

THE STATE OF SOUTH CAROLINA

In The Court of Appeals

APPEAL FROM THE ADMINISTRATIVE LAW COURT

S. Phillip Lenski, Administrative Law Judge

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Case No. 14-ALJ-17-0552-CC

JUN 30 2021

SC Court of Appeals

Appellate Case No. 2021-000031

Lowe's Home Centers, LLC

Appellant,

v.

South Carolina Department of Revenue

Respondent.

RECORD ON APPEAL
Volume 11 of 12

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INDEX

Volume 1

Final Order of December 11, 2020.....	1
Transcript of Proceedings dated April 20, 2016.....	34
Transcript of Proceedings dated June 7, 2016.....	369
Joint Exhibits	
1.....	424
2.....	435
3.....	439
4.....	441

Volume 2

Joint Exhibits	
5.....	444
6.....	452
7.....	455
8.....	497
9.....	531
10.....	567
11.....	569
13.....	572
14.....	576
15.....	580
16.....	585

Volume 3

Joint Exhibits	
17.....	599
18.....	603
19.....	606
20.....	608
21.....	706
22.....	721
23.....	724
24.....	727
25.....	730

Volume 4

Joint Exhibits	
26.....	733
27.....	746
28.....	807
29.....	813
30.....	821
31.....	830
32.....	834
33.....	890
34.....	899

Volume 5

Joint Exhibits	
35.....	905
36.....	912
37.....	918
38.....	920
39.....	923
40.....	927
41.....	931
42.....	935
43.....	939
44.....	950
45.....	960
46.....	969
47.....	973

Volume 6

Joint Exhibits	
48.....	978

Volume 7

Joint Exhibits	
Continuation of 48.....	1083

Volume 8

Joint Exhibits	
Continuation of 48.....	1189

Volume 9

Joint Exhibits	
49.....	1298
50.....	1315
51.....	1321
52.....	1332
53.....	1335
54.....	1352
55.....	1409
56.....	1415

Volume 10

Joint Exhibits	
57.....	1514
58.....	1530
59.....	1637
60.....	1645
61.....	1650
62.....	1653

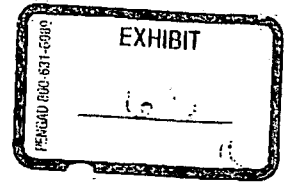
Volume 11

Joint Exhibits	
63.....	1660

Volume 12

Joint Exhibits	
Continuation of 63.....	1804
64.....	1972
Respondent's Exhibits	
1.....	1974
2.....	1976
Certificate of Counsel.....	1978

JOINT EXHIBIT 63

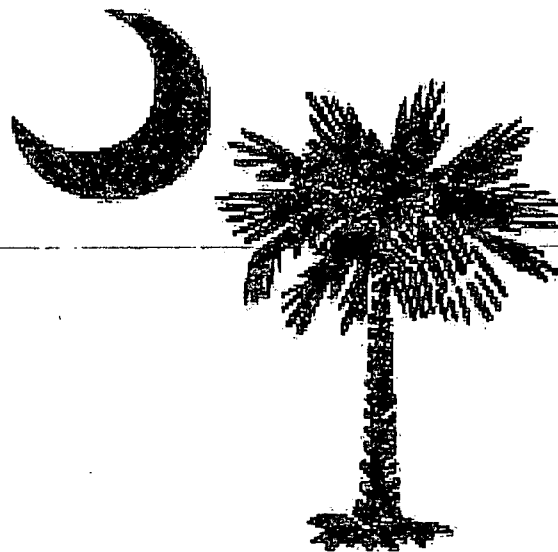


South Carolina Sales and Use Tax Manual

2015 Edition

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(Through the 2014 Session of the General Assembly)



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**The Honorable Nikki R. Haley, Governor
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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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Table of Content

Chapter	Page
1. Chapter 1 – General Overview	
A. History.....	Chapter 1, Page 1
B. Rates and Impositions.....	Chapter 1, Page 2
C. Local Sales and Use Taxes.....	Chapter 1, Page 3
D. Local Taxes Administered by the Department.....	Chapter 1, Page 3
E. Local Taxes Administered by Local Governments.....	Chapter 1, Page 5
F. Exclusions.....	Chapter 1, Page 5
G. Partial Exemptions.....	Chapter 1, Page 7
H. Full Exemptions.....	Chapter 1, Page 9
2. Chapter 2 – Sales Tax Impositions	
A. General Sales Tax Imposition.....	Chapter 2, Page 1
B. Definitions.....	Chapter 2, Page 2
C. Summary of the General Sales Tax Imposition.....	Chapter 2, Page 3
D. Special Sales Tax Impositions.....	Chapter 2, Page 4
E. Sales to Individuals 85 Years of Age and Older.....	Chapter 2, Page 9
3. Chapter 3 – Use Tax Impositions	
A. General Use Tax Imposition.....	Chapter 3, Page 1
B. Definitions.....	Chapter 3, Page 4
C. Summary of the General Use Tax Imposition.....	Chapter 3, Page 6
D. Special Use Tax Impositions.....	Chapter 3, Page 6
E. Temporary Storage – Exclusion from the Use Tax.....	Chapter 3, Page 10
F. Sales to, or Purchases by, Individuals 85 Years of Age and Older.....	Chapter 3, Page 12
4. Chapter 4 – Casual Excise Tax	
A. General Information.....	Chapter 4, Page 1
B. Examples of Exempt Transfers.....	Chapter 4, Page 3
C. Sales to Individuals 85 Years of Age and Older.....	Chapter 4, Page 5
5. Chapter 5 – Sales or Purchases at Retail.....	
Chapter 5, Page 1	
6. Chapter 6 – “Gross Proceeds of Sale” and “Sales Price”	
A. Gross Proceeds and Sales Price - What is Includable?.....	Chapter 6, Page 1
B. Examples of Charges included in “Gross Proceeds” and “Sales Price”.....	Chapter 6, Page 2
C. Gross Proceeds and Sales Price - What is Not Includable?.....	Chapter 6, Page 6
D. Examples of Charges not included in “Gross Proceeds” and “Sales Price”.....	Chapter 6, Page 8
E. Gross Proceeds – Withdrawals for Use.....	Chapter 6, Page 10
F. Gross Proceeds – Promotional Items Provided to Customers For No Consideration, A Nominal Consideration, or an Amount Significantly Below Cost.....	Chapter 6, Page 18

Chapter	Page
7. Chapter 7 – Tangible Personal Property	
A. General Guidelines.....	Chapter 7, Page 1
B. Service vs. Sale of Tangible Personal Property.....	Chapter 7, Page 1
C. Examples of Persons Engaged in the Business of Selling Tangible Personal Property at Retail.....	Chapter 7, Page 2
D. Examples of Persons Engaged in the Business of Selling a Non-Taxable Service.....	Chapter 7, Page 3
E. Sale of Tangible Personal Property vs. Improvement to Real Property.....	Chapter 7, Page 4
8. Chapter 8 – Exclusions.....	Chapter 8, Page 1
9. Chapter 9 – Exemptions	
A. Exemptions Authorized under the Sales and Use Tax Law (Chapter 36 of Title 12).....	Chapter 9, Page 1
B. Other Sales and Use Tax Exemptions Authorized by the General Assembly.....	Chapter 9, Page 17
10. Chapter 10 – Maximum Tax Items	
A. General Information.....	Chapter 10, Page 1
B. Specific Motor Vehicle Examples.....	Chapter 10, Page 4
C. Boats, Boat Trailers and Boat Motors.....	Chapter 10, Page 7
D. Manufactured Homes.....	Chapter 10, Page 8
E. Musical Instruments and Office Equipment Sold to Religious Organizations.....	Chapter 10, Page 10
11. Chapter 11 – Accommodations	
A. General Information.....	Chapter 11, Page 1
B. Transactions Not Subject to the Sales Tax on Accommodations.....	Chapter 11, Page 5
C. Additional Guest Charges.....	Chapter 11, Page 10
D. Examples of the Application of the Sales Tax on Accommodations and Additional Guest Charges.....	Chapter 11, Page 11
E. Hurricane Insurance.....	Chapter 11, Page 21
F. Cancellations of Accommodations.....	Chapter 11, Page 22
G. Purchases by Persons Furnishing Accommodations.....	Chapter 11, Page 22
12. Chapter 12 – Local Sales and Use Taxes	
A. General Information.....	Chapter 12, Page 1
B. Types of Local Sales and Use Taxes.....	Chapter 12, Page 2
C. Local Sales and Use Tax Due Dependent on County or Municipality of Delivery.....	Chapter 12, Page 5
D. Retailer’s Responsibility to Remit Local Sales and Use Taxes.	Chapter 12, Page 6

Chapter	Page
12. Chapter 12 – Local Sales and Use Taxes (Continued)	
E. Purchasers – Reporting Requirements	Chapter 12, Page 7
F. Transactions Exempt from Local Sales and Use Taxes	Chapter 12, Page 8
Exhibit A – Local Tax Chart and Transactions Exempt from Local Sales and Use Taxes.....	Chapter 12, Page 9
13. Chapter 13 – Nexus	
A. General Information	Chapter 13, Page 1
B. Qualifications to Survey Responses.....	Chapter 13, Page 2
C. Survey Answers	Chapter 13, Page 3
14. Chapter 14 – Manufacturers, Processors, and Compounders	
A. General Information	Chapter 14, Page 1
B. Machines, Parts, and Attachments	Chapter 14, Page 1
C. Machine Exemption – General Rule	Chapter 14, Page 3
D. Machines – Replacement Parts and Attachments	Chapter 14, Page 3
E. Examples of Exempt Machines or Machine Parts	Chapter 14, Page 4
F. Examples of Non-Exempt Machines or Parts	Chapter 14, Page 5
G. Machines – A Structure versus A Building	Chapter 14, Page 5
H. Pollution Abatement Machines.....	Chapter 14, Page 6
I. Machines Owned by Someone Other Than a Manufacturer.....	Chapter 14, Page 6
J. Machines Used Substantially in Manufacturing (Dual Usage Machine)	Chapter 14, Page 7
K. Tangible Personal Property that is an “Ingredient or Component Part” or “Used Directly” in the Process	Chapter 14, Page 7
L. Electricity	Chapter 14, Page 8
M. Coal, Coke and Other Fuel.....	Chapter 14, Page 8
N. Fuel Used by Aircraft Manufacturer.....	Chapter 14, Page 9
O. Packaging	Chapter 14, Page 9
P. Sales for Resale or Wholesale Sales	Chapter 14, Page 10
Q. Material Handling Systems and Equipment.....	Chapter 14, Page 10
R. Computer Equipment	Chapter 14, Page 11
S. Construction Material	Chapter 14, Page 12
15. Chapter 15 – Agriculture	
A. General Information.....	Chapter 15, Page 1
B. Machines, Parts and Attachments	Chapter 15, Page 1
C. Livestock.....	Chapter 15, Page 2
D. Feed.....	Chapter 15, Page 2
E. Insecticides, Chemicals, Fertilizers, Soil Conditioners, Seeds and Seedlings.....	Chapter 15, Page 3
F. Containers and Labels.....	Chapter 15, Page 3
G. Fuel	Chapter 15, Page 4
H. Electricity and Gas	Chapter 15, Page 4

Chapter	Page
15. Chapter 15 – Agriculture (Continued)	
I. Building Materials, Supplies, Fixtures and Equipment For Commercial Housing of Poultry and Livestock.....	Chapter 15, Page 5
J. Sales by Farmers	Chapter 15, Page 5
K. Hatcheries	Chapter 15, Page 6
16. Chapter 16 – Construction Contractors	
A. General Information.....	Chapter 16, Page 1
B. Retailer vs. Contractor	Chapter 16, Page 2
C. Construction Contracts with Manufacturers	Chapter 16, Page 5
D. Light Construction Equipment.....	Chapter 16, Page 6
E. Construction Material Used to Construct a Single Manufacturing or Distribution Facility	Chapter 16, Page 6
F. Contracts with the Federal Government	Chapter 16, Page 7
G. Contract with State, County and Municipal Governments	Chapter 16, Page 8
H. Contractors that Manufacture or Fabricate Items that They will Use in Constructing Real Property	Chapter 16, Page 8
I. Transient Construction Property	Chapter 16, Page 10
J. Local Sales and Use Taxes.....	Chapter 16, Page 11
<hr/>	
17. Chapter 17 – Communications	
A. Exemptions and Exclusions	Chapter 17, Page 2
B. Taxable Communications Services.....	Chapter 17, Page 3
C. Non-Taxable Communications Services.....	Chapter 17, Page 5
D. Bundled Transactions.....	Chapter 17, Page 6
18. Chapter 18 – Catawba Indian Reservation – State and Tribal Sales and Use Taxes	
A. The Catawba Indian Claims Settlement Act.....	Chapter 18, Page 1
B. Application of State and Tribal Sales and Use Taxes to Sales of Tangible Personal Property Delivered on the Reservation	Chapter 18, Page 2
C. Purchases by the Tribe for Tribal Government Functions.....	Chapter 18, Page 3
D. Artifacts Made by Members of the Tribe	Chapter 18, Page 3
E. Sales on the Reservation	Chapter 18, Page 4
F. Tangible Personal Property Made by Members of the Tribe (Other than Artifacts)	Chapter 18, Page 4
G. Accommodations	Chapter 18, Page 5
H. Maximum Tax Items.....	Chapter 18, Page 5
19. Chapter 19 – Motion Picture Production Companies	
A. “Motion Picture Production Companies” – Comprehensive Exemption.....	Chapter 19, Page 1
B. “Motion Picture Companies” – Limited Exemption for Supplies and Equipment	Chapter 19, Page 6

Chapter	Page
20. Chapter 20 – Medicines, Prosthetics and Medical Supplies	
A. Exemptions for Medicines, Prosthetics Devices, and Other Medical Supplies.....	Chapter 20, Page 1
B. Other Relevant Exemptions	Chapter 20, Page 4
21. Chapter 21 – Unprepared Food Exemption	
Regulation on Unprepared Food Exemption	Chapter 21, Page 1
22. Chapter 22 – Administrative Requirements	
A. Retail Licenses	Chapter 22, Page 1
B. Obtaining a Retail License.....	Chapter 22, Page 3
C. Operating Without a Retail License – Penalty.....	Chapter 22, Page 3
D. Returning a License	Chapter 22, Page 4
E. Purchaser’s Certificate of Registration	Chapter 22, Page 4
F. Special Event Returns	Chapter 22, Page 4
G. Types of Paper Returns	Chapter 22, Page 5
H. Reporting Requirements	Chapter 22, Page 5
I. Reporting and Paying the Tax Electronically	Chapter 22, Page 6
J. Discount for Timely Payment.....	Chapter 22, Page 8
K. Cash Deposit or Bond.....	Chapter 22, Page 9
L. Recordkeeping	Chapter 22, Page 9
M. Assessments	Chapter 22, Page 9
N. Refunds	Chapter 22, Page 11
O. Penalties and Interest	Chapter 22, Page 13
P. Other Penalties	Chapter 22, Page 13
Q. Interest.....	Chapter 22, Page 14
R. Waiver of Penalties	Chapter 22, Page 14
S. Completion of an Audit	Chapter 22, Page 14
T. The Fairness in Lodging Act.....	Chapter 22, Page 17
23. Chapter 23 – Frequently Asked Questions	
A. License and Registration.....	Chapter 23, Page 2
B. Filing Returns.....	Chapter 23, Page 7
C. Sales and Use Tax Rates	Chapter 23, Page 16
D. What is Subject to the Sales and Use Tax?.....	Chapter 23, Page 17
E. Government	Chapter 23, Page 23
F. Churches and Other Nonprofit Organizations	Chapter 23, Page 24
G. Internet Sales and Purchases	Chapter 23, Page 28
H. Use Tax – Out-of-State Purchases	Chapter 23, Page 29
I. Construction.....	Chapter 23, Page 35
J. Medicine and Other Medical Supplies.....	Chapter 23, Page 36
K. Farmers	Chapter 23, Page 38
L. Maximum Tax.....	Chapter 23, Page 40
M. Administrative	Chapter 23, Page 40

Chapter

Page

23. Chapter 23 – Frequently Asked Questions (Continued)

N. Refunds	Chapter 23, Page 43
O. Penalties and Interest	Chapter 23, Page 45
P. Local Taxes	Chapter 23, Page 45
Q. Food	Chapter 23, Page 47
R. Resale and Exemption Certificates	Chapter 23, Page 49
S. Other	Chapter 23, Page 51
T. Accommodations	Chapter 23, Page 53

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

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).

South Carolina imposes a 1% sales tax on charges for any rooms, lodgings, or sleeping accommodations for less than 90 days to the same person and a 6% sales tax¹⁸ 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 §4-10-20.

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.

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).

²⁹ See South Carolina Information Letter #14-5.

- 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

- 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

- 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 S.C. Code Ann. §12-36-2110(D) and §12-36-2120(A).

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

- 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

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

- 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 foundations⁴¹
- 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

- 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.

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

- 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 Bulletin⁴²
- 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

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 use tax 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

- 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

- 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 Carolina⁴⁶
- 12-36-2120(77) This exemption for certain energy efficient products was ruled unconstitutional by the Supreme Court of South Carolina⁴⁷
- 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).

12-36-2120(12)

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.

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. Wisconsin*, 201 S.C. 158, 216 S.E. 22, 378, 110 S.W.2d 100, 101.

the use tax) when:

- 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

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,

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.

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 South Carolina Code of Laws, Title 12, Chapter 36, Section 910(B)(2).

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).

Accommodations and "Additional Guest Charges"

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.

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

	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

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.

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 F.2d 528 (1956); South Carolina Code §§12-36-

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

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 Department of Revenue, 2006.

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.

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).

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."

including but not limited to, charges for:

- 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 117-303 and South Carolina Code of Laws, Title 12, Chapter 36, Section 1310.

- 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.

(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 §§ 12-36-1110 and 12-36-1111.

- (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 in 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.

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 Regulation Bulletin #00-17

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

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

permanently attached to the boat).” 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.

- 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.

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.

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

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.

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)(c).

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).

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.

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 117-308.6.

use in the performance of such services."

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.

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).

“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

- ▣ 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.

- 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

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

Lay-away fees.

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 Private Letter Ruling #17-218.

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.

in;

- 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).

- 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

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.

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*

property or 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.

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.

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
<p>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.</p>	<p>None</p>	<p>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.</p>
<p>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.</p>	<p>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.</p>	<p>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.</p>
<p>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.</p>	<p>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.</p>	<p>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.</p>

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
<p>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.</p>	<p>None</p>	<p>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.</p>
<p>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.</p>	<p>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.</p>	<p>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.</p>
<p>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.</p>	<p>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.</p>	<p>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.</p>

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 See footnote #69.

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
<p>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.</p>	<p>None</p>	<p>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</p>
<p>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.</p>	<p>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.</p>	<p>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</p>

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.

Event in South Carolina	Event Outside of South Carolina	Taxability of Situation #5
<p>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.</p>	<p>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.</p>	<p>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.</p> <p>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.</p> <p><u>If sold at retail in South Carolina</u>, the sales tax is due on the "gross proceeds" of the sale.</p>

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.

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

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

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

- 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

- 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)(I) and SC Regulation 117-308.5.

¹⁷ SC Code §117-308.6. However, sales by architects of all reproductions of their plans, designs or

- (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.

(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, table, builder hardware, door, door frames, window frames, water meters, etc.

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

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>

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.

SC Revenue Ruling #94-2

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.

SC Revenue Procedure #08-2

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.

SC Regulation 117-302.1

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.

SC Regulation 117-302.1

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.

SC Regulation 117-302.2

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.

SC Revenue Ruling #95-6

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

SC Revenue Ruling #09-17

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

SC Revenue Ruling #09-17

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 processing⁵

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

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

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

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 law ⁵ <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

- 12-36-2120(2) Sales to the federal government
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
- 12-36-2120(22) Material necessary to assemble missiles
- 12-36-2120(25) Sales of cars and motorcycles to nonresident military personnel
South Carolina Private Letter Ruling #90-12; South Carolina Private Letter Ruling #90-11; South Carolina Private Letter Ruling #89-9
- 12-36-2120(29) Federal government contracts – property that passes to the government
SC Regulation 117-314.11; South Carolina Revenue Ruling #04-9
- 12-36-2120(30) Supplies purchased by State General Services Division for resale to State agencies
SC Regulation 117-304.1; South Carolina Revenue Ruling #92-15
- 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

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

SC Regulation 117-302.3; South Carolina Private Letter Ruling #88-10

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 facility¹⁰

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

SC Regulation 117-321.1

12-36-2120(14) Wrapping paper, containers, etc., used incident to the sale and delivery of tangible personal property

SC Regulation 117-302.2; SC Regulation 117-312

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

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; 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; Anonymous Corporation v. South Carolina Department of Revenue (02-ALJ-17-0350-CC); Southeastern-Kusan, Inc. v. South Carolina Tax Commission 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

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

SC Regulation 117-302.4

12-36-2120(20) Railcars and locomotives

12-36-2120(21) Certain vessels and barges (more than 50 tons burden)

SC Regulation 117-312; SC Regulation 117-321.1

12-36-2120(24) Laundry supplies and machinery used by a laundry or drycleaning business. This exemption does not apply to coin operated laundromats.

SC Regulation 117-303

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*

- 12-36-2120(31) Vacation time sharing plans and exchange of accommodations in which the accommodation to be exchanged is the primary consideration
- 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.*
- 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.*
- 12-36-2120(34) 50% of the gross proceeds of a modular home regulated under Chapter 43 of Title 23
- SC Regulation 117-335.2*
- 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
- South Carolina Revenue Advisory Bulletin #01-1*

- 12-36-2120(43) Supplies, equipment, machinery, and electricity for use in filming/producing motion pictures
South Carolina Revenue Ruling #08-12¹²
- 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 Carolina¹³
South Carolina Revenue Ruling #13-3
- 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
South Carolina Revenue Ruling #11-1; South Carolina Revenue Ruling #93-6
- 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).

- 12-36-2120(56) Machines used in research and development
South Carolina Revenue Ruling #08-3
- 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
South Carolina Revenue Ruling #09-5
- 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 facility¹⁵

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)."

- 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 facility¹⁷
- 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

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.

South Carolina Revenue Ruling #13-5

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.

South Carolina Revenue Ruling #08-12

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.

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

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.
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
- 12-36-2120(8) Newspapers, newsprint paper, and the South Carolina Department of Agriculture Market Bulletin²¹
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

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.

- 12-36-2120(10)(a) Meals or food used in furnishing meals to K-12 students in schools (not for profit)
SC Regulation 117-305.5
- 12-36-2120(26) Television, radio, and cable TV supplies, equipment, machinery, and electricity
SC Regulation 117-323; South Carolina Private Letter Ruling #12-1.
- 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 use tax 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

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.

Home Medical Systems, Inc. v. South Carolina Department of Revenue, 677 SE2d 582 (2009); *Associated Medical Specialist, P.A. v. South Carolina Tax Commission*, SC Ct. of App., Unpublished Op. No. 97-UP-447 (1997); *Drummond v. State of South Carolina*, 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 aids²⁵

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

- 12-36-2120(41) Sales by nonprofit organizations
SC Revenue Ruling #12-3; SC Revenue Ruling #09-8; SC Revenue Procedure #03-6; SC Private Revenue Opinion #01-5
- 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
SC Revenue Ruling #10-7; SC Revenue Ruling #10-8
- 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
SC Revenue Ruling #11-3
- 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
South Carolina Revenue Ruling #11-3

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

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

SC Regulation 117-337; SC Revenue Ruling #07-4

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

SC Information Letter #14-4

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

sales of qualifying sales as purchases are exempt from the State and local sales and use taxes.

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

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 Bulletin #02-12 and SC Revenue Bulletin #08-0

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.

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 South Carolina Code §12-36-2110.

- 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

- 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.

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

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:

I. 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

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

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

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.

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 - - - - -

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.

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 117.307.1

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.

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.

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

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

its owner for less than 15 days during the taxable year, provided the owner or 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).

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

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.

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 hospital's 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 exemption 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 #09-2.

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.

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)

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?

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.)

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?

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

³⁰This 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

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

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 brought to the guest's room. As such, newspapers brought to a guest's room do not fall

\$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

- 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.

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

... 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).

770 sales tax under Code Section 2503(a)(7) 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.

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

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

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.