does not work, you may contact the Department (by letter or telephone). The Department will investigate the matter. However, please understand that as a result of privacy laws the Department will not be able to provide you any information about the investigation or its results.

6. I am a licensed retailer. If I do not charge my customers the sales tax, do I have to pay the sales tax to the Department?

Yes. The sales and use tax is due whether or not the retailer collects the tax from the customer.

7. I operate a motel and I received an exemption certificate from a church located in Florida. They provided me with a Florida tax exemption certificate. Should I accept this exemption certificate?

No. An exemption certificate from another state is not valid in South Carolina. Each state has its own exemptions from the sales and use tax that are only valid with respect to that state's sales and use tax.

N. Refunds

1. What information is required when filing a claim for refund? How far back can we file a claim? What is the statute?

A taxpayer who is legally liable for the tax may seek a refund of a state tax by filing a written claim for refund with the department. A claim for refund is timely filed if filed within three years.

The refund claim must specify:

- (1) the name, address, and telephone number of the taxpayer;
- (2) the appropriate taxpayer identification number or numbers;
- (3) the tax period or date for which the tax was paid;
- (4) the nature and kind of tax paid;
- (5) the amount which the taxpayer claims was erroneously paid;
- (6) a statement of facts supporting the taxpayer's position;

(7) a statement outlining the reasons for the claim, including law or other authority upon which the taxpayer relies; and

(8) other relevant information that the department may reasonably require.

The statutory provisions concerning a refund claim are South Carolina Code §§12-54-85 and 12-60-470.

2. Who is the taxpayer that can apply for and receive a refund with respect to sales tax and use tax?

For sales tax, the taxpayer is the retailer and only the retailer may apply for and receive the refund. However, a purchaser who has paid sales tax to a retailer for a specific transaction may claim a refund if the retailer who paid the sales tax to the Department has assigned, in writing, the right to a refund of that sales tax to the purchaser.

For use tax, the taxpayer is the purchaser and only the purchaser may apply for and receive the refund. However, a retailer who collects the use tax from the purchaser and remits the use tax to the Department may claim a refund of the use tax collected, but only if the retailer establishes that he has paid the use tax in question to the Department and either (1) repaid the use tax to the purchaser from whom he collected it or (2) obtained the written consent of the purchaser from whom he collected the use tax to the allowance of the refund.

3. Does the Department issue a refund check or credit memo?

Refund checks.

4. Can a retailer apply an overpayment to a return?

No. The retailer must request a refund and if the Department approves the refund a check will be issued to the retailer

5. What is the process of getting a refund from the Department if I paid the Department of Motor Vehicles the tax mistake on the purchase of a vehicle?

If you believe you have paid a tax in error to the Department of Motor Vehicles, file a refund claim with the Department of Revenue containing the following:

- (1) your name, address, and telephone number;
- (2) any appropriate taxpayer identification number or numbers;
- (3) the tax period or date for which the tax was paid;
- (4) the nature and kind of tax paid;

- (5) the amount which you claim was erroneously paid;
- (6) a statement of facts supporting your position;
- (7) a statement outlining the reasons for the claim, including law or other authority upon which you rely; and
- (8) other relevant information that the department may reasonably require such copies of the paperwork you completed and used to remit the tax at the Department of Motor Vehicle.

O. Penalties and Interest

1. What is your interest rate?

The interest rate is subject to change on a quarterly basis. It is based on the interest charged by the Internal Revenue Service. The rate is compounded daily except simple interest applies to the underpayment of declaration of estimated tax. Under a special proviso enacted by the General Assembly, the interest rate for refunds is presently 3% lower than the interest rate for assessments.

The Department issues an information letter each quarter updating the public as to the interest rate. This information letter can be found on the Department's website (www.dor.sc.gov) under "Dept. Advisory Opinions" (To find the information letter, go to the "Alphabetical Index of Advisory Opinions" and then to the "Administrative" index of opinions.)

2. How is penalty and interest calculated?

To calculate basic failure to file penalties, failure to pay penalties and interest, go to the Department's website (www.dor.sc.gov) and click on the "P&I Calculator."

P. Local Taxes

1. What counties have local option sales and use taxes, transportation sales and use taxes and other local sales and use taxes administered and collected by the Department? When did it start?

The first local sales and use taxes were imposed in 1991. For a list of the local sales and use taxes that are presently being imposed, visit the Department's website at www.dor.sc.gov.

2. Which local sales and use tax applies when I deliver into another county? Is there a difference if I ship the product or personally deliver it?

The determination as to which local sales and use tax applies when a retailer delivers the product into another county is based on the point of delivery.

Delivery of tangible personal property is defined to occur when and where title or possession of tangible personal property transfers from the retailer to his customer. Following are guidelines to be used in determining when and where delivery occurs:

FOB Destination or Similar Terms: Delivery is considered to take place at the purchaser's location or wherever delivered to the purchaser (at the purchaser's direction).

FOB Shipping Point or Similar Terms: Delivery is considered to take place at the retailer's location. Retailers with multiple retail locations are to maintain their records so as to clearly show which sales are attributable to each location.

Shipping Terms Are Unspecified: Delivery is considered to take place at the purchaser's location or wherever delivered to the purchaser (at the purchaser's direction).

Retailer Uses Own Vehicle: If a retailer uses his own vehicle(s) for making deliveries, delivery is considered to take place at the purchaser's location or wherever delivered at the direction of the purchaser. This applies whether the vehicles are owned or leased by the retailer.

Situations Where Title Transfers, But Not Possession: Delivery is considered to take place at the retailer's location.

For example, a printer may produce business cards for a customer. The cards include all needed information except for the employee name. The printer keeps possession of, but not title to, the cards. At the direction of the customer, the printer will imprint the customer's cards with an employee's name and send the imprinted cards to the customer.

Retailers with multiple retail locations are to maintain their records so as to clearly show which sales are attributable to each location.

NOTE: Retailers reporting sales for purposes of the local option tax must report their sales by county and municipality where delivery occurs.

RETAILERS CANNOT RELY ON MAILING ADDRESSES IN REPORTING THE LOCAL OPTION TAX. A MAILING ADDRESS IS NOT AN ACCURATE INDICATION AS TO WHETHER OR NOT A LOCATION IS WITHIN A PARTICULAR MUNICIPALITY OR COUNTY.

3. **Is a retailer required to remit a local sales and use tax for every county in which the retailer does business or may the retailer remit only the local sales and use tax for the county in which my retail store is located?**

The retailer must remit the local sales and use tax based on the county in which the retailer delivered the product or service. For example, if a retailer with a store in Richland County delivers a product on his own truck to a customer in Lexington County, the retailer must remit the local sales and use tax imposed in Lexington County.

4. **Why doesn't the Department implement any new local sales and use tax at the beginning of a calendar quarter (i.e., April 1st, July 1st, October 1st, or January 1st)? This would greatly reduce the impact on quarterly sales and use tax filers.**

The date a new local sales and use tax is implemented is not controlled by the Department. These implementation dates are established in the law by the General Assembly and, in accordance with the law, the date the local authorities notify the Department that the referendum approving the tax has been certified. In order to establish a uniform implementation date, such as the first day of a calendar quarter, the General Assembly would need to amend the various local sales and use tax laws.

Q. Food

1. **What qualifies a sale for the unprepared food exemption?**

Foods eligible for the unprepared food exemption (South Carolina Code §12-36-2120(75)) include:

- (1) Any food intended to be eaten at home by people, including snacks, beverages and seasonings;
- (2) Seeds and plants intended to grow food (not birdseed or seeds to grow flowers); and,
- (3) Cold items, which may include salads or sandwiches, intended to be eaten at home by people and that are not considered "prepared meals or food" as discussed below.

Food and other items which are not eligible for the unprepared food exemption (South Carolina Code §12-36-2120(75)) and are, therefore, subject to the full state sales and use tax rate (unless otherwise exempt) include:

- (1) Alcoholic beverages, such as beer, wine, or liquor;
- (2) Hot beverages ready-to-drink such as coffee;

- (3) Tobacco;
- (4) Hot foods ready to eat;
- (5) Foods designed to be heated in the store;
- (6) Hot and cold food to be eaten at a lunch counter, in a dining area or anywhere else in the store or in a nearby area such as a mall food court;
- (7) Vitamins and medicines;
- (8) Pet food;
- (9) Any non-food items such as tissue, soap or other household goods;
- (10) Meals or food shipped or delivered to businesses or institutions (hospitals, prisons, jails, nursing homes, etc.); and,
- (11) Prepared meals or food (See definition in SC Regulation 117-337.2.)

For more information concerning this exemption, see Chapter 22 of this publication or SC Regulation 117-337.

2. What food items are exempt when sold by a convenience store?

Sales of foods eligible for the unprepared food exemption by a convenience store engaged in the retail sale of all sorts of canned foods and dry goods (e.g., tea, coffee, spices, sugar, and flour), and that may also be engaged in the retail sale of fresh fruits and vegetables and fresh and prepared meats, fish, and poultry, shall be deemed to be for home consumption and exempt from the state sales and use tax under the unprepared food exemption in South Carolina Code §12-36-2120(75).

However, if the store has an identifiable location which advertises, holds itself out to the public (e.g., offers hot food or the ability to heat food, provides seating, or provides utensils with the meal or food), or is perceived by the public as being engaged in the sale of ready-to-eat food or beverages to customers for their immediate consumption on or off the premises, then all sales of food from that identifiable location shall be deemed to be for immediate consumption and subject to the sales tax at the full state rate unless the sale falls within the exception noted in SC Regulation 117-337.2. For example, if a convenience store has an area where a customer can get a hot dog or sandwiches that are intended for immediate consumption (including ones intended to be heated in a microwave), then the sale of the hot dogs and sandwiches are for immediate consumption and subject to the full state rate. Any chips or drinks (whether fountain drinks or bottled drinks) sold with that hot dog or sandwich at the lunch counter are also for immediate consumption and subject to the full state rate.

For more information concerning this exemption, see Chapter 22 of this publication or SC Regulation 117-337.

3. Why am I paying more sales tax for milk and bread at convenience stores in Richland and Calhoun counties than I do at convenience stores in Lexington County?

The sale of milk and bread at a convenience store qualifies for the state exemption for unprepared food. This exemption does not apply to local sales and use taxes, unless the sales occurs in one of the counties with a local sales and use tax law that exempts sales of unprepared food.

Since the local sales and use taxes in Richland and Calhoun counties do not exempt sales of unprepared foods and the one in Lexington county does, you should be paying a 2% sales tax (0% state and 2% local) in Richland county, 1% sales tax (0% state and 1% local) in Calhoun county and you should not be paying any sales tax on unprepared food in Lexington county.

4. Why do some retailers charge a sales tax on sodas?

The determination as to whether a sale of unprepared food is exempt from the state sales and use tax is based on whether the food is of a type that is eligible to be purchased with USDA food stamps, the type of location selling the food, and whether the food is being sold for immediate consumption, business or institutional consumption, or home consumption.

In other words, a food must be of a type eligible to be purchased with USDA food stamps and must also be sold for home consumption (based on the type of food and the type of location selling the food) to qualify for the exemption from the state sales and use tax under South Carolina Code §12-36-2120(75). For example, bottled soft drinks are eligible to be purchased with USDA food stamps, but if bottled soft drinks are sold at a concession stand at a festival, then the bottled soft drinks are sold for immediate consumption and not home consumption and the sale at the festival would be subject to the full state sales tax rate.

For a more detailed explanation of the exemption for unprepared foods, see SC Regulation 117-337.

R. Resale and Exemption Certificates

1. What items may be purchased tax free by a retailer?

Items that a retailer will resell may be purchased tax free by the retailer. For example, a retailer may purchase computers tax free if the computers are being purchased for resale to customers.

Items that a retailer purchases for use by the retailer are subject to the tax, unless otherwise exempt under the sales and use tax law. For example, computers purchased by a retailer for use in maintaining the records of the retailer are subject to the tax.

As stated above, items that a retailer purchases for use by the retailer are subject to the tax, unless otherwise exempt under the sales and use tax law. An example of an exemption available for a retailer is the purchase of containers used incident to the sale and delivery of tangible personal property. For example, the plastic and paper bags purchased by a grocery store into which the store places the food purchased by the customer are exempt as a container used incident to the sale and delivery of the food.

2. What does a retailer need to do when accepting a resale certificate?

The presentation of a resale certificate by a purchaser will relieve the seller of liability for the sales tax and switch the liability to the purchaser, provided all of the following conditions are met:

1. The resale certificate presented to the seller by the purchaser contains all the information required by the Department and has been fully and properly completed.
2. The seller did not fraudulently fail to collect or remit the tax, or both.
3. The seller did not solicit a purchaser to participate in an unlawful claim that a sale was for resale.

3. Does the retailer have to have a copy of a customer's resale certificate or can the retailer just write down their retail license number on the invoice and not charge them tax?

In order for the retailer to be relieved of liability for the sales tax and switch the liability to the purchaser, the retailer must have a properly completed resale certificate on file.

4. As a retailer what is my responsibility when issued an exemption certificate?

If a customer provides a retailer an exemption certificate issued by the Department (Form ST-9 – Exemption Certificate), or a properly executed exemption certificate authorized by the Department (Form ST-8 – Single Sale Exemption Certificate), the retailer should sell the items to the customer tax free provided the transaction is of a type exempted by the certificate. The retailer should maintain a copy of the certificate in order to document that the sale qualified for the exemption and to document that the liability for the tax has been shifted to the purchaser.

S. Other

1. How does the sales tax apply to sales from vending machines?

By law, the operator of a vending machine is considered the user or consumer of all items the operator sells from the vending machine, except cigarettes and soft drinks in closed containers.

Therefore, when the vending machine operator purchases anything the operator will sell from the vending machine (other than cigarettes and soft drinks in closed containers); the purchase by the operator is subject to the tax. When the vending machine operator purchases cigarettes and soft drinks in closed container, the vending machine operator may purchase cigarettes and soft drinks in closed container tax-free, but is subject to the sales tax on the sale of cigarettes and soft drinks in closed container from the operator's vending machines.

2. What is exempt during the sales tax holiday?

The General Assembly has authorized one sales tax holiday. This three day sales tax holiday exempts sales taking place during a period beginning 12:01 a.m. on the first Friday in August and ending at twelve midnight the following Sunday of (i) clothing; (ii) clothing accessories including, but not limited to, hats, scarves, hosiery, and handbags; (iii) footwear; (iv) school supplies including, but not limited to, pens, pencils, paper, binders, notebooks, books, bookbags, lunchboxes, and calculators; (v) computers, printers and printer supplies, and computer software; (vi) bath wash clothes, blankets, bed spreads, bed linens, sheet sets, comforter sets, bath towels, shower curtains, bath rugs and mats, pillows, and pillow cases.

The exemption allowed by this item does not apply to (i) sales of jewelry, cosmetics, eyewear, wallets, watches; (ii) sales of furniture; (iii) a sale of an item placed on layaway or similar deferred payment and delivery plan however described; (iv) rental of clothing or footwear; (v) a sale or lease of an item for use in a trade or business.

3. Does the gross proceeds that a retailer must report on a sales tax return include the sales tax?

No. For example, if a retailer sells an item for \$100 and collects from the customer a 6% state sales tax of \$6 (no local tax due in this example), then the gross proceeds to be reported on the return is \$100, not \$106.

4. If a retailer does not charge a customer the correct tax percentage, is the customer liable for the difference?

If the tax is a sales tax, the customer is not liable for the difference.

If the tax is a use tax, the customer is liable for the difference.

5. If I must pay a property tax each year on my vessel, is use tax still due?

The property tax and the use tax are two separate taxes. The use tax is due at the time of purchase of the vessel when a vessel is purchased outside of South Carolina for use in South Carolina. The property tax is an annual tax on property situated in South Carolina.

6. How do you register a business name in South Carolina?

To register a business name in South Carolina, visit the South Carolina Business One-Stop (“SCBOS”) at <http://www.scbos.com/default.htm>. The registration of a business name is handled by the South Carolina Secretary of State.

7. If a business sells one of its assets, is the sale of that asset (e.g., furniture) subject to the sales and use tax?

It depends –

- (a) If the business selling the asset is selling it for resale by the buyer, then the sale is a wholesale sale and is not subject to the sales and use tax.
- (b) If the business selling the asset is selling it for use by the buyer and the business selling the asset is not engaged in the business of selling tangible personal property at retail (e.g., a law firm, an accounting firm), then the sale is a casual and isolated sale and it is not subject to the sales and use tax.
- (c) If the business selling the asset is selling it for use by the buyer and the business selling the asset is engaged in the business of selling tangible personal property at retail (a retailer, such as a grocery store, an equipment rental store, a department store), then the sale is a retail sale subject to the sales and use tax. In South Carolina, all sales of tangible personal property at retail by a retailer, whether it is inventory or a business asset, are subject to the sales and use tax unless the sale qualifies for one of the exemptions found in the sales and use tax law. See Code Section 12-36-2120 for a list of the exemptions, including one for the sale of depreciable assets when the entire business is sold and the purchaser continues the operation of the business (Code Section 12-36-2120(42)).

T. Accommodations

- 1. If a person charges for renting a room or for otherwise furnishing sleeping accommodations, would the charge be subject to the state sales tax and what is the tax rate?**

Yes. The charge for providing accommodations is subject to the statewide sales tax rate of 7% (5% state and 2% local accommodations) plus any applicable local sales and use tax rate administered and collected by the Department on the behalf of counties. For information relating to the local sales and use tax administered by the Department, visit our website at www.dor.sc.gov.

- 2. Are there any charges for accommodations that are not subject to sales tax?**

Sales tax on accommodations does not apply to (1) the lease or rental of accommodations supplied to the same person for a period of 90 continuous days (sales become tax exempt on the 91st day); or (2) the home consists of less than six sleeping rooms contained on the same premise and the owner resides in the home while renting the rooms to others on daily or weekly basis; the home must serve as the owner's "place of abode" at the time the other rooms are rented; or (3) the rental income is wholly excluded from the gross income of the taxpayer under Internal Revenue Code Section 280A(g). (Internal Revenue Code Section 280A(g) allows a taxpayer to exclude from gross income the rental income derived from a dwelling unit used during the tax year by the taxpayer as a residence, provided that the dwelling unit is rented for less than 15 days during the tax year.)

- 3. How do you report and pay tax electronically?**

Electronic Sales Tax Systems (ESales & EDI) will allow a retailer to make payment by EFW (Electronic Funds Withdrawal/ Bank Draft) or credit card (MasterCard, Visa). However, currently, the Form ST-3T must be mailed to the Department by the paper method.

- 4. What form or forms do you use to report and pay sales tax on accommodations?**

A. ST-388 (State Sales, Use, and Accommodations Tax Return). This form is used by taxpayers who are liable for the state sales tax imposed on accommodations furnished to transients. The form is used to report the state sales tax imposed on accommodations, sales of tangible personal property and any use tax imposed on purchases. The Form ST-388 must be submitted to the Department along with the Forms ST-3T and ST-389 at the same time. If you are licensed with the Department for the purposes of remitting sales tax on accommodations, you must file the ST-388 return even if there is no tax due for the period.

The ST-388 is used for reporting the total charges for rooms, lodging and accommodations subject to sales tax at 7%. This form is designed with three columns (A, B and C) across the front. Sales and purchases subject to tax in Column A at the 6 rate include sales such as meals, gift items and additional guest services and purchases of hotel or motel supplies. However, charges or accommodations are excluded from Column A and the worksheet for this Column. The 7% sales tax imposed on sales of accommodations is reported under Column B (at 5%) and C (at 2%). Columns B and C are used to report the 7% sales tax on the gross proceeds derived from the rental or charges for any room or any place in which rooms, lodgings, or sleeping accommodations are furnished to transients for a consideration.

You must report all sales on the worksheet, report and deduct the applicable exclusions and exemptions from sales tax on the worksheet to calculate the “net taxable sales” (all sales + all withdrawals for use + all out-of-state purchases subject to the use tax – applicable deductions) and remit the tax based upon your net taxable sales and purchases.

- B. ST-3T (State Accommodations Report by County or Municipality). This form must be filed with the Form ST-388 at the time of filing even if you have only one rental unit in the county or municipality where your business is located. You must use this form to separately report the 2% portion of the total gross proceeds from business done in each county or municipality. This tax is reported and paid under Column B of the ST-388 form.
- C. ST-389 (Schedule of Local Sales and Use Taxes Administered by the Department). ST-389 is used to report the various local sales and use tax administered and collected by the Department on taxable sales and services. This form is not required to be filed with the state form ST-388 if the retailer is located in a county that does not impose local sales and use tax and does not make deliveries into other counties that do impose local sales and use tax.

5. **When is the accommodations tax return due?**

The accommodations tax return is due on or before the twentieth (20th) day of the month following the close of the period ended. To be considered timely filed, the return must be received or postmarked by the 20th of the month. If the 20th falls on a weekend or legal holiday, the return is due on the next business day.

**STATE OF SOUTH CAROLINA
ADMINISTRATIVE LAW COURT**

Amazon Services, LLC,	)	Docket No. 17-ALJ-17-0238-CC
	)	
	)	
Petitioner,	)	
	)	
vs.	)	FINAL ORDER AND DECISION
	)	
	)	
South Carolina Department of Revenue,	)	
	)	
	)	
Respondent.	)	
	)	

APPEARANCES:

For the Petitioner: Benjamin J. Razi, Esq.; Sean M. Akins, Esq.; John C. von Lehe, Jr., Esq.; Bryson M. Geer, Esq.

For the Respondent: John M.S. Hoefer, Esq.; Tracey C. Green, Esq.; Chad N. Johnston, Esq.; John W. Roberts, Esq.; Andrew R. Hand, Esq.; Jason P. Luther, Esq.; Lauren Acquaviva, Esq.

STATEMENT OF THE CASE

This matter is before the South Carolina Administrative Law Court (the Court) pursuant to a Request for Contested Case Hearing filed by Amazon Services, LLC (Petitioner or Amazon) challenging the final determination of the South Carolina Department of Revenue (Department), in which the Department assessed Amazon for a total of \$12,490,502.15 in taxes, penalties, and interest for the period of January 1, 2016, through March 31, 2016.¹ Specifically, the Department determined that Amazon is a retail seller who owes sales and use tax on certain retail sales of goods involving third parties (Merchants) participating on Amazon's online sales platform known as the Marketplace. Amazon contends the Merchants are the true sellers of the goods and are therefore responsible for collecting and remitting any sales and use tax due.

¹ The amount of assessed taxes is an estimated figure based on information provided to the Department by Amazon. By agreement of the parties, this estimated amount was used to allow Amazon to proceed with its contested case, and the final amount will be determined at the Department level following the conclusion of this litigation.

Procedural History

In 2011, the South Carolina General Assembly passed the Distribution Facility Sales Tax Exemption (Moratorium) in order to encourage investment by Amazon in South Carolina. See S.C. Code Ann. § 12-36-2691. The Moratorium extended from 2011 to 2015, and exempted companies from remitting sales and use taxes under the existing law on goods sold if those companies maintained a distribution facility in the state meeting certain terms and conditions as defined in the statute. *Id.* Amazon was the principal beneficiary of this exemption. Until 2011, Amazon did not have a physical presence in South Carolina.

After the Moratorium expired, the Department ascertained that Amazon was not collecting sales and use taxes for all the sales occurring on the Marketplace. Upon further investigation, the Department ascertained that Amazon appeared to be remitting sales and use tax only for sales transactions involving Amazon affiliates. Consequently, the Department audited Amazon's first quarter 2016 operations, which ultimately resulted in the June 21, 2017 Department Determination at issue in this case.

On July 21, 2017, Amazon filed its request for a contested case hearing. Following discovery, on December 7, 2018, Amazon and the Department filed cross-motions for summary judgment pursuant to Rule 68 of the Rules of Procedure for the Administrative Law Court (SCALC Rules) and Rule 56 of the South Carolina Rules of Civil Procedure (SCRCR). This Court denied both motions by order dated January 29, 2019, on the basis that, although the facts underlying the transactions at issue in this matter are relatively straight forward, summary judgment was not appropriate due to the various disputes regarding the implications and conclusions to be drawn from those facts. A hearing was held in this matter on February 4-6, 2019.

LEGAL ISSUE RAISED

The following issue is presented in this proceeding: Whether Amazon is a "retailer" or "seller" or is "in the business of selling" under South Carolina law such that Amazon owes sales and use tax on retail sales involving third-party Merchants participating in Amazon's online sales platform known as the Marketplace.

FINDINGS OF FACT

Having observed the witnesses and exhibits presented at the hearing and taking into consideration the burden of persuasion and the credibility of the witnesses, this Court makes the following findings of fact by a preponderance of the evidence:

General Background

Petitioner is an Amazon subsidiary that operates the website Amazon.com (the Marketplace). Amazon.com contains listings of various items available for purchase by customers of the website, including items listed for sale by Merchants. The three primary types of persons and entities that list items for sale on the Marketplace are: (1) Amazon; (2) Amazon affiliates²; and (3) Merchants. Amazon is registered in South Carolina as a “retailer” for purposes of the South Carolina Sales and Use Tax Act and collects and remits sales taxes related to its sale of “Amazon Prime” subscriptions to customers residing in South Carolina.³ Sales and use taxes also are collected and remitted for retail sales on the Marketplace involving Amazon affiliates.

At issue in this case are the sales and use taxes due on retail sales on the Marketplace involving goods derived from third-party Merchants. Approximately 50% of the transactions on the Marketplace involve Merchants. Although it is undisputed that these transactions are retail sales, Amazon contends that it is not the “seller” or “retailer” with respect to these sales, nor otherwise engaged in the business of selling those goods at retail, and therefore has no obligation to collect and remit the sales and use taxes due on these sales.

Amazon.com Customer Experience

Generally, a sale on the Marketplace starts with a customer searching for a product on Amazon.com. The results of that search will populate in response to the customer’s search terms, and then the customer will select, or click on, the good or product the customer wishes to buy from the search results. After the customer selects a product from the search results, the customer is taken to the product detail page that displays attributes for the product, including descriptions,

² These affiliates include Amazon.com, LLC, AmazonFresh, LLC, Fabric.com, Woot, Inc., Zappos Retail, Inc., 6pm.com, LLC, Amazon Web Services, Inc., Quidsi Retail LLC, IMDb.com, BOP LLC, Warehouse Deals, LLC, and Amazon Digital Services, LLC.

³ Amazon Prime subscriptions provide Amazon customers that purchase the subscription a variety of benefits that improve their shopping experience on Amazon.com, including free and discounted expedited shipping.

images, and customer reviews.⁴ Amazon’s proprietary algorithm also determines what person or entity—either an Amazon affiliate or a Merchant—will be the default offeror on the product detail page. Unless the customer clicks a hyperlink on the product detail page for “Other Sellers on Amazon,” any customer purchase of the product will be obtained from the algorithm-determined offeror. Thus, if a customer does not purposefully seek out other offerors, the customer’s purchase will default to the offeror determined by Amazon’s algorithm. Amazon refers to the default offeror as the winner of the “Buy Box.”

Amazon’s algorithm uses price, shipping cost, and other variables to determine the winner of the Buy Box. Amazon provides general information on how to “win” the Buy Box (*e.g.*, “Price competitively”); however, the complete method of evaluating criteria to be selected as the Buy Box winner is proprietary and not publicly available; has not been disclosed by Amazon in this proceeding or elsewhere; and varies by category and over time. Amazon’s primary witness testified that he believed the percentage of sales that go to the winner of the Buy Box was at least 50%, although, surprisingly to this Court, he was unable to testify as to a more precise percentage or even range of percentages.

When customers wish to purchase a specific product, they either click the “Buy now” button, which immediately takes them to Amazon’s “Checkout” page or, if they wish to continue shopping for additional products, they place the product in Amazon’s online “Cart.” Customers can put multiple products from different Merchants and Amazon affiliates in the Cart at one time and can later purchase them all at the same time. Although they can conduct product searches without doing so, customers must create a customer account on Amazon.com and enter among

⁴ Amazon requires that there only be a single product detail page per product regardless of how many Merchants may list the product on the Marketplace, which Amazon explains is to “optimize the buying experience” for customers on Amazon.com. Joint Ex. 39. Accordingly, “[t]he creation of product detail pages is limited to products that do not already exist within Amazon’s catalog” and “[c]reating a product detail page for a product already in the Amazon catalog is prohibited” by Amazon. *Id.* Thus, a Merchant listing a product that is already on the Marketplace generally has no control as to how that product will be displayed on the product detail page. For new products, Amazon imposes content-specific and other detail page creation policies on Merchants as well as requirements for any images of the product. *Id.*; Joint Ex. 83. Amazon also “uses complex image ranking technology to determine the best images to display” for each product and does not have to use the images uploaded by any Merchant. Joint Ex. 83. Ultimately, Amazon creates each product detail page based on manufacturer and Merchant contributions.

other things their shipping address and payment method in order to actually complete their purchase of a product.

When customers are ready to pay for a product or products in their Amazon Cart, they click the “Proceed to checkout” button. At that point, customers are directed to Amazon’s Checkout page where they input their shipping address and payment method (or confirm the default shipping address and payment method selected by the customer when they first created an Amazon account) as well as select a shipping or delivery option (if more than one option is available). The payment methods accepted by Amazon are credit and debit cards, U.S. based checking accounts, “Amazon Store Cards,” and Amazon gift cards.⁵ Customers input their payment information (*e.g.*, credit card information) directly into the Amazon.com website operated by the Petitioner. In other words, there is no pop-up window or other action directing the customers to another website operated by some other third-party or even an Amazon affiliate to make payment. Rather, all money paid by customers for purchases on Amazon.com is submitted directly to Petitioner, and thus, Petitioner is the actual point of sale for any product sold on Amazon.com.⁶

On the Checkout page, Amazon provides an “Order Summary,” which identifies the total cost of the “Item(s)” selected for purchase, the cost for “Shipping & handling,” and the “Estimated tax to be collected” (if any). Notably, there are no per-transaction costs or service fees identified or charged by Amazon to the customer associated with the sales transaction.

After customers input their payment and shipping information and they are ready to purchase the item or items, they click the “Place your order” button. Upon making a purchase, customers are provided a specific Amazon.com order number and they receive an order confirmation email from Amazon detailing their order. In addition to the details of the customer’s order on Amazon.com, the email confirmation states:

⁵ Customers cannot purchase products on the Marketplace using cash, check, or other payment methods such as PayPal. Customers also cannot make payments directly to the Merchants, and Merchants are expressly prohibited by Amazon from requesting any payments from customers.

⁶ Amazon’s contract with Merchants expressly provides that Amazon has the exclusive right to receive sales proceeds for sales taking place on the Marketplace. Joint Ex. 3, pp. 15-16 (“We will also receive all Sales Proceeds on your behalf for each of these transactions and will have exclusive rights to do so, and will remit them to you in accordance with these Selling on Amazon Service Terms.”).

- “Thank you for shopping with us.”
- “We’ll send a confirmation when your item ships.”
- “We hope to see you again soon. **Amazon.com**”

Joint Ex. 122 (emphasis in original).

Customers can access their post-purchase Order Summary and the invoices for all of their orders through their Amazon.com customer account on the website or by following the link in their confirmation email. Like the Checkout page Order Summary, the post-purchase Order Summary identifies the total cost of the “Item(s)” selected for purchase, the cost for “Shipping & handling,” and the “Estimated tax to be collected” (if any). Customers also can check the status of their order on the Order Summary page. The invoice prepared and provided by Amazon also includes the cost per item, shipping and handling costs, and sales taxes (if any). It does not include or identify any fees for services provided by Amazon related to the sales transaction. Customers typically receive only one Amazon.com order number and one invoice from Amazon for a specific transaction, regardless of the number of items purchased and number of Merchants involved. A customer’s credit card statement will identify the transactions on Amazon.com as “Amazon marketplace payments” in the merchant descriptor field. When a specific item ships, Amazon will send another email to the customer informing the customer of the shipment and providing them the option to “Track your package.”

All of the above—*i.e.*, a complete sales transaction on the Marketplace—can occur without any personal contact or communications between a customer and a Merchant. If there is any contact prior to a purchase, it must be initiated by the customer by calling the Merchant or using a feature on Amazon.com called “buyer/seller messaging,” which permits customers to ask product-specific questions.⁷ As explored more fully below, Amazon prohibits Merchants from having any direct communications with customers except for the limited purpose of providing product-specific information, completing orders (e.g., confirming shipping addresses), or responding to customer service inquiries.

Notably, Amazon specifically refers to purchasers of products on the Marketplace as its “buyers” or “customers.” *See, e.g.*, Joint Ex. 14 (“Amazon places high importance on maintaining

⁷ Merchants are not provided access to any potential customer’s email through “buyer/seller messaging” but rather receive an encrypted version of the customer’s email with the potential customer’s inquiry.

the trust of **our** millions of satisfied **buyers.**” (emphasis added)); Joint Ex. 40 (requiring pricing parity “[t]o ensure that **our customers** have access to a large selection of Products at competitive prices” (emphasis added)); Joint Ex. 7 (“Customers trust that they will find low prices on Amazon.com.”).

Fulfilling the Order

If a customer orders a product on the Marketplace listed by a Merchant, the order is shipped to the customer in one of two ways. Either the Merchant ships the product or the Merchant can, for an additional fee, opt to use Fulfillment By Amazon (FBA) to ship the product.

Fulfilled by Merchant

When a product listed on the Marketplace by a Merchant is purchased, Amazon sends the Merchant an email notifying it of the sale. The Merchant then ships the product to the customer and is required to notify **Amazon** when the item ships.⁸ Under the terms of the Business Solutions Agreement (BSA),⁹ which is the agreement between Amazon and the Merchants, Amazon then notifies the customer by email that the product has shipped. Amazon prohibits Merchants from sending order confirmation emails to customers.¹⁰

Once Amazon receives notice that the Merchant has shipped the product, Amazon processes the customer’s credit card for payment. Typically, this is done by its affiliate, Amazon Payments, Inc., although under the BSA, Amazon can, in its discretion, process the payments directly.¹¹ Amazon records the transaction in the Merchant’s “Seller Account.” The Seller Account is part of the “Seller Central” online portal where Merchants can view the proceeds of sales along with the applicable fees paid to Amazon. Every two weeks, or more frequently if requested but at Amazon’s discretion, Amazon transfers the sales proceeds to the Merchant’s bank account.

⁸ Amazon requires Merchants to ship items within two business days of order notification. Joint Ex. 97 (“Always ship your items within two business days of order notification. This is a requirement!”).

⁹ Joint Ex. 3.

¹⁰ Joint Ex. 3, p. 17 (providing that a Merchant will “except as expressly permitted by this Agreement, not send customers emails confirming orders or fulfillment of Your Products”).

¹¹ Regardless of the entity that processes the payments, Petitioner is always the entity that accepts the payment from the customer when the customer inputs their credit card information into Amazon.com.

However, Amazon expressly reserves the right to withhold payments from Merchants until it is “confident that customers have received the products they ordered.” Joint Ex. 41 (“[W]e do not pay sellers until we are confident that customers have received the products they ordered.”).

Amazon determines which Merchants can offer “Premium Shipping” options, which include same-day, one-day, and two-day shipping. To offer Premium Shipping, Merchants must have been listing on the Marketplace for more than 90 days and must meet certain delivery performance requirements established by Amazon. Joint Ex. 38. If a Merchant’s performance metrics fall below the thresholds set by Amazon, Amazon may revoke the Merchant’s eligibility to offer Premium Shipping. *Id.*

Amazon also requires that all shipping and handling charges for orders fulfilled by Merchants remain within the parameters set by Amazon. Joint Ex. 3, p. 16. And for certain types of orders, such as for products offered by Merchants on the “Individual selling plan” and “BMVD Products,”¹² Amazon sets “category-based shipping and handling charges,” which the Merchant must “accept . . . as payment in full for [its] shipping and handling.” *Id.*

For sales in which the product order is fulfilled by the Merchant, the BSA provides that Merchants are responsible for responding to claims for certain shipping-related issues, including non-performance, non-delivery, mis-delivery, theft, or mistake. Merchants are also required to handle returns and refunds, but all payments flowing from the Merchant to the customer must go through Amazon.¹³ Notwithstanding these requirements imposed on Merchants, Amazon also has an “A-to-Z Guarantee Program,” which allows customers to submit claims related to sales involving Merchants directly to Amazon for processing. Under this program, Amazon contacts the Merchant about the complaint to confirm certain information about the transaction and then determines in its sole discretion how to settle the claim with the customer, which may include reimbursement at the Merchant’s expense.

¹² “‘BMVD Product’ means any book, magazine or other publication, sound recording, video recording, and/or other media product in any format” Joint Ex. 3, p. 20.

¹³ Joint Ex. 3, p. 17 (“[Merchant] will route all payments to customers in connection with Your Transactions through Amazon. We will provide those payments to the customer (which may be in the same payment form originally used to purchase Your Product or as otherwise determined by us), and you will reimburse us for all amounts we pay.”).

Fulfilled By Amazon

If a Merchant opts to pay extra for FBA, Amazon stores, packages, and ships the Merchant's products when a sale is made. The costs of this program include monthly storage fees, as well as transaction-based fulfillment fees. To start the process, Merchants register each product for FBA, which is operated by another Amazon affiliate, Amazon Fulfillment Services (AFS). However, Merchants do not have any contractual relationship with AFS. Rather, the Petitioner is the party with whom a Merchant contracts for FBA, and a Merchant signs up for FBA through Amazon.com.

As part of FBA, Merchants must initially ship their products to an Amazon fulfillment center at their cost and pay storage fees to Amazon. Unless the Merchant pays an extra fee for Amazon to restrict its distribution options, Amazon selects in its discretion the fulfillment center to which the Merchant ships their product. Otherwise, Merchants have no control as to the fulfillment center(s) at which their products are stored. Merchants agree that once Amazon receives their products, Amazon can commingle products of the same type. Merchants may request their product units be returned to them, but must pay a per-item fee to Amazon or must otherwise have Amazon dispose of a unit.

When a customer purchases a product subject to FBA, Amazon sends an automated email to AFS. After receipt of that email, AFS packages and ships the product to the customer. Amazon may combine products from different Merchants or Amazon affiliates together into one shipment. Upon shipment, Amazon processes the customer's credit card and the funds are distributed in the same manner as if a Merchant shipped the item itself. Under the BSA, Amazon has sole discretion regarding all customer services issue relating to FBA products.

Amazon's Relationship with Third-Party Merchants

Amazon's relationship with the Merchants who supply products that are sold on the Marketplace is set forth in the BSA as well as numerous policy documents promulgated by Amazon that impose on Merchants various guidelines, terms and conditions, codes of conduct, and other requirements. The BSA is a single agreement with multiple subsections to which Petitioner and other Amazon affiliates are parties, all of which are collectively referred to simply as "Amazon" in the BSA. The BSA contains general provisions covering the overall relationship between Amazon and Merchants, as well as more specific provisions governing particular parts of

Amazon's sales platform, including "Selling on Amazon," "Fulfillment by Amazon," and "Transaction Processing."

To list products on the Marketplace, a Merchant must agree to the terms of the BSA, which may be modified at any time by Amazon. Any modifications are deemed accepted by a Merchant simply by the Merchant continuing to list products on the Marketplace after Amazon posts the modification on Seller Central. Joint Ex. 3, p. 7. The separate policy documents promulgated by Amazon may be modified by Amazon and become effective without notice to the Merchants. *Id.* Amazon may suspend or terminate the BSA with a Merchant, and suspend or terminate a Merchant's ability to list products on the Marketplace, at any time and for any reason. *Id.* at 2-3. Merchants do not have the option of altering the terms of the BSA.

Although Amazon's witnesses characterized the BSA as only setting the outer limits of what a Merchant can and cannot do, the BSA includes many material limitations on how Merchants participate in Marketplace transactions. For example, with respect to pricing of products, the BSA requires Merchants to ensure that the price they set, as well as any other terms or conditions with respect to the product they wish to list on the Marketplace, "is at least as favorable to Amazon Site users as the most favorable terms upon which a product is offered or sold via [the Merchant's other] Sales Channels...." Joint Ex. 3, p. 18. In other words, Amazon requires that the price selected by a Merchant for a specific product must be as low as the price that it offers the product anywhere else. This is tantamount to a "most favored nations" clause and amounts to another measure of control over the sale of goods on the website that is exercised by Amazon. Additionally, Merchants must provide product information in the format required by Amazon. *Id.* at 15. The BSA also provides that Amazon has the sole discretion to "determine the content, appearance, design, functionality, and all other aspects of [Amazon.com], including by redesigning, modifying, removing or restricting access to [the site], and by suspending, prohibiting or removing any listing." *Id.* at 20.

Amazon also controls the flow of funds between customers, Amazon, and Merchants. Pursuant to the BSA, Amazon will "receive all Sales Proceeds on your behalf for each of these transactions and will have exclusive rights to do so, and will remit them to you in accordance with these Selling on Amazon Service Terms." Joint Ex. 3, pp. 15-16. As discussed above, all refunds to customers must be routed through Amazon as well. Amazon maintains control over when Merchants receive the proceeds from the sale of their goods. Specifically, the BSA provides that

proceeds—reduced by Amazon’s fees—will be remitted to the Merchants, at Amazon’s sole discretion, on a bi-weekly basis. And, although Amazon witness testified that Merchants may request more frequent distributions, the BSA states that Merchants do “not have the ability to initiate or cause payments to be remitted to [them].”¹⁴ Amazon also bears the risk of credit card fraud, but Amazon, at its sole discretion, can withhold a transaction for investigation, refuse to process the transaction, restrict shipping, or stop/cancel a transaction, and Merchants must stop/cancel an order when directed to do so by Amazon. For orders that are cancelled at the direction of Amazon, the Merchant is required to refund proceeds to the customer and, again, must do so through Amazon.

Moreover, Amazon maintains strict control over the information of customers purchasing goods on the Marketplace. In particular, the BSA provides:

Use of Amazon Transaction Information.¹⁵

You will not, and will cause your Affiliates not to, directly or indirectly: (a) disclose any Amazon Transaction Information (except that you may disclose that information solely as necessary for you to perform your obligations under this Agreement if you ensure that every recipient uses the information only for that purpose and complies with the restrictions applicable to you related to that information); (b) use any Amazon Transaction Information for any marketing or promotional purposes whatsoever, or otherwise in any way inconsistent with our or your privacy policies or applicable Law; (c) contact a Person that has ordered Your Product with the intent to collect any amounts in connection therewith or to influence that Person to make an alternative transaction; (d) disparage us, our Affiliates, or any of their or our respective products or services or any customer; or (e) target communications of any kind on the basis of the intended recipient being an Amazon Site user. In addition, you may only use tools and methods that we designate to communicate with Amazon Site users regarding Your Transactions, including for the purpose of scheduling, communicating, or cancelling the fulfillment of Your Products.

Joint Ex. 3, p. 6. Thus, Merchants are prohibited from using Amazon’s customer information for any purpose other than those tasks that are necessary to fulfill the Merchants’ duties related to the

¹⁴ Prior to the proceeds being disbursed to the Merchant, Amazon may combine them with funds of other Merchants and invest them, with all interest or earnings going to Amazon.

¹⁵ “Amazon Transaction Information” is defined in the BSA as “Order Information and any other data or information acquired by you or your Affiliates from Amazon, its Affiliates, or the parties’ performance under this Agreement.” Joint Ex. 3, p. 11. “Order Information” is then defined as “with respect to any of Your Products ordered through an Amazon Site or a Webstore Site, the order information and shipping information that we provide or make available to you.” *Id.* at 12.

transaction on the Marketplace. To the extent a Merchant needs to initiate any communications with an Amazon customer, the Merchant is required to use tools on Amazon.com to communicate with that customer and may not use any other means or methods of communicating with that customer. *Id.*¹⁶

Amazon Compensation

Amazon is compensated for transactions on its website through referral fees, applicable variable closing fees, the non-refundable monthly Selling on Amazon subscription fee, and other applicable fees paid by Merchants. The referral fees are calculated based on the sales price of a product, and the percentages vary based upon the product being sold and range from 45% of the total sale value for “Amazon Device Accessories” to 6% for personal computers. These referral fee percentages are determined by Amazon in part based on the typical or average profit margins of the different products. Amazon’s compensation therefore is akin to transaction fees which are tied to and derived from the sale of goods on the Marketplace, rather than fees associated with services.

Sales and Use Tax Collection

Because Amazon accepts customer payments and is the point of sale for all transactions on the Marketplace, only Amazon has the ability to collect the sales and uses taxes owed for these transactions. No other person or entity interfaces with the customer through the purchase transaction. In the BSA, however, Amazon requires Merchants to agree to be responsible for the collection, reporting, and payment of all taxes. Joint Ex. 3, p. 5. Amazon’s policy is incongruent to the way these transactions actually occur.

During the period at issue, a “Professional” Merchant had the option of paying a fee and subscribing to Amazon’s “Tax Calculation Service.” Under this program, Amazon calculates and withholds taxes for the transaction, the Merchant having selected applicable product tax codes based on a list provided by Amazon. Joint Ex. 23. Amazon collects the tax from the customer and

¹⁶ The BSA further defines as “Confidential Information” any information “relating to us or to the Services, including but not limited to Amazon Transaction Information, that is not known to the general public.” Joint Ex. 3, p. 5. Merchants are required to agree, among other things, that “all Confidential Information will remain Amazon’s exclusive property” *Id.* Thus, Amazon not only closely guards its customers’ information, it also considers that information to be its exclusive proprietary information.

then disburses the tax to the Merchant after taking its percentage-based fee. *Id.* Amazon does not accept any responsibility for remitting the taxes, or ensuring that the taxes are remitted, to any taxing authority. *Id.*

Notably, during the period at issue, Amazon did not make available the tax collection service to non-professional Merchants. *Id.* (offering tax collection option to “Marketplace Professional seller[s] or Amazon Webstore seller[s]” only). Thus, during the period at issue, a non-professional Merchant had no way to collect sales and use taxes for sales transactions involving products listed by that Merchant on the Marketplace.

CONCLUSIONS OF LAW

General Conclusions/Burden of Proof

This Court has subject matter jurisdiction in this case pursuant to section 1-23-600(A) and section 12-60-460 of the South Carolina Code. This is a contested case, and it is heard de novo. *Be Mi, Inc. v. S.C. Dep’t of Revenue*, 408 S.C. 290, 297, 758 S.E.2d 737, 740 (Ct. App. 2014) (“[T]he ALC serves as the sole finder of fact in the de novo contested case proceeding.” (citation omitted)); *Brown v. S.C. Dep’t of Health & Envtl. Control*, 348 S.C. 507, 512, 560 S.E.2d 410, 413 (2002) (explaining that a contested case before the ALC is “in the nature of a de novo hearing with the presentation of evidence and testimony”). The standard of proof is a preponderance of the evidence. S.C. Code Ann. § 1-23-600(A)(5); *see also Anonymous (M-156-90) v. State Bd. of Med. Exam’rs*, 329 S.C. 371, 375, 496 S.E.2d 17, 19 (1998) (“Absent an allegation of fraud or a statu[t]e or a court rule requiring a higher standard, the standard of proof in administrative hearings is generally a preponderance of the evidence.”). Therefore, because it is challenging a Department Determination, Amazon has the burden of proof to show by a preponderance of the evidence that the Department’s Determination was incorrect.¹⁷ *Leventis v. Dep’t of Health & Envtl. Control*, 340 S.C. 118, 132-33, 530 S.E.2d 643, 651 (Ct. App. 2000) (holding that generally, the complaining party bears the burden of proof).

¹⁷ Prior to the hearing, Amazon filed a “Motion to Confirm that the Department Bears the Burden of Proof,” seeking to have the burden of proof imposed on the Department on the basis that the Department has advanced new theories in this proceeding that are different than those in its Determination. By order dated January 31, 2019, this Court denied the motion and confirmed that Amazon has the burden of proof to show by a preponderance of evidence that it is not liable for the taxes at issue in this matter.

Relevant Sales and Use Tax Law

In this state, a “sales tax, equal to five percent of the gross proceeds of sales, is imposed upon every person engaged or continuing within this State in the business of selling tangible personal property at retail.” S.C. Code Ann. § 12-36-910(A). Complementing this tax is the use tax, which is “imposed on the storage, use, or other consumption in this State of tangible personal property purchased at retail for storage, use, or other consumption in this State, at the rate of five percent of the sales price of the property, regardless of whether the retailer is or is not engaged in business in this State.” S.C. Code Ann. § 12-36-1310. The use tax must be collected by the seller “at the time of making the sales or, if the storage, use, or consumption is not then taxable, at the time the storage, use, or other consumption is taxable” and the seller must “give to the purchaser a receipt showing the amount subject to the tax and the amount of tax collected.” S.C. Code Ann. § 12-36-1350(A).

A “retailer” and “seller” includes, in relevant part, every person “selling or auctioning tangible personal property whether owned by the person or others.” S.C. Code Ann. § 12-36-70(1)(a). A “retail sale mean[s] all sales of tangible personal property except those defined as wholesale sales.” S.C. Code Ann. § 12-36-110. More generally, a “sale” or “purchase” is broadly defined to mean:

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

- (1) a transaction in which possession of tangible personal property is transferred but the seller retains title as security for payment, including installment and credit sales;
- (2) a rental, lease, or other form of agreement;
- (3) a license to use or consume; and
- (4) a transfer of title or possession, or both.

S.C. Code Ann. § 12-36-100. Additionally, the tax is imposed on the “gross proceeds of sales,” which is defined as “the value proceeding or accruing from the sale, lease, or rental of tangible personal property.” S.C. Code Ann. § 12-36-90(1)(a). In contrast to retail sales of tangible personal property, “[t]he receipts from services, when the services are the true object of the transaction, are not subject to the sales and use tax, unless the sales and use tax is specifically imposed by statute

on such services (i.e. accommodation services, communication services).” S.C. Code Ann. Regs. 117-308.

Application of Sales and Use Tax Law

Amazon contends it is not engaged “in the business of selling” and is not a “seller” or “retailer” that is statutorily required to collect and remit sales taxes on retail sales on Amazon’s Marketplace involving third-party Merchants because it does not transfer title or possession of any products in exchange for consideration. Rather, Amazon contends it provides only services to Merchants. The Department, on the other hand, argues that Amazon is engaged “in the business of selling” and is a “seller” or “retailer” because it offers products to the public for sale on Amazon.com and accepts payment for those products. The Department contends that Amazon’s self-identification as a service provider is irrelevant because the “true object” of all the transactions at issue is the sale and purchase of tangible personal property and Amazon cannot contract away its tax liabilities. The Department further argues that Amazon’s self-characterization belies its true role in these sales transactions, which occur exclusively through its website—for a fee based on the sales price of the product—and over which it exercises extensive control.

Based on the evidence and facts presented, this Court finds that Amazon is engaged “in the business of selling” and falls within the definition of “retailer” or “seller” such that Amazon is responsible for the collection and remittance of sales and use tax on retail sales on Amazon’s Marketplace involving third-party Merchants. In determining the meaning of the applicable statutory provisions, “[t]he cardinal rule of statutory interpretation is to ascertain and effectuate the intention of the legislature.” *Chem-Nuclear Sys., LLC v. S.C. Bd. of Health & Envtl. Control*, 374 S.C 201, 205, 648 S.E.2d 601, 603 (2007). “The language of a statute must be read in a sense which harmonizes with its subject matter and accords with a general purpose.” *Id.* And “[i]f a statute’s language is plain and unambiguous, and conveys a clear and definite meaning, there is no occasion for employing rules of statutory interpretation....” *Grant v. City of Folly Beach*, 346 S.C. 74, 79, 551 S.E.2d 229, 231 (2001). Here, as applied to Amazon, the relevant statutory provisions are clear and unambiguous¹⁸ and require Amazon to collect and remit sales and use tax for sales on Amazon’s Marketplace involving third-party Merchants.

¹⁸ As explained below, this Court disagrees with Amazon’s contention that the current statutory provisions are rendered ambiguous by statements of Department officials years after the period at issue about the proposed “marketplace facilitator” legislation. Simply put, this Court

Taxable Sales and Purchases on the Marketplace

There is no dispute—nor could there be—that the transactions taking place on Amazon.com are “sales” or “purchases” within the meaning of section 12-36-100. A customer accesses Amazon.com, searches for and selects a product or products, and then, in exchange for monetary payment, immediately receives the right to receive, and, in a matter of days, actually receives, the product or products. This is a “transfer, exchange, or barter, conditional or otherwise, of tangible personal property for a consideration,” § 12-36-100, and thus is a sale subject to South Carolina sales and use taxes.

Amazon is Engaged in the Business of Selling

This Court finds that Amazon is “engaged . . . in the business of selling tangible personal property at retail.” S.C. Code Ann. § 12-36-910(A). Amazon is the exclusive owner and operator of the Amazon.com Marketplace through which customers obtain tangible personal property in exchange for payment directly to Amazon on Amazon.com. The listing of goods on Amazon.com is not simply a matter of a Merchant independently marketing products for sale but, instead, is part of the sale of those goods on and by Amazon.com. Amazon’s focus on who holds legal title in an effort to evade the statutory strictures is misplaced.

As noted above, goods are made available to and purchased by customers through the Amazon.com Marketplace. While shopping on Amazon.com, customers can select multiple products from various Merchants by placing them in the online “Cart” operated by Amazon and then can pay for all those products at once by “checking out” with Amazon. Amazon collects the payments directly from the customers and issues receipts to those customers for the products they purchased. All order and shipping confirmations are sent by Amazon, and Amazon restricts the communications that Merchants can have with Amazon customers. In the order confirmation email received by the customer, Amazon thanks the customer for “shopping with us,” tells them Amazon “hope[s] to see [them] again soon,” and electronically signs the email, “Amazon.com.” In some cases, Amazon ships the ordered product directly to the customer from its distribution centers. In other cases, after an order is placed, Amazon directs the Merchant to ship the product, requires

does not have any doubt, let alone “substantial doubt,” that the General Assembly intended for the collection and remittance obligations imposed under the Sales and Use Tax Act to apply to entities and businesses like Amazon, even if the General Assembly could not foresee the exact technological advancements that have allowed for such online businesses.

that the Merchant do so within two days of the order, and can withhold payment to the Merchant until Amazon is confident the order was properly fulfilled. All refunds for any returned items also must go through Amazon and are almost completely at the discretion of Amazon. Accordingly, Amazon is, at the very minimum, “engaged . . . in the business of selling tangible personal property at retail.” S.C. Code Ann. § 12-36-910(A). Throughout the process described above, whereby customers search for, select, order, pay for, and receive tangible personal property, in addition to those sales that require returns or refunds, customers can, and more often than not do, only interface with Amazon.

Moreover, Amazon controls all aspects of the Marketplace, including the content on Amazon.com and the flow of funds from the purchasers of products. Although Merchants, in some instances,¹⁹ provide the product descriptions and images, Amazon controls the format of these descriptions for purposes of its website and, in its discretion, can modify or remove such descriptions or images. Amazon also exercises control over the pricing of the products by requiring Merchants to list products at prices “at least as favorable to” Amazon customers “as the most favorable terms upon which a product is offered or sold” by the Merchants elsewhere. Amazon actively participates in the selling process through its proprietary algorithm which selects and prominently displays the product offers that Amazon has determined are best for Amazon customers. In short, Amazon is not simply operating a free and open space where Merchants can list products at any price they wish and in any reasonable manner and where payment is made directly to the Merchants. Rather, Amazon takes an active role in determining how, which, and at what prices products are sold on its Marketplace, something Amazon readily states it does to cultivate the buying experience and trust of *its* buyers and customers, and accepts the payment for these products.

Based on these facts, Amazon is in the business of selling tangible personal property at retail. This conclusion is confirmed by the Supreme Court’s decision in *Travelscape, LLC v. South Carolina Department of Revenue*, which affirmed this Court’s ruling requiring an online travel company to collect and remit sales tax on the gross proceeds it received from providing hotel reservations to third-party hotels located in South Carolina. 391 S.C. 89, 705 S.E.2d 28 (2011).

¹⁹ As explained above, if a product is already listed on the Marketplace, a Merchant wishing to list that product is prohibited from creating a new product detail page and therefore has no control over how the product is displayed.

The facts and the pertinent analysis of *Travelscape* are very similar to this case. There, the petitioner, which did not own or operate any hotels, offered hotel reservations at third-party hotels through its website Expedia.com. A customer who wished to book a hotel room through Expedia.com entered a request to book the room and, after the customer submitted payment directly to the website via credit card, the petitioner issued the customer a confirmation of the room reservation, which gave the customer the right to occupy the room at the hotel selected for a particular time.

The petitioner in *Travelscape* argued that it was not responsible for paying the accommodations tax in South Carolina because it did not physically furnish hotel rooms to customers, and that the word “furnishing” as used in the Sales and Use Tax Act contemplated the physical provision of hotel rooms. *Travelscape*, 391 S.C. at 99-101, 705 S.E.2d at 33-35. The Supreme Court resolved this question as follows:

Travelscape is correct in pointing out that “furnish” as used in subsection (A) invokes the connotation of physically providing sleeping accommodations to customers. Indeed, the American Heritage Dictionary defines “furnish” as “to equip with what is needed” and to “supply” or “give.” *Am. Heritage Dictionary* 540 (2d College Ed. 1982). Relying on *Powerex*, Travelscape argues the term “furnish” as used in subsection (E) should be read consonant with its use in subsection (A). We agree. As used in subsection (E), “furnish” does mean to physically provide sleeping accommodations. However, Travelscape’s argument ignores the antecedent language in (E) that it applies to all persons “engaged ... in the business of” furnishing accommodations. **“Business” includes “all activities, with the object of gain, profit, benefit, or advantage, either direct or indirect.”** S.C. Code Ann. § 12-36-20 (2000). Accordingly, we find the context of “furnish” as it appears in subsection (E) demonstrates that it encompasses the activities of entities such as Travelscape who, **whether directly or indirectly**, provide hotel reservations to transients for consideration. Contrary to the dissent’s view, we do not read the term “furnish” differently in subsection (E) than we do in (A). Instead, we interpret subsection (E) in such a manner as to give effect to all the language contained therein—particularly that the entity be “engaged ... in the business of” furnishing accommodations—rather than focusing on the term “furnish” in isolation. **While Travelscape does not physically provide accommodations, it is in the business of doing so.**

Id., 391 S.C. at 101, 705 S.E.2d at 34 (emphases added). This same reasoning applies here. While Amazon does not own the products sold on the Marketplace and, in some cases, does not physically ship the products to the customers, it is engaged in the “business” of selling those products.

Amazon is the “Retailer” or “Seller”

Ultimately, Amazon not only is engaged in the business of selling, but also is the “retailer” or “seller” of the sales and purchase transactions that occur on Amazon.com. Customers pay money directly to Amazon in exchange for obtaining goods. Amazon, as the exclusive owner and operator of Amazon.com, is thus “selling or auctioning tangible personal property.” § 12-36-70. Contrary to Amazon’s primary contention, there is no requirement that a “retailer” or “seller” hold title to or have physical possession of the tangible personal property in order to sell it. Rather, the definition of “retailer” and “seller” expressly includes any person who sells tangible personal property, **“whether owned by the person or others.”**²⁰ § 12-36-70(1)(a) (emphasis added). Accordingly, the General Assembly specifically recognized that the “retailer” or “seller” required to collect and remit tax may not be the person who holds title or physically possesses the tangible personal property that is sold.

Other provisions of the Sales and Use Tax Act and the supporting regulations promulgated by the Department confirm that a person need not hold title or physically possess the tangible personal property to be a “retailer” or “seller.” Pursuant to section 12-36-100, transfer of **either** title or possession is sufficient to constitute a sale but neither is a prerequisite.²¹ See § 12-36-100(4) (noting as an example that “sale” and “purchase” include “a transfer of title or possession, or both”). If the General Assembly had desired to make the transfer of title or possession a requirement of a “sale” or “purchase” or to define a “retailer” or “seller” as only someone that sells

²⁰ Amazon also argues that it cannot be the “seller” or “retailer” because it does not receive “consideration” in exchange for the products sold on its website. This Court does not find that argument persuasive. First, there is no dispute that consideration is provided by customers in exchange for goods and that the customers pay Amazon directly. There also is no dispute that Amazon receives transaction-based fees and part of the fees are calculated based on the standard profit margins of the various goods that are sold. It, therefore, appears that Amazon’s argument is simply that it does not receive “consideration” in exchange for the goods because it is not the owner of the goods. But section 12-36-70(1)(a) expressly states that the “seller” or “retailer” need not be the owner of the goods. And Amazon provides no explanation as to how this “consideration” theory fits with the requirement that consignees collect and remit sales tax for the goods they do not own but have sold.

²¹ For this reason, as well as the fact that there is no dispute that the transactions on the Marketplace constitute “sales” or “purchases” pursuant to section 12-36-100, Amazon’s reliance on this statutory provision is misplaced. Again, the question in this case is not whether “sales” or “purchases” take place on Amazon.com, but whether Amazon is the “retailer” or “seller” with respect to those “sales” and “purchases.”

tangible personal property to which they hold title or have possession, it could have done so in sections 12-36-70 or 12-36-100. The General Assembly did not do that but, instead, promulgated broad definitions of “sale,” “purchase,” “retailer,” and “seller” and even expressly provided that a “retailer” or “seller” does not have to own the property it sells. Application of those broad definitions here leads to the conclusion that Amazon is the seller of the goods at issue.

The Sales and Use Tax Regulations also provide in pertinent part:

“When, however, warehousemen buy and sell property as a regular course of business of such sales, if not otherwise exempted, are subject to the sales tax, ***including sales of goods held on consignment and including transactions in which the warehouseman acts as a broker selling goods not actually owned by him or in his possession at the time he accepts the order.***”

S.C. Code Regs. 117-319 (emphasis added); *see Home Med. Sys., Inc. v. S.C. Dep’t of Revenue*, 382 S.C. 556, 564, 677 S.E.2d 582, 587 (2009) (“Regulations authorized by the Legislature have the force of law.”) (quoting *Goodman v. City of Columbia*, 318 S.C. 488, 490, 458 S.E.2d 531, 532 (1995)). This Regulation confirms not only the interpretation that neither ownership nor possession is necessary for someone to be a “retailer” or “seller” responsible for collecting and remitting sales tax, but also the Department’s argument that the focus of any inquiry in the sales and use tax context should be on the time and place at which the sale occurs. *See* S.C. Code Regs. 117-319 (“...at the time he accepts the order”).

Amazon contends this “point of sale” focus is a new theory of sales and use taxation developed for the first time by the Department for this litigation. However, Regulation 117-319 dispels that argument. Moreover, a focus on the point of sale is logical and is inherent in the pertinent statutory provisions. For example, section 12-36-1350 requires that the use tax must be collected by the seller from the purchaser “at the time of making the sales” and the seller must “give to the purchaser a receipt showing the amount subject to the tax and the amount of tax collected.” This demonstrates that the General Assembly intended that the “seller” would be the party directly interacting with and accepting payment from the customer, regardless of the entity having legal ownership of the goods. That cannot happen if the Merchant is deemed the seller because, for all purchase transactions completed through its website, Amazon is the only party that may accept payment and is the only party that provides a receipt for items purchased. Indeed, Amazon exclusively controls the point of sale and the functionality by which customers’ payments are accepted and processed and expressly prohibits Merchants from sending order confirmations

to customers. Given that the obvious purpose of the Sales and Use Tax Act is not just to impose a tax but to ensure the collection and remittance of the tax, a focus on the “point of sale”—*i.e.*, the point where payment is received from a customer—in the determination of the “seller” or “retailer” for any given transaction is foundational to the application of the relevant tax to any sale, not a new theory developed by the Department to pull Amazon under the ambit of the Sales and Use Tax Act.

This “point of sale” inquiry as well as the conclusion that Amazon is the “retailer” or “seller” for the sales transactions conducted on Amazon.com is supported by *Travelscape*. The petitioner in that case did not own, possess, or operate the hotel rooms that were offered for sale on its website. The Supreme Court, however, held that the petitioner was liable for sales tax on the gross proceeds of the hotel room reservations sold on its website because it provided the right to occupy the room of a third-party hotel for a particular time in exchange for payment made directly to it through the website. That is the same situation as this case except, instead of hotel rooms, it is tangible personal property that is sold through the Amazon.com website. In other words, the customer obtains the right to the goods through Amazon.com.

Additionally, as recognized by this Court in its *Travelscape* ruling, the treatment of consignment sales further supports the conclusion that online retailers like Travelscape and Amazon are responsible for the collection and remittance of sales tax. In a consignment sale, the owner of tangible personal property allows a third party to sell the property. At the time of sale, the third party collects and remits sales tax on the gross proceeds of its retail sale to customers, retains its fee as compensation and then pays the owner for the property. The total amount received for the sale is subject to sales tax without any deduction for labor costs. As it was in *Travelscape*, this scenario is almost identical to the transactions in which Amazon is engaged.

Amazon contends that analogizing the sales transactions on its website to consignments is not appropriate because it claims in the typical consignment (1) the consignee physically possesses the property for sale; and (2) the buyer is unaware of the owner of the property. This Court fails to see how, even if true, either lessens the import of the analogy because the statutory framework treats entities in the business of selling tangible personal property as a retailer even if the goods they sell legally are owned by other entities.

First, even accepting as true Amazon’s theory that possession is required to be a consignee, or even more generally, a “seller” or “retailer,” Amazon cannot credibly explain how this theory

would not apply to sales involving Amazon’s FBA program under which products are physically stored, packed, and shipped to the customer by Amazon. This scenario for all practical purposes is a consignment.²² But even in the scenario where the Merchant ships the product directly to the Amazon customer, the controls and requirements imposed and implemented by Amazon mean that, at least from a customer’s perspective, there is virtually no difference between purchasing products shipped from Amazon versus products shipped from Merchants. This is especially so considering that the process for obtaining those products—*i.e.*, going to Amazon.com, selecting the products, and paying Amazon—is the same for the customer regardless of the location from which the products are shipped. For example, Amazon sets performance requirements that determine the shipping options available for each Merchant, and Amazon expressly requires that Merchants ship products within two days. Accordingly, from a customer’s perspective, as long as they receive the product ordered, the location from which a product was shipped makes no difference, and Amazon’s uniform business model intentionally ensures the customer sees no difference between items shipped by Amazon or shipped directly from a Merchant. And, again, the statute expressly applies to entities involved in selling goods that may be owned by others.

This Court also does not view the fact that some customers might be aware of the identity of the Merchants that own the products purchased as legally significant. Section 12-36-70(1)(a) defines “retailers” or “sellers” as those “selling or auctioning tangible personal property whether owned by the person or others.” Critically, it does not say “whether owned by the person or others whose identities are unknown to the buyers” or anything to similar effect. Nothing else in the Sales and Use Tax Act imposes or even implies such a limitation. Rather, as discussed above, the relevant statutory provisions focus on the person selling goods in exchange for payment from the customer, regardless of whether those goods are owned by that person or others. Once again, *Travelscape* is instructive, as a customer using Expedia.com knew the identity of the hotel at which they were reserving a room (and, correspondingly, the fact that the hotel was not owned or operated by Travelscape or Expedia), and the Supreme Court held that Travelscape was nevertheless

²² This Court does not find compelling Amazon’s argument that the BSA disclaims any agency or consignment relationship. First, a person cannot contract away their obligations under the South Carolina tax laws. Furthermore, Amazon expressly acknowledges in the BSA that it is, at the very least, acting as a bailee or warehouseman for products it stores and ships under the FBA program. Joint Ex. 3, p. 35; *see* S.C. Code Regs. 117-319.

responsible for collecting and remitting the sales tax associated with the reservations made through the website.

Other considerations also weigh heavily against Amazon’s argument that disclosure of the Merchant’s identity forecloses it from being the “retailer” or “seller.” In almost all retail sales, the manufacturer or company that developed the product is known to the customer. For example, for brick-and-mortar retail sales, a customer typically views a product in packaging created by the company that developed the product that includes the name of that company, a description of the product, and images of the product. There also is often contact information of that company on the packaging so that customers can contact them to ask questions if they wish prior to purchasing the product. Notwithstanding the customer’s access to all this information, it is the brick-and-mortar retail store at which the customer selects the product and submits payment that is required to collect and remit sales tax, not the company that developed and packaged the product.

For these same reasons, Amazon is the entity required to collect and remit sales and use tax with respect the transactions on Amazon.com.²³ Just as in the brick-and-mortar retail sale example, the fact that a customer knows the identity of the Merchant, can view descriptions and images created—in some cases—by the Merchant on Amazon.com, and can initiate contact with the Merchant to ask product specific questions is not determinative and does not alter the conclusion that Amazon is the “retailer” or “seller.”

The Sales and Use Tax Act is Not Ambiguous

Amazon also contends that the pertinent Sales and Use Tax Act provisions are ambiguous as applied to their online Marketplace and that Amazon should therefore receive the benefit of that ambiguity. “Where the language relied upon to bring a particular person within a tax law is ambiguous or is reasonably susceptible of an interpretation that will exclude such person” that “person will be excluded, any substantial doubt being resolved in his favor.” *See Alltel Commc’ns, Inc. v. S.C. Dep’t of Revenue*, 399 S.C. 313, 318, 731 S.E.2d 869, 872 (2012) (quoting *Cooper River Bridge, Inc. v. S.C. Tax Comm’n*, 182 S.C. 72, 76, 188 S.E. 508, 509-10 (1936)).

²³ Amazon asserted in its prehearing statement that the Determination violated the Federal Internet Tax Freedom Act (ITFA) because it discriminates against electronic commerce. However, Amazon did not assert this argument in its motion for summary judgment or at hearing, and thus, it appears Amazon has abandoned this argument. Nevertheless, the Court finds the Determination did not violate the ITFA for the simple reason that the Department is attempting to tax sales on the internet in the same way as sales accomplished through traditional means.

Nevertheless, in *Crescent Manufacturing Co. v. Tax Commission*, the South Carolina Supreme Court observed:

If the intent of the Legislature is apparent from an examination and consideration of the statute as a whole, the rule of strict construction in favor of the taxpayer has no application. That rule of strict construction of penal laws and tax status “is subordinate to the rule of reasonable, sensible construction, having in view effectuation of the legislation purpose,” . . . “and does not prevent the courts from calling to their aid all other rules of construction and giving each its appropriate scope”

129 S.C. 480, 492, 124 S.E. 761, 765 (1924) (citations omitted). So it is here.

This Court disagrees with Amazon and finds that the pertinent statutory provisions are not ambiguous. In support of its ambiguity argument, Amazon relies almost entirely on the draft language of legislation proposed by the Department after the tax period at issue and the initiation of this contested case regarding “marketplace facilitators” and certain statements that Department officials have made to the General Assembly about this proposed legislation.²⁴ Amazon contends that because the language proposed by the Department would encompass Amazon, *ipso facto* the current language of the Sales and Use Tax Act must be ambiguous as to Amazon. The Department contends that the marketplace facilitator legislation, which, by its terms, would cover many more entities and businesses than Amazon, and the statements of Department officials in the context of this legislation do not render the Sales and Use Act ambiguous. Rather, the Department contends, the current statutory provisions cover Amazon because it is engaged “in the business of selling” and is a “retailer” or “seller,” as those terms are currently defined.

First, this Court finds that neither the “marketplace facilitator” legislation nor the Department’s statements about this legislation demonstrate that the current statutory provisions are ambiguous or are even relevant to the inquiry.²⁵ See *John v. United States*, 247 F.3d 1032,

²⁴ The bill to enact the proposed legislation, S.214, has been passed by both houses of the General Assembly and enrolled for ratification, but has not been signed into law by the Governor as of April 5, 2019. Section 1 of the bill as currently pending provides that “this act shall not be construed as a statement concerning the applicability of the South Carolina Sales and Use Tax Act to any sales and use tax liability in matters currently in litigation or being audited.” This provision alone would eliminate Amazon’s ambiguity argument because it originates in discussions about the marketplace legislation.

²⁵ Amazon entered into evidence written and recorded statements of the current Director of the Department, which this Court allowed into evidence on the limited basis argued by Amazon that these statements were admissions against a parties’ interest. Having fully reviewed the

1041 (9th Cir. 2001) (“Whether a statute is ambiguous is a pure question of law to be determined by the courts, however, not by the parties or by an administrative agency.”); *Jeter v. S.C. Dep’t of Transp.*, 633 S.E.2d 143, 146, 369 S.C. 433, 438 (2006) (“The issue of interpretation of a statute is a question of law for the court.”); *see also See Bank of Am. NT & SA v. 203 N. Lasalle Street P’ship*, 526 U.S. 434, 461 (1999) (Thomas, J. concurring) (“A mere disagreement among litigants over the meaning of a statute does not prove ambiguity[.]”). Furthermore, as explained above, the current language of the Sales and Use Tax Act encompasses Amazon under the “reasonable, sensible construction” of its provisions, especially considering its purposes.

Amazon has not pointed to any ambiguity in the current statutory scheme that creates any substantial doubt as to whether Amazon is a “seller” or “retailer.” Indeed, Amazon has turned the traditional ambiguity analysis on its head by looking first to extraneous materials to attempt to prove the existence of an ambiguity in the statute without first identifying any ambiguity in existing statute. The mere fact that the current law does not expressly address sales on the internet does not mean that internet sales are not sales, or that those entities that direct and facilitate them are not retailers or are not engaged in the business of selling tangible personal property at retail. Indeed, the Supreme Court’s ruling in *Travelscape* confirmed that the broad provisions of the Sales and Use Tax Act apply to internet sales just as they do to sales by more traditional means. Simply put, if an entity followed the same business model of Amazon but did so with a brick-and-mortar store, there would be no doubt that entity would be responsible for collecting and remitting sales and use

statements, even if they were relevant or had any probative value, this Court does not find that they are inconsistent with or contrary to the Department’s position in this proceeding, especially considering that the statements were made to legislators in the context of proposed legislation applicable to many more types of businesses other than Amazon. Nor could either the Department or its employees alter state law by any means, including but not limited to written presentations, oral pronouncements, or deposition testimony, as the Department is incapable of exceeding the authority granted to it by the General Assembly. *TNS Mills, Inc. v. S.C. Dep’t of Revenue*, 331 S.C. 611, 627, 503 S.E.2d 471, 480 (1998) (holding that the “Department does not have the authority to waive the application deadline and annual determination requirements” set forth in the statute); *see also Bazzle v. Huff*, 319 S.C. 443, 445, 462 S.E.2d 273, 274 (1995) (“An administrative agency has only such powers as have been conferred by law and must act within the authority granted for that purpose.”); *Captain’s Quarters Motor Inn, Inc. v. S.C. Coastal Council*, 306 S.C. 488, 490, 413 S.E.2d 13, 14 (1991) (stating that “[a]s a creature of statute, a regulatory body is possessed of only those powers expressly conferred or necessarily implied for it to effectively fulfill the duties with which it is charged”). Finally, as noted above, the provisions of S.214 forestall Amazon’s argument in this regard.

tax. And no doubt, let alone “substantial doubt,” is created just because Amazon operates its business on the internet.

The True Object of the Transaction

Finally, Amazon argues there is no genuine dispute that it is a service provider and, therefore, it is not liable for sales and use tax on retail sales involving Merchant goods. Amazon cites to Regulation 117-308 to support its position, which provides that “[t]he receipts from services, when the services are the true object of the transaction, are not subject to the sales and use tax” Amazon’s argument misses the point. While the “true object” of any specific transaction must be examined to determine whether that transaction is subject to sales and use tax, the starting point is to first correctly identify the transaction at issue. Here, the transaction at issue is the sale of goods at retail to customers on Amazon.com. And there is no dispute that the “true object” of this transaction is the sale of tangible personal property at retail. Quite simply, the Department is not attempting to separately collect tax on the fees Amazon charges to Merchants but, instead, is seeking to collect from the seller or retailer the tax on the gross proceeds of the sale and purchase of goods on Amazon.com.

Even if there was any doubt as to the “true object” of the transactions at issue, one must only look to the invoices issued by Amazon to customers for their purchases on Amazon.com to see that the “true object” of the transactions is to obtain goods. See *Rent-A-Center East, Inc. v. S.C. Dep’t of Revenue*, ___ S.C. ___, ___, ___ S.E.2d ___, ___, 2019 WL 208917, at *4 (Ct. App. 2019) (“[T]he true object test focuses on factual questions; namely, whether **the customer’s purpose** for entering the transaction was to procure a good or a service.” (emphasis added)) (quoting *Boggero v. S.C. Dep’t of Revenue*, 414 S.C. 277, 285, 777 S.E.2d 842, 846 (Ct. App. 2015)). These invoices identify the item(s) purchased and their costs, shipping and handling costs, and any sales tax charged. Nowhere on the invoice issued to customers are any per-transaction service fees identified or charged by Amazon. Nor can it seriously be argued that the customer entered the transaction to procure Amazon’s services versus tangible personal property. Simply put, as reflected on the invoices issued by Amazon, an Amazon customer’s purpose for completing transactions on Amazon.com and submitting payments to Amazon is to obtain goods and, thus, the true object of these transactions is the sale of goods.

CONCLUSION

After considering the evidence in the record and the pertinent legal authorities, this Court finds that Amazon failed to show by a preponderance of the evidence that the Department Determination upholding the sales and use tax assessment on the sales of tangible personal property on Amazon.com involving third-party Merchants was incorrect. Amazon is a “retailer” or “seller” and is engaged in the business of selling tangible property with respect to such sales, and thus, the Department properly assessed Amazon for taxes, penalties, and interest.²⁶ Therefore, consistent with the parties’ agreement, this Court is remanding this matter to the Department for the final calculation of tax, interest, and penalties owed by Amazon.

ORDER

IT IS THEREFORE ORDERED that, consistent with this Final Order and Decision, Petitioner must remit to the Department the sales and use taxes, penalties, and interest, including penalties and interest that continue to accrue until this matter is resolved, owed under the Sales and Use Tax Act for the period of January 1, 2016, through March 31, 2016, with respect to the proceeds from the sales of tangible personal property taking place on Amazon.com.

AND IT IS SO ORDERED.

Ralph King Anderson, III
Chief Administrative Law Judge

April __, 2019
Columbia, South Carolina

²⁶ Because this Court finds the Department properly assessed Amazon for tax for sales on the Marketplace, this Court finds the Department properly assessed interest and penalties on Amazon’s outstanding tax liability. S.C. Code Ann. §§ 12-54-25(A), 12-54-43.

STATE OF SOUTH CAROLINA
ADMINISTRATIVE LAW COURT

AMAZON SERVICES, LLC,	)	
	)	
Petitioner,	)	
	)	
vs.	)	Docket No. 17-ALJ-17-0238-CC
	)	
SOUTH CAROLINA	)	
DEPARTMENT OF REVENUE,	)	<u>AFFIDAVIT OF</u>
	)	<u>DAMIAN HUNT</u>
Respondent.	)	
_____	)	

PERSONALLY APPEARED before me, the undersigned, who, being duly sworn states as follows:

1. My name is Damian Hunt, and I am over eighteen years old and am competent to provide testimony in this case based on my personal knowledge regarding the matters addressed herein.
2. I am currently employed as a Director of State & Local Tax at Amazon. I submit this declaration in support of Amazon Services LLC's Motion for Summary Judgment in the above-captioned case. I am familiar with the above-captioned litigation and the statements in this declaration are based upon my personal knowledge.
3. Amazon.com, Inc. ("Amazon") has conducted business in South Carolina for more than 20 years.
4. During that time, Amazon has invested heavily in the state, including the construction and operation of two fulfillment centers.

5. Amazon has also helped more than 9,000 South Carolina businesses reach millions of new customers throughout the country by selling on Amazon.com.

6. Between January 2016 and September 2018, Amazon has collected and remitted to South Carolina more than \$138,217,029 in sales and use taxes.

7. Amazon and its various subsidiaries have also paid license fees, wage and other business-related taxes, real estate taxes, and personal property taxes.

8. I attach as Hunt Affidavit Exhibit 1 a true and correct copy of the Amazon Small Business Impact Report, AS0115657–AS0115659.

9. Amazon Services is an Amazon subsidiary that operates the Amazon.com website and, in exchange for fees, offers services to independent third-party sellers who sell on the website (i.e., the “Marketplace”).

10. Amazon Services issues Internal Revenue Service Forms 1099-K to all third-party sellers that sell more than \$20,000 in a year. These forms report third-party sellers’ total sales, without reduction for fees paid to Amazon Services. Amazon Services reports for financial and income tax purposes only the fees that it receives because the third-party sellers’ sales proceeds are not those of Amazon Services.

11. Third-party sellers have been using Amazon.com to sell products for nearly 20 years.

12. In 2016, the Department audited Amazon.com, LLC (an Amazon subsidiary that sells products on Amazon.com) and Amazon Services, pursuant to which the Department demanded and received a broad range of information and documents.

13. I attach as Hunt Affidavit Exhibit 2 a true and correct copy of the September 1, 2016 Audit Letter from Logan Mitchell, Field Auditor, South Carolina Department of Revenue to

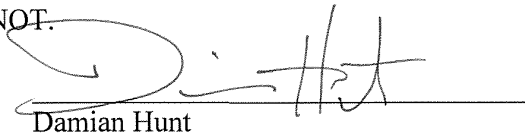
Jim Jackson, Senior Tax Manager, Amazon Services LLC, and Summons to Produce Documents, signed by Susie Shytle, Audit Supervisor, Columbia District, South Carolina Department of Revenue.

14. During the audits, Amazon Services explained to the Department both in writing and in person that, for third-party sales, it is the third-party sellers that are responsible for collecting and remitting tax.

15. On December 9, 2016, the Department issued a Proposed Notice of Assessment against Amazon Services of approximately \$12.6 million for the first quarter of 2016 (the "Notice").

16. I attach as Hunt Affidavit Exhibit 3 a true and correct copy of the December 9, 2016 Notice.

FURTHER AFFIANT SAYETH NOT.

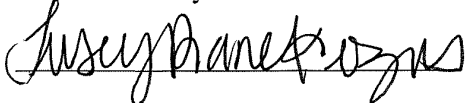

Damian Hunt

STATE OF WASHINGTON

COUNTY OF King

On this day personally appeared before me Damian Hunt, to me known to be the individual described in and who executed the within and foregoing instrument, and acknowledged that he signed the same as his free and voluntary act and deed, for the uses and purposes therein mentioned.

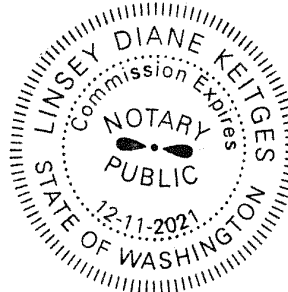
Given under my hand and seal of office this 4th day of December, 20 18.



Notary Public residing at King County

Printed Name: Linsey Diane Keitges

My Commission Expires:
12-11-2021



NEXSEN|PRUET

Burnet R. Maybank, III
Member
Admitted in SC

July 21, 2017

VIA HAND DELIVERY

Jana E. Shealy
Clerk's Office
South Carolina Administrative Law Court
1205 Pendleton Street, Suite 224
Columbia, SC 29201

Re: Amazon Services, LLC
P.O. Box 80416
Seattle, WA 98108

Dear Ms. Shealy:

Enclosed please find an original and one copy of the Request for Contested Case Hearing Form, along with the \$500.00 filing fee for the above-referenced case. Please return clocked copy via our courier.

Charleston

Charlotte

Columbia

Greensboro

Greenville

Hilton Head

Myrtle Beach

Raleigh

Thank you for your attention to this matter.

Very truly yours,



Burnet R. Maybank, III

BRM/mw

Enclosures

1230 Main Street
Suite 700 (29201)
PO BOX 2426
Columbia, SC 29202
www.nexsenpruet.com

T 803.540.2048
F 803.727.1472
E BMaybank@nexsenpruet.com
Nexsen Pruet, LLC
Attorneys and Counselors at Law

FILED

JUL 21 2017

SC ADMIN LAW COURT

APP_01935

ROA_01899

South Carolina Administrative Law Court (SC ALC)
Request for Contested Case Hearing FORM
Mail to: 1205 Pendleton St., Suite 224, Columbia, SC 29201

Last Name: Amazon Services LLC	First:	Middle:	☐ Mr. ☐ Mrs.	☐ Miss ☐ Ms.	Docket No. (To Be Completed by ALC)
Mailing Address: Attn: Damian Hunt, P.O. Box 80416	City: Seattle			State and Zip: WA 98108-0416	
Home Number:	Work Number: 206-765-1533	Cell Number:	*E-Mail Address: Damianh@Amazon.com		

*By providing your e-mail address, you consent to receive court orders and notices via electronic transmission

REPRESENTATION

Are you representing yourself? ☐ Yes ☒ No

Are you represented by an Attorney? ☒ Yes ☐ No

Attorney Mailing Address:

1230 Main Street, Ste 700

Attorney Work Number and Cell Number:

803-540-2048 803-960-3024

Name of Attorney: Burnet R. Maybank III

City, State and Zip:

Columbia, SC 29201

Attorney E-Mail Address:

bmaybank@nexsenpruet.com

CASE INFORMATION

Name of Agency that Issued the Decision: Department of Revenue

(Example – Dept. of Revenue, Dept. of Insurance, DHEC)

In order to have your case processed, **you must attach the agency decision.** Is it attached?:

☒ Yes ☐ No

If no, please explain:

Date the decision was issued: June 21, 2017

Date the decision was received: June 21, 2017

Please provide a brief statement regarding why the hearing is being requested and the relief sought:

Amazon Services LLC requests a Contested Case Hearing on the grounds that the Determination dated June 21, 2017 is contrary to the South Carolina Sales and Use Tax Act, the United States Constitution, and federal law. Amazon Services LLC seeks relief in the form of an order disallowing the tax, penalties, and interest asserted in the Determination.

Payment via ☒ Check ☐ Money Order ☐ Cash for \$500.00 (applicable **filing fee pursuant to ALC Rule 71**) is being submitted today to the Administrative Law Court via ☐ U.S. Postal Service ☒ Hand-delivery



July 21, 2017

X Your Signature or Signature of Attorney

Date

PROOF OF SERVICE (MUST BE COMPLETED)

Your Name: Burnet R. Maybank III

Date: July 21, 2017

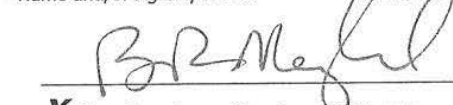
City: Columbia

State: SC

I hereby certify that on the date and place listed above, I served a copy of the foregoing Request for Contested Case Hearing **on all other parties** to this matter by depositing the same in the United States Mail, postage paid, and addressed as follows (use the reverse side for any additional names):

Department of Revenue	300A Outlet Pointe Blvd.	Columbia, SC 29210
Name and/or Agency Name	Address	City, State and Zip

Lauren Acquaviva	300 A Outlet Pointe Blvd.	Columbia, SC 29210
Name and/or Agency Name	Address	City, State and Zip



X Your Signature or Signature of Attorney

July 21, 2017

Date

FILED

JUL 21 2017

SC ADMIN LAW COURT

Attention: All cases filed in the Administrative Law Court are subject to the Rules of Procedure found at the Court's website www.scalc.net or from the Clerk of Court. Failure to follow these rules may result in dismissal of your case.

APP_01936

ROA_01900



STATE OF SOUTH CAROLINA
DEPARTMENT OF REVENUE

300A Outlet Pointe Blvd., Columbia, South Carolina 29210
P.O. Box 12265, Columbia, South Carolina 29211-9979
803-898-5130 FAX # 803-896-0171

June 21, 2017

Amazon.com Tax Department
Attn: Damian Hunt
P. O. Box 80416
Seattle, WA 98108-0416

Re: Department Determination
Amazon Services, LLC

Dear Mr. Hunt:

Enclosed is the South Carolina Department of Revenue's Determination in the above-referenced matter. If you disagree with the Determination, you may request a contested case hearing before an Administrative Law Judge. If you choose to pursue such remedy, you must do so within thirty (30) days of the date of this letter. If you fail to respond within this time limitation, you will lose your right to appeal the Department Determination and your protest will be ended. Should you desire a contested case hearing, you must complete the enclosed request form and mail it, along with a \$500.00 filing fee, to the Administrative Law Court at the address stated on the form's instruction sheet.

The Administrative Law Court rules require that you also send me a copy of your request. My address is as follows: PO Box 12265, Columbia, SC 29211-9979.

Sincerely,

OFFICE OF GENERAL COUNSEL FOR LITIGATION

A handwritten signature in cursive script, reading "Lauren Acquaviva", is written over the typed name.

Lauren Acquaviva
Counsel for Litigation
Lauren.Aquaviva@dor.sc.gov
803-898-5110

DEPARTMENT DETERMINATION

Taxpayer:

Amazon Services, LLC
P.O. Box 81207
Seattle, WA 98108

Periods Involved:

Sales and Use Tax – January 1, 2016 through March 31, 2016

Matters in Dispute:

1. Is Amazon Services, LLC (“Taxpayer”) a person in the business of selling tangible personal property (“property”) at retail and, thus, subject to sales and use tax pursuant to S.C. Code Ann. §§ 12-36-910(A) and 12-36-1310(A) (2014)?
2. Did the South Carolina Department of Revenue (“Department”) properly include all the proceeds from the Taxpayer’s online sales in the tax base?

Amount in Dispute:

Tax:	\$ 9,576,549.12 ¹
Penalty:	\$ 2,394,137.28
Interest:	<u>\$ 519,815.75</u>
Total	\$12,490,502.15 ²

Determinations:

1. The Taxpayer is a person in the business of selling tangible personal property at retail and is subject to South Carolina’s sales and use tax.
2. The Department properly included all the proceeds from the Taxpayer’s online sales in the tax base.

Relevant Facts:

1. The Taxpayer is an affiliate of Amazon.com, Inc. (“Amazon”). Other relevant affiliates of Amazon include Amazon.com, LLC, Amazon Fulfillment Services, Inc. (“AFS”), and Amazon Payments, Inc. (“Amazon Payments”).

¹This is an estimated figure based on an agreement by the parties.

²The total for this quarter may change as interest and penalties are only calculated through July 18, 2017, and will continue to accrue until this matter is resolved.

2. Amazon.com, LLC is one of many Amazon affiliates whose property is offered for sale on www.amazon.com (the "Taxpayer's Website"). In other words, Amazon.com LLC supplies property to the Taxpayer to be sold on the Taxpayer's website. On January 1, 2016, Amazon.com, LLC began collecting and remitting sales tax to the Department.³
3. AFS has subsidiaries throughout the United States that own and operate Amazon's fulfillment centers. Amazon.com.dedc, LLC ("DEDC"), is the AFS subsidiary that owns and operates the fulfillment centers located in South Carolina.
4. Amazon Payments is the payment processing entity that the Taxpayer uses. Amazon Payments contracts with various merchant services providers and/or financial institutions in order to provide its payment-processing services.
5. The Taxpayer owns and operates the Taxpayer's Website. The Taxpayer enters into agreements with third parties and Amazon affiliates, such as Amazon.com, LLC, in order to offer various property for sale on the Taxpayer's Website. The agreements the Taxpayer enters into with third parties and Amazon affiliates are almost identical except for the fees.
6. The third parties are suppliers and/or consignors of tangible personal property, and the Taxpayer is the seller and/or consignee of tangible personal property. As the consignors, the third parties retain title to the property.
7. The Taxpayer contracts with AFS for fulfillment services. AFS's subsidiaries, such as DEDC, handle all the storing, packaging, and shipping of property held in AFS's fulfillment centers. AFS controls which fulfillment centers are used for the storage of products. Finally, the Taxpayer contracts with Amazon Payments to obtain payment-processing services for the Taxpayer's Website. The third parties and Amazon affiliates do not have agreements with AFS or Amazon Payments. They only have agreements with the Taxpayer.
8. When the Taxpayer's customer makes a purchase on the Taxpayer's Website, the customer enters his or her shipping address, billing address, and credit card information (collectively "customer order information") on the checkout page of the Taxpayer's Website. The Taxpayer holds that customer information while it processes the customer's order. The Taxpayer sends the customer an order confirmation email. When a customer purchases property that is held in an Amazon fulfillment center ("Fulfilled by Amazon" or "FBA"),

³Initially, based on the Department's understanding of the facts, the Department believed Amazon.com, LLC, was a South Carolina retailer and liable for sales and use tax on all sales made on the Taxpayer's Website. As the facts have been developing and continue to develop, the Department now questions whether Amazon.com, LLC, is liable for the sales and use tax at all or whether the Taxpayer is liable for the sales and use tax on all sales made on the Taxpayer's Website, including sales of property supplied by Amazon affiliates like Amazon.com, LLC. If, after discovery, the Department determines that the Taxpayer and not the Amazon affiliates, such as Amazon.com, LLC, is the proper taxpayer concerning all sales made on the Taxpayer's Website, the Department reserves the right to make adjustments as necessary.

the Taxpayer sends an automated message to AFS instructing AFS to ship the property to the customer. Once AFS ships the property to the customer, the Taxpayer charges the customer's credit card. When a customer purchases property that is held by a third party (the "Merchant Fulfillment Network" or "MFN"), the Taxpayer instructs the third party to ship the property to the customer. The Taxpayer then requires the third party to notify the Taxpayer when the third party ships the property to the customer. Once the Taxpayer receives notification from the third party that the property shipped, the Taxpayer charges the customer's credit card.

9. Some of the property is shipped to the Taxpayer's South Carolina customers from within the State and the remaining property is shipped to its South Carolina customers from outside of the State. When the property is shipped from outside the State, it usually is shipped directly to the customer without any participation from any local place of business of the Taxpayer, i.e., AFS's distribution warehouse.

10. After the Taxpayer charges the customer's credit card, the Taxpayer, via Amazon Payments, holds the funds and records the transaction in the third party's "seller account."⁴ While the Taxpayer is holding the funds, the Taxpayer may combine the funds with proceeds from other sales on the Taxpayer's Website, invest and earn interest on the funds, or use the funds for any other purpose permitted by law. Every two weeks (or more frequently at the Taxpayer's discretion), the Taxpayer sends the third party the third party's portion of the proceeds and the Taxpayer retains its portion. The third party's portion of the proceeds is the total sale proceeds less the Taxpayer's fees.⁵
11. For orders that are fulfilled by AFS, the Taxpayer determines the shipping and handling charges. For orders that are fulfilled via the Merchant Fulfillment Network, the third party determines the shipping and handling charges. However, the third party's charges for shipping and handling must remain within the parameters set by the Taxpayer.
12. The Taxpayer provides some level of customer service on all purchases from the Taxpayer's Website. On FBA orders, the Taxpayer handles all customer service. On MFN orders, the Taxpayer only handles customer service on payment related issues. Additionally, the Taxpayer provides the A-to-Z Guarantee Program wherein a customer can submit a claim related to his or her order on the Taxpayer's Website regardless of which entity fulfilled the order. Third parties are required to comply with the requirements of the A-to-Z Guarantee Program. Moreover, the third party is required to reimburse the Taxpayer the amount the customer paid the Taxpayer plus any associated fees if the claim made by the customer is not caused by one of the two situations covered by the Taxpayer.⁶

⁴"Seller account" is a term used by the Taxpayer.

⁵At this point, the Department is still not clear as to how money changes hands.

⁶Pursuant to the Taxpayer's Business Solutions Agreement, the third party is responsible for the costs of all returns, claims, chargebacks, and disputes except those caused by "(i) credit card fraud for which [the Taxpayer is] responsible under Section S-1.4; or (ii) [the Taxpayer's]"

13. The Taxpayer determines the cancellation, return, and refund policy for all property sold on the Taxpayer's Website.
14. The Taxpayer restricts how a third party can use a purchaser's customer order information and any other data the third party acquires from the Taxpayer, Amazon, or an Amazon affiliate.
15. The Taxpayer requires that when a third party's property is offered for sale somewhere other than the Taxpayer's Website, the purchase price, terms of the offer, customer service, and product information on the Taxpayer's Website must be equal or better than that of any other store or website.
16. In 2011, AFS opened a fulfillment center in Lexington County, South Carolina. That same year, the South Carolina General Assembly passed the "Distribution Facility Sales Tax Exemption," which exempted retailers like the Taxpayer from collecting and remitting sales and use tax for a five-year period from January 1, 2011, through December 31, 2015. See S.C. Code Ann. § 12-36-2691 (2014). AFS later opened two more fulfillment centers in South Carolina – one in North Charleston and one in Spartanburg.
17. On January 1, 2016, the Taxpayer's duty to remit sales and use tax began. Shortly thereafter, the Department began receiving emails and phone calls from the Taxpayer's South Carolina customers who reported that "Amazon charged them sales tax on some purchases but not others."
18. On February 25, 2016, the Department emailed Amazon to start a discussion about Amazon's sales and use tax collection and remittance. During the discussions that followed, the Department learned that Amazon was treating sales of property supplied by Amazon affiliates differently from sales of property supplied by third parties. The Department also learned that Amazon believed Amazon.com, LLC, was liable for sales tax on sales of its property on the Taxpayer's Website, and that the Taxpayer merely provided a nontaxable service to the third parties.
19. On September 1, 2016, the Department mailed the Taxpayer a letter informing the Taxpayer that the Department would be conducting a sales and use tax audit of the Taxpayer's online sales for the periods from January 1, 2016, through March 31, 2016. The Department also issued the Taxpayer a Summons to Produce Records in order to help expedite the audit.
20. In November of 2016, the Department received a spreadsheet with summary data from the first quarter of 2016. The spreadsheet contains data regarding the Taxpayer's sales of property owned by third parties during that quarter. The spreadsheet also reflects tax collected by the Taxpayer on behalf of third parties and then remitted to those third parties.

failure to make [the] Order Information available as the same was received by [the Taxpayer] or resulting from address verification"

21. On November 15, 2016, the Department held a meeting with the Taxpayer and its counsel. The Taxpayer asked the Department to issue the proposed assessment based on the summary data in the above-referenced spreadsheet. As such, the parties agreed the Department would issue the proposed assessment based on estimated figures.
22. The Department used the spreadsheet to create a proposed assessment. On December 9, 2016, the Department sent the Taxpayer and its counsel the Proposed Assessment and the Explanation of Audit Assessments and Adjustments. The Proposed Assessment indicated that the Taxpayer owed \$9,830,759.19 in sales and use tax plus substantial understatement penalties and interest.
23. On March 9, 2017, the Taxpayer hand delivered its protest letter to the Department.
24. On March 22, 2017, the Department held a conference with the Taxpayer and its counsel to discuss the Proposed Assessment. The Taxpayer requested an adjustment to the Proposed Assessment because the Taxpayer included the "shipping count" in the spreadsheet it provided to the Department. The shipping count represented the total number of shipments made during the first quarter of 2016. The Department did not need such figure in making its calculation, but was not aware that such figure was included in the Total Net Activity. All the Department needed was the total shipping charges for the quarter, which were also included in the spreadsheet. Accordingly, the Taxpayer asked that the Department exclude the shipping count and recalculate the tax liability based on the adjusted Total Net Activity. The recalculation resulted in reducing the tax measure by \$3,631,571.43. Using a 7% sales and use tax rate (6% state rate plus an estimate 1% for local option sales tax), the tax liability was reduced by \$254,210.00. The Department agreed to make this adjustment. The Taxpayer's counsel also expressed some concerns about the accuracy of the local option taxes. The parties agreed that for purposes of the hearing, the Department would use a 7% tax rate, and that the local option taxes could be verified if necessary after a decision from the court. Finally, the Taxpayer asked about taxes that it collected on behalf of the third parties. The Department informed the Taxpayer that the Department did not give any credit for those collected taxes, but that the Department may need to make adjustments after a decision from the Court.
25. After the conference on March 22, 2017, the Department sent the Taxpayer and its counsel an Amended Proposed Assessment and Explanation of Audit Assessments and Adjustments. The Amended Proposed Assessment indicates the Taxpayer owes \$9,576,549.12 in sales and use tax plus substantial understatement penalties and interest.
26. On March 28, 2017, the file was forwarded to the Office of General Counsel for Litigation.

Analysis:

I. The Taxpayer is a person in the business of selling tangible personal property at retail and is subject to sales and use tax.

South Carolina has a Sales and Use Tax Act (the “Act”), which imposes sales and use tax on specific persons. See S.C. Code Ann. §§ 12-36-5 et seq. (2014). In determining whether a specific person is subject to sales or use tax in South Carolina, it is important to read the Act as a whole. See *TNS Mills, Inc. v. South Carolina Dept. of Revenue*, 503 S.E.2d 471, 476, 331 S.C. 611, 620 (1998); *Higgins v. State*, 307 S.C. 446, 449, 415 S.E.2d 799, 801 (1992) (“In construing statutory language, the statute must be read as a whole, and sections which are part of the same general statutory law must be construed together and each one given effect, if it can be done by any reasonable construction.”). Under South Carolina law, “[a] sales tax, equal to [six]⁷ percent of the gross proceeds of sales, is imposed upon every person⁸ engaged or continuing within this State in the business⁹ of selling tangible personal property¹⁰ at retail” and is not limited to tangible personal property owned by the person/retailer. Section 12-36-910(A). Additionally, § 12-36-1310(A) imposes a use tax on “the storage, use, or other consumption in this State of tangible personal property purchased at retail for storage, use, or other consumption in this State” However, S.C. Code Ann. §§ 12-36-1340 and 12-36-1350 (2014) impose the responsibility of collecting and remitting the use tax on the retail seller who maintains a place of business in this State.¹¹ Thus, if the Taxpayer is a retail seller who maintains a place of business in this State, then the Taxpayer is responsible for remitting the sales and use tax.

The definition of “retailer” and “seller” includes every person “selling or auctioning tangible personal property whether owned by the person or others.” S.C. Code Ann. § 12-36-70(1)(a)

⁷S.C. Code Ann. § 12-36-1110 (2014) imposes an additional one percent sales and use tax.

⁸Under the Act, the term “person” includes “any individual, firm, partnership, limited liability company, association, corporation, receiver, trustee, any group or combination acting as a unit, the State, any state agency, any instrumentality, authority, political subdivision, or municipality.” S.C. Code Ann. § 12-36-30 (2014).

⁹Under the Act, the term “business” includes “all activities, with the object of gain, profit, benefit, or advantage, either direct or indirect.” S.C. Code Ann. § 12-36-20 (2014).

¹⁰Under the Act, the term “tangible personal property” is defined as “personal property which may be seen, weighed, measured, felt, touched, or which is in any other manner perceptible to the senses.” S.C. Code Ann. § 12-36-60 (2014).

¹¹“Retailer maintaining a place of business in this State, or any similar term, includes any retailer having or maintaining within this State, directly or by a subsidiary, an office, distribution house, sales house, warehouse or other place of business, or any agent operating within this State under the authority of the retailer or its subsidiary, regardless of whether the business or agent is located here permanently or temporarily or whether the retailer or subsidiary is admitted to do business within this State.” S.C. Code Ann. § 12-36-80 (2014).

(2014).¹² In addition, the term “gross proceeds of sales,” which will be discussed in more detail under section II, includes proceeds from the sale of tangible personal property sold on consignment. See S.C. Code Ann. § 12-36-90(1)(a) (2014). “Sale at retail” and “retail sale” generally is a sale, not for resale, to the user or consumer of the tangible personal property. See S.C. Code Ann. § 12-36-110 (defining “sale at retail” and “retail sale”) and § 12-36-120 (2014) (defining “wholesale sale”). Finally, “sale” means “any transfer, exchange, or barter, conditional or otherwise, of tangible personal property for a consideration . . .” S.C. Code Ann. § 12-36-100 (2014). Thus, reading the Act as a whole, a person in the business of transferring tangible personal property to its user or consumer in South Carolina for a consideration, regardless of whether that person owns or physically possesses such property, is responsible for sales and use tax.

The Taxpayer in this case operates a business where it offers for sale property owned by its affiliates or third parties on the Taxpayer’s Website to users or consumers of the property in South Carolina. Some of the property is shipped to the Taxpayer’s South Carolina customers from within the State and the remaining property is shipped to its South Carolina customers from outside of the State. When the property is shipped from outside the State, it usually is shipped directly to the customer without any participation from any local place of business of the Taxpayer. The Taxpayer does not dispute that tangible personal property is sold at retail on the Taxpayer’s Website to users or consumers in South Carolina.¹³ Rather, the Taxpayer disputes *who* sells the tangible personal property on the Taxpayer’s Website. Thus, the primary issue in this case is whether the *Taxpayer* sells tangible personal property on the Taxpayer’s Website.

As will be discussed in more detail below, the totality of the Taxpayer’s activities clearly demonstrates that the Taxpayer is in the “business of selling tangible personal property at retail” within the meaning of § 12-36-910(A). The Taxpayer hosts the Taxpayer’s Website so its customers can select from a variety of items. The Taxpayer controls to whom and to where the property is sent and effects the actual transfer of the property to its customers. The Taxpayer accepts payment for said property and holds the funds in “escrow” for later disbursement of a

¹²For example, S.C. Code Ann. Regs. 117-319 (2012) provides, in part:

When, however, warehousemen buy and sell property as a regular course of business such sales, if not otherwise exempted, are subject to the sales tax, **including sales of goods held on consignment and including transactions in which the warehouseman acts as a broker selling goods not actually owned by him or in his possession at the time he accepts the order.**

(Emphasis added). This regulation demonstrates just how broad a reach the Act has, such that even persons who do not own or possess the tangible personal property are liable for sales and use tax on their sale of such property.

¹³If the Department’s understanding as to the nature of the dispute is incorrect, please inform the Department in writing prior to requesting a contested case hearing so the Department can issue an amended Department Determination addressing all of the disputed issues. If you fail to inform the Department of any additional issues, such additional issues, if any, will be deemed abandoned.

portion of the funds to third parties. Finally, the Taxpayer exercises controls over transaction details such as customer service and returns. Therefore, the Taxpayer is liable for sales and use tax as a South Carolina retailer.

A. A plain reading of Section 12-36-100 demonstrates the Taxpayer sells tangible personal property on the Taxpayer's Website.

The Taxpayer sells tangible personal property on the Taxpayer's Website. Specifically, for a sale to take place, as defined by the Act, there must be (1) a transfer of tangible personal property (2) for a consideration. See § 12-36-100. Section 12-36-100 is very broad and includes *any* transfer. In *International Harvester Co. v. Wasson*, 281 S.C. 458, 460, 316 S.E.2d 378, 379 (1984), the South Carolina Supreme Court examined the definition of "sale." In doing so, the Court stated "if the transfer of the [tangible personal property], i.e., delivery, took place in South Carolina, the sale would take place in this State." *Id.* The Court did not mention physical possession in its analysis. *Id.* Notably, Black's Law Dictionary defines the term "transfer" as "[t]o convey or remove from one place or one person to another." *Black's Law Dictionary*, 729 (3d. Pocket Ed. 2006). Accordingly, any type of transfer for a consideration, whether it be on consignment, via drop shipment, or in some other way by direction of the retailer, constitutes a sale.

Here, once a customer places an order on the Taxpayer's Website, the Taxpayer transfers the property to the customer by directing either AFS or a third party to ship said property. This method of transferring property is akin to a drop shipment and/or consignment sale. Accordingly, the facts demonstrate that the Taxpayer transfers the property, satisfying the first element of a sale. Next, the Taxpayer only directs shipment of the property after it receives payment from the customer. As such, the Taxpayer receives a consideration in exchange for it transferring the property. Specifically, when a customer places his or her order on the Taxpayer's Website, the customer provides the Taxpayer with his or her billing information. The Taxpayer holds the customer's billing information until the property is shipped. Once the property is shipped, the Taxpayer charges the customer's credit card and receives payment. After the Taxpayer charges the customer's credit card, the Taxpayer holds the funds. In instances when a third party supplies the property,¹⁴ the Taxpayer records the transaction in the third party's "seller account." Every two weeks, the Taxpayer sends the third party its proceeds, which is the total sales proceeds less the Taxpayer's fees. As such, the Taxpayer receives a consideration, satisfying the second and final element of a sale. Accordingly, since the Taxpayer receives money from its customer – a consideration – in exchange for the Taxpayer transferring tangible personal property to the customer, the Taxpayer sells tangible personal property in South Carolina via the Taxpayer's Website.

Additionally, § 12-36-100 provides some examples of what constitutes a sale. Specifically, § 12-36-100(4) provides that a transfer of possession for a consideration constitutes a sale. The Act, however, does not include a definition of the term "possession". The South Carolina Supreme Court has stated "[w]hen faced with an undefined statutory term, the Court must interpret the term in accordance with its usual and customary meaning." *Travelscape, LLC v. S.C. Dept. of Revenue*,

¹⁴At this time, the Department does not know how money changes hands when an Amazon affiliate, such as Amazon.com, LLC, supplies the property.

391 S.C. 89, 99, 705 S.E.2d 28, 33 (2011) (internal citation omitted). In its usual and customary meaning, possession can be actual or constructive. See Black's Law Dictionary, 546 – 547 (3d. Pocket Ed. 2006) (defining “possession” as “something that a person owns [actual possession] or controls [constructive possession].”) The Black's Law Dictionary defines actual possession as “[p]hysical occupancy or control over property” and constructive possession as “[c]ontrol or dominion over a property without actual possession or custody of it.” Id. Thus, the first element of a “sale” can also be satisfied if the Taxpayer has either physical possession/control over the tangible personal property or control over tangible personal property without physical possession of it. This is consistent with, when reading the Act as a whole, the provisions of the imposition statute, the inclusion of consignment sales in the definition of gross proceeds of sales, and the definition of retailer.

As stated above, the Taxpayer transfers property to its customer after the customer places an order on the Taxpayer's Website. The Taxpayer uses two different means of transferring tangible personal property to its customers: (1) AFS fulfills some orders and (2) third parties fulfill the other orders. When AFS fulfills the order, AFS stores the property at one of its fulfillment centers. Once a customer places an order with the Taxpayer, the Taxpayer instructs AFS to ship the property to the customer. Thus, even though AFS fulfills the order, the Taxpayer has control over the property. The Taxpayer controls when the property is shipped and who receives the property. AFS simply follows the Taxpayer's instructions, but the Taxpayer is who has control over and transfers the property. AFS cannot fulfill an order without instruction from the Taxpayer. As such, the Taxpayer has physical control of the tangible personal property and maintains such control until it transfers possession of the property to its customer.

Similarly, when a third party fulfills the order, the third party stores the property. Once a customer places an order with the Taxpayer, the Taxpayer instructs the third party to ship the property to the customer. Thus, when a third party fulfills the order, the Taxpayer has control or dominion over the property without actual possession or custody of it. As such, the Taxpayer is who transfers the property to its customer. Accordingly, whether AFS or a third party fulfills the sales order, the Taxpayer has either actual physical possession of the tangible personal property or sufficient control over the tangible personal property to constructively possess the same and transfers such possession to its customer. Thus, the Taxpayer sells tangible personal property on the Taxpayer's Website.

B. South Carolina case law supports the conclusion that the Taxpayer is engaged in the business of selling tangible personal property at retail and is subject to sales and use tax.

Our Supreme Court examined a similar issue in Travelscape, LLC v. S.C. Dept. of Revenue, 391 S.C. 89, 705 S.E.2d 28 (2011). Specifically, the Travelscape Court examined the “engaged in the business of” language and the undefined term “furnish” found in S.C. Code Ann. § 12-36-920(E) (2014). Similar to § 12-36-910(A), which imposes a sales tax on “every person engaged . . . in the business of [transferring] tangible personal property [for a consideration],” § 12-36-920(E) imposes an accommodations tax “on every person engaged or continuing within this State in the business of furnishing accommodations to transients for consideration.” (emphasis added). The term “transfer” is not defined in the Act. Similarly, the term “furnish” or “furnishing” is not

defined in the Act. In construing the undefined term “furnish,” the Travelscape Court stated that the meaning of an undefined term should be construed “in conjunction with the whole purpose of the statute and the policy of the law.” 391 S.C. at 99, 705 S.E.2d at 33. In doing so, the Court determined the term “furnish” must be read in light of the “engaged in the business of” language in the statute. The Travelscape Court reasoned as follows:

As used in subsection (E), “furnish” does mean to physically provide sleeping accommodations. However, Travelscape's argument ignores the antecedent language in (E) that it applies to all persons “engaged ... in the business of” furnishing accommodations. “Business” includes “all activities, with the object of gain, profit, benefit, or advantage, either direct or indirect.” S.C. Code Ann. § 12-36-20 (2000). Accordingly, we find the context of “furnish” as it appears in subsection (E) demonstrates that it encompasses the activities of entities such as Travelscape who, whether directly or indirectly, provide hotel reservations to transients for consideration. . . . [W]e interpret subsection (E) in such a manner as to give effect to all the language contained therein—particularly that the entity be “engaged ... in the business of” furnishing accommodations—rather than focusing on the term “furnish” in isolation. While Travelscape does not physically provide accommodations, it is in the business of doing so.

391 S.C. at 101, 705 S.E.2d at 34. The Travelscape Court went on to explain that “[t]he application of the tax to ‘every person engaged . . . in the business of furnishing accommodations’ also reveals that the legislature intended to levy the tax not merely on those physically providing sleeping accommodations, **but on those entities who were accepting money in exchange for supplying hotel rooms.**” Id. (emphasis added).

The language in § 12-36-910(A) is substantively identical to the language in § 12-36-920(E), therefore the Court’s analysis in Travelscape is instructive here. Like the taxpayer in Travelscape, the Taxpayer argues that since it does not have physical possession of the property, it cannot transfer the property and, thus, cannot be selling the property. However, the term “transfer,” like the term “furnish,” is not defined in the Act. Moreover, § 12-36-100 does not limit the definition of sale to a transfer of possession. Rather the statute is broad and includes any type of transfer, the transfer of possession being just one example. Therefore, in determining the meaning of the term “transfer” in the Act, the term should be construed in conjunction with the whole purpose of the statute and the policy of the law in the same way the Travelscape Court construed the term “furnish.” 391 S.C. at 99, 705 S.E.2d at 33. Applying the Travelscape Court’s reasoning to construe the term “transfer” demonstrates that the Legislature intended to levy a sales tax on the Taxpayer regardless of whether the Taxpayer has actual or constructive possession of the property because the Taxpayer accepts money in exchange for supplying/conveying/delivering property to its customers. Accordingly, the application of the statutes at issue combined with the Court’s reasoning in Travelscape demonstrate that South Carolina’s Sales and Use Tax Act has a broad reach and that the Taxpayer is a person engaged in the business of selling tangible personal property at retail.

II. The Department properly included all the proceeds from the Taxpayer's online sales in the tax base.

All retailers must collect and remit sales tax on their gross proceeds of sales. See § 12-36-910(A). "Gross proceeds of sales" is defined as:

[T]he value proceeding or accruing from the sale, lease, or rental of tangible personal property.

(1) The term includes:

- (a) the proceeds from the sale of property sold on consignment by the taxpayer;
- (b) ~~the proceeds from the sale of tangible personal property~~ without any deduction for: [various expenses].

S.C. Code Ann. § 12-36-90 (2014). The Administrative Law Court (ALC) looked at § 12-36-90(1)(a) in the Travelscape case. See Travelscape, LLC v. S.C. Dept. of Revenue, 08-ALJ-17-0076-CC, 2009 WL 769017 at *22 fn 15 (S.C. Admin. Law Ct. Feb. 12, 2009). In doing so, the ALC explained:

In a consignment sale, the owner of tangible personal property allows a third party to sell the property. At the time of sale, the third party collects and remits sales tax on the gross proceeds of its retail sale to customers, retains its fee as compensation and then pays the owner for the property. The total amount received for the sale is subject to sales tax without any deduction for labor costs.

Id. Moreover, our Supreme Court in Travelscape examined § 12-36-90(1) and explained that a taxpayer is liable for tax on the entire amount received by the seller, to include the fees retained by the seller for its services. Travelscape, 391 S.C. at 98, 705 S.E.2d at 33. Accordingly, the Taxpayer, as a retailer who operates like a consignment store, must remit sales tax on all sales and on the entire value of each sale, including its retained fees, and cannot deduct its expenses.

Additionally, a retail seller who maintains a place of business in this State is responsible for collecting and remitting the use tax at a rate of six percent of the sales price. See §§ 12-36-1310, 12-36-1340, and 12-36-1350. "Sales price" is defined as "the total amount for which tangible personal property is sold, without any deduction for [various] expenses." S.C. Code Ann. § 12-36-140. Thus, just like with the sales tax, the Taxpayer must remit use tax on all sales and on the entire value of each sale, including its retained fees, and cannot deduct its expenses.

Here, the Taxpayer sells property owned by its affiliates or third parties through the Taxpayer's Website. The Taxpayer does not own any of the property it sells; rather, the Taxpayer sells property that is owned by others – a consignment sale. The Taxpayer receives the proceeds from the sale then the Taxpayer remits to the third party that party's share of the proceeds. However, because the Taxpayer must remit sales tax on the entire value of the sale, the Taxpayer must remit

sales and use tax on the entire amount the Taxpayer collects from its customers. Accordingly, because the Taxpayer sells the tangible personal property on the Taxpayer's Website, the Department properly included all the proceeds from the Taxpayer's online sales in the tax base.¹⁵

III. The Taxpayer's arguments are not persuasive.

A. The Department has sufficient nexus with the Taxpayer, and therefore, the Proposed Assessment does not violate the Due Process and dormant Commerce Clauses of the U.S. Constitution.

First, the Taxpayer argues that the Proposed Assessment violates the Due Process Clause because the Taxpayer "did not direct purposeful contact with the state when it provided services to the Merchants situated in states other than South Carolina . . ." Taxpayer's Protest Ltr. at p. 46. The Taxpayer, however, mischaracterizes itself as a service provider and ignores the fact that it is deemed the seller by South Carolina law, as discussed above. Accordingly, when the Taxpayer sold property to its South Carolina customers, it directed purposeful contact with South Carolina. Thus, the Department has sufficient nexus with the Taxpayer to satisfy the Due Process Clause.

Second, the Taxpayer appears to argue that the Proposed Assessment violates the dormant Commerce Clause because the Taxpayer does not have a physical presence in South Carolina. However, AFS, an affiliate of the Taxpayer, has three distribution centers in South Carolina. Commerce Clause nexus may be established through an agent performing activities on behalf of a taxpayer that help the taxpayer establish and maintain a market in the taxing state. See e.g., New Mexico Taxation and Revenue Dep't v. Barnesandnoble.com LLC, 303 P.3d 824 (relying on Tyler Pipe Industries, Inc. v. Washington State Dep't of Revenue, 483 U.S. 232 (1987)). AFS's distribution centers help the Taxpayer establish and maintain a market in South Carolina and throughout the world. Accordingly, the Taxpayer has a physical presence in South Carolina. Because the Taxpayer has a physical presence in South Carolina, the Proposed Assessment does not violate the dormant Commerce Clause.

B. The Taxpayer had fair notice that its selling activities within South Carolina subjected the Taxpayer to South Carolina's taxing jurisdiction.

The Taxpayer also argues that South Carolina did not give it fair warning that its actions may be subject to South Carolina's taxing jurisdiction. Here again, the Taxpayer mischaracterizes itself as a service provider rather than a seller of tangible personal property. Because the Taxpayer is deemed the seller by South Carolina law, the Taxpayer had fair warning that its sales of tangible personal property in South Carolina subjected it to South Carolina's taxing jurisdiction. Moreover, the passage of § 12-36-2691, which gave the Taxpayer a five year moratorium on collecting and remitting sales and use tax, put the Taxpayer on notice that it was a retailer subject to South Carolina sales and use tax on all sales transactions that took place on the Taxpayer's Website beginning on January 1, 2016. As such, not only did the Taxpayer have fair notice that its selling

¹⁵ Again, the Department did not include the proceeds derived from the sale of tangible personal property supplied by the Taxpayer's affiliates based on the original information Amazon and its affiliates provided to the Department. As the facts in this case develop further, the Department reserves the right to make adjustments as necessary.

activities in South Carolina subjected it to South Carolina's taxing jurisdiction, but it had five years to prepare for its sales and use tax collection obligation.

Additionally, the Taxpayer appears to believe that the Department is imposing an obligation on the Taxpayer to collect and remit sales and use tax on behalf of the third parties. This is not the case. As explained above, the Taxpayer, just like a consignee, is the seller and the legally liable taxpayer for the sales and use taxes due on items sold on the Taxpayer's Website.

C. The Proposed Assessment does not violate the Internet Tax Freedom Act.

Finally, the Taxpayer argues that the Proposed Assessment violates the Internet Tax Freedom Act (ITFA) (47 U.S.C. 151 note). Specifically, the Taxpayer argues that the Proposed Assessment constitutes a discriminatory tax per the ITFA. Section 1105(2) of the ITFA defines a discriminatory tax, in part, as follows:

(A) any tax imposed by a State or political subdivision thereof on electronic commerce that-

(i) is not generally imposed and legally collectible by such State or such political subdivision on transactions involving similar property, goods, services, or information accomplished through other means;

* * *

(iii) imposes an obligation to collect or pay the tax on a different person or entity than in the case of transactions involving similar property, goods, services, or information accomplished through other means.

First, the Taxpayer argues that the Proposed Assessment is discriminatory pursuant to ITFA § 1105(2)(A)(i) because "it taxes sales that would not be taxed if they were accomplished through traditional commerce." Taxpayer's Protest Ltr. at p. 49. This argument is without merit. While the Taxpayer likes to compare itself to a shopping mall that is not responsible for collecting sales and use tax, the Taxpayer is actually a consignment store that is responsible for collecting sales and use tax. The Taxpayer, like a consignee, offers property for sale that belongs to third parties/consignors. The Taxpayer, like a consignee, receives payment from the customer and passes the third party/consignor's portion on to the third party in two-week intervals. Finally, the Taxpayer, like a consignee, transfers the property to the customer. The sales and use tax applies to the Taxpayer the same way it applies to a consignee who has a brick and mortar store. As such, the Taxpayer's sales would still be taxed if such sales were accomplished through other means. Therefore, ITFA § 1105(2)(A)(i) does not apply here.

Second, the Taxpayer argues that the Proposed Assessment is discriminatory pursuant to ITFA § 1105(2)(A)(iii) because it "shift[s] the tax obligation" from the third party to the Taxpayer. Taxpayer's Protest Ltr. at p. 49. As explained above, because the Taxpayer is the retailer in these transactions operating like a consignee and South Carolina law imposes a sales and use tax on the consignee, the Proposed Assessment does not shift the tax obligation. Rather, it is the Taxpayer

who would like the Department to shift the tax obligation from the Taxpayer to the third parties. As such, ITFA § 1105(2)(A)(iii) does not apply here.

Finally, the Taxpayer argues that the ITFA prohibits taxing transactions that are unique to the internet. See Taxpayer's Protest Ltr. at p. 50. The Taxpayer cites H.R. Rep. No. 105-570 (1998) in support of this proposition. Id. The relevant portions of H.R. Rep. No. 105-570 (1998) provide as follows:

No taxes on Internet-unique services

Taken together, [Section 1105(2)(A)(i) and (ii)] mean that property, goods, services, or information that are sold exclusively over the Internet--**with no comparable off-line equivalent**--would be protected from taxation for the duration of the moratorium. Examples of such transactions include, but are not limited to, electronic mail over the Internet, Internet site selections, Internet bulletin boards, and Internet search services.

No new collection obligations

[Section 1105(2)(A)(iii)] states that a tax on electronic commerce is discriminatory if it imposes an obligation to collect or pay a tax on a different person or entity than in the case of transactions involving similar property, goods, services, or information accomplished through other means, such as over the telephone or via mail-order. **For instance, a tax does not discriminate against electronic commerce if the obligation to collect and remit the tax falls on the vendor if the same goods were ordered off-line as well as online.** This provision would also bar taxes that seek in the case of electronic commerce to impose tax collection obligations on persons other than the buyer or seller in a transaction. Specifically, it would bar taxes that impose collection or reporting duties on Internet access or online service providers, telephone companies, banks, credit card companies, financial intermediaries, or other entities that might have access to a consumer's billing address since these obligations do not also apply in the case of telephone or mail-order sales.

(Emphasis added). Here again, the transactions that occur on the Taxpayer's Website are not unique to the internet. The same types of transactions occur every day in consignment stores. Accordingly, because a comparable off-line equivalent exists, the Proposed Assessment does not violate the ITFA. Additionally, whether a customer orders the property online from the Taxpayer or purchases the property off-line from a consignment store, the tax obligation still falls on the South Carolina retailer. The Taxpayer is a consignee and the South Carolina retailer in this case just as a consignee is the South Carolina retailer for purposes of transactions that occur at a brick

and mortar consignment store. Accordingly, the Proposed Assessment does not constitute a discriminatory tax pursuant to the ITFA.

Conclusion:

For all of the foregoing reasons, the Taxpayer is a person in the business of selling tangible personal property at retail, and the Department properly included all the proceeds from the Taxpayer's online sales in the tax base.

June 21, 2017

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SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM THE ADMINISTRATIVE LAW COURT

Ralph King Anderson, III, Chief Administrative Law Judge

Appellate Case No. 2019-001706

Trial Court Case No. 17-ALJ-17-0238-CC

Amazon Services, LLC, ... Appellant,
v.
South Carolina Department of Revenue, ... Respondent.

CERTIFICATE OF COUNSEL

The undersigned certifies that the foregoing Record on Appeal contains all material proposed to be included by any of the parties and not any other material.

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