

THE STATE OF SOUTH CAROLINA

In The Court of Appeals

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SC Court of Appeals

APPEAL FROM THE ADMINISTRATIVE LAW COURT

S. Phillip Lenski, Administrative Law Judge

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

Appellate Case No. 2021-000031

Lowe's Home Centers, LLC

Appellant,

v.

South Carolina Department of Revenue

Respondent.

RECORD ON APPEAL
Volume 12 of 12

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third and subsequent years of this tax a portion of the tax may be used for certain property tax rollbacks. The tax collected by the Department of Revenue on behalf of these municipalities.

Note: The Department publishes a chart with the various types of local sales and use taxes collected by the Department and the exemptions allowed under each tax. As of the date of this document, South Carolina Information Letter #14-17 contains the most recently published information. Updated information will be published in new information letters on the Department's website (<http://www.dor.sc.gov>) as warranted.

Catawba Indian Tribal Tax: The Catawba Indian Reservation is located in Lancaster and York counties. The application of either the state sales and use tax or the Catawba Tribal sales and use tax for sales (deliveries) made on the Catawba Indian Reservation are determined by the Catawba Indian Claims Settlement Act. The specific sales and use tax provisions can be found in South Carolina Code §27-16-130(H). The Catawba Tribal sales and use tax expires on November 28, 2092.

The following chart provides a summary of these provisions:

<u>Delivery on the Reservation From:</u>	<u>Type Tax Applicable</u>	<u>Administered and Collected By:</u>
Location On the Reservation	Tribal Sales Tax (Equal to Combined State and Local Rate*)	DOR
Location Off the Reservation But in SC – Sales \$100 or less	State Sales Tax (Local taxes would not be applicable in these circumstances.)	DOR
Location Off the Reservation But in SC – Sales Over \$100	Tribal Sales Tax (Equal to Combined State and Local Rate*)	DOR
Location Off the Reservation and Outside the State – Seller Registered with DOR	State Use Tax (Local taxes would not be applicable in these circumstances.)	DOR
Location Off the Reservation and Outside the State – Seller Not Registered with DOR	Tribal Use Tax (Equal to Combined State and Local Rate*)	Catawba Indian Tribe

* Lancaster County imposes a 1% local option sales and use tax and a 1% Capital Projects Tax. York county imposes a 1% Capital Projects sales and use tax. These local taxes are in addition to the State sales and use tax. Therefore, **effective January 1, 2012**, the tribal sales tax and the tribal use tax are imposed at the following rates:

For sales (deliveries) made on the Reservation within Lancaster County:

- 8% for general sales of tangible personal property
- 9% for sales of accommodations
- 2% for sales of unprepared foods

7% for general sales of tangible personal property
8% for sales of accommodations
0% for sales of unprepared foods

Please note that the rate for the tribal sales tax and the tribal use tax may increase or decrease dependent upon whether the total state and local sales and use tax rates change in Lancaster county or York county in the future.

C. Local Sales and Use Tax Due Dependent on County or Municipality of Delivery

The determination as to which local sales and use tax is due depends on where delivery of the tangible personal property took place.⁷

For purposes of local sales and use taxes, delivery of tangible personal property is defined to occur when and where title or possession of tangible personal property transfers from the retailer to his customer. Following are guidelines to be used in determining when and where delivery occurs:⁸

FOB Destination or Similar Terms: Delivery is considered to take place at the purchaser's location or wherever delivered to the purchaser (at the purchaser's direction).

FOB Shipping Point or Similar Terms: Delivery is considered to take place at the retailer's location. Retailers with multiple retail locations are to maintain their records so as to clearly show which sales are attributable to each location.

Shipping Terms Are Unspecified: Delivery is considered to take place at the purchaser's location or wherever delivered to the purchaser (at the purchaser's direction).

Retailer Uses Own Vehicle: If a retailer uses his own vehicle(s) for making deliveries, delivery is considered to take place at the purchaser's location or wherever delivered at the direction of the purchaser. This applies whether the vehicles are owned or leased by the retailer.

Situations Where Title Transfers, but Not Possession: Delivery is considered to take place at the retailer's location.

all needed information except for the employee name. The printer keeps possession of, but not title to, the cards. At the direction of the customer, the printer will imprint the customer's cards with an employee's name and send the imprinted cards to the customer.

Retailers with multiple retail locations are to maintain their records so as to clearly show which sales are attributable to each location.

D. Retailer's Responsibility to Remit Local Sales and Use Taxes⁹

Whether or not a retailer can be required to remit a jurisdiction's tax is dependent upon the controlling facts and the extent of the seller's activities with the jurisdiction into which tangible personal property is delivered.

If a retailer that has established Commerce Clause nexus with South Carolina purposefully avails itself of the benefits of the economic market of a jurisdiction or it has purposefully directed its efforts toward the residents of a jurisdiction, it has a minimal connection with that jurisdiction sufficient to subject it to that jurisdiction's authority and therefore require it to remit the jurisdiction's tax on its deliveries into that jurisdiction, even if it has no physical presence in that particular jurisdiction.

Examples of when a retailer that has established Commerce Clause nexus with South Carolina must remit a jurisdiction's sales and use tax include, but are not limited to:

Retailers Using Their Own Vehicles: A retailer is required to remit a jurisdiction's tax if the retailer is shipping property into the jurisdiction using his own vehicles (whether owned or leased).

Retailers Using a Contract Carrier: A retailer is required to remit a jurisdiction's tax if the retailer is shipping property into the jurisdiction using a contract carrier (an independent or related company working specifically for or otherwise representing the retailer with respect to the delivery.)

Retailers Using a Common Carrier: A retailer is required to remit a jurisdiction's tax if the retailer is shipping property into the jurisdiction using a common carrier (*e.g.*, UPS, the mail), and the retailer is subject to the jurisdiction of delivery's authority (Due Process nexus has been established with the jurisdiction of delivery).

include, but are not limited to, the following:

- (a) The retailer maintains, temporarily or permanently, directly or by subsidiary, an office, warehouse, distribution house, sales house, other place of business, or property of any kind in the jurisdiction of delivery.
- (b) The retailer or a subsidiary has, temporarily or permanently, an agent, representative (including delivery personnel and independent contractors acting on behalf of the retailer), salesman, or employee operating within the jurisdiction of delivery.
- (c) The retailer advertises via advertising media located in the jurisdiction of delivery (*e.g.*, newspapers, television, cable systems, and radio).
- (d) The retailer advertises via advertising media located outside the jurisdiction but which has coverage within the jurisdiction of delivery (*e.g.*, newspapers, television, cable systems, and radio).

Please note that these statements are only examples and that there are other circumstances in which a retailer must remit a jurisdiction's tax with respect to deliveries into that jurisdiction. Retailers must be aware that as the courts address this issue, the requirements for remitting a jurisdiction's tax may evolve and the retailer will be liable for the tax if the retailer fails to remit the tax when it has a connection with that jurisdiction sufficient to require it to remit that jurisdiction's tax. If upon being audited, it is found a retailer has a sufficient connection with a particular jurisdiction so as to require remittance of that jurisdiction's tax, but the retailer has failed to do so, the Department will assess the retailer for that jurisdiction's tax.

E. Purchasers - Reporting Requirements

Purchases of tangible personal property (not for resale) first stored, used or consumed in a local tax county are subject to the local use tax. Such purchases are to be reported on Form ST-389 by county and/or municipality where the property is first stored, used or consumed. Form ST-389 provides information as to which type of local sales and use tax must be reported by county and municipality and which type of local sales and use tax must only be reported by county.

NOTE: The purchaser is not liable for a county's local use tax if he takes delivery in another county and pays the other county's local sales tax, provided the local sales tax he paid is equal to or greater than the local use tax that would otherwise be due. If the local sales tax he paid is less than the local use tax, then the purchaser owes the difference. Also, the purchaser is relieved of the liability for the local use tax if he has a receipt from a retailer showing the retailer has collected the local use tax.

While most local sales and use taxes provide the same exemptions for certain sales and purchases, there are some differences. Exhibit A of this chapter should provide guidance concerning the various types of local sales and use taxes collected by the Department of Revenue and the types of exemptions allowed under each tax.

Local Tax Charts and Transactions Exempt from Local Sales and Use Taxes

From time to time the Department issues information letters to update the charts and other information found in this exhibit. These information letters can be found on the Department's website (www.dor.sc.gov).

Check the website regularly in order to maintain an up-to-date list of the local sales and use taxes that are being imposed in South Carolina. The most current version of this information, as of the date on this publication, is South Carolina Information Letter #14-17.

In November 2014, voters in several counties approved referendums to impose local sales and use taxes. Chart 1 includes local taxes in effect from May 1, 2014 through February 28, 2015. Chart 2 includes local taxes in effect March 1, 2015 through April 30, 2015. Chart 3 below includes local sales and use taxes in effect May 1, 2015.

Chart 4 Catawba Indian Reservation Tribal Tax and Chart 5 Municipal Sales and Use Taxes remain unchanged during this period.

May 1, 2013		SALES AND PURCHASES EXEMPT FROM LOCAL SALES AND USE TAXES						
COUNTY	TYPE OF LOCAL SALES AND USE TAX AND EFFECTIVE DATE	12-36-2120 12-36-2130 STATE EXEMPTIONS	12-36-2110 EXEMPTION FOR MAXIMUM TAX ITEMS	12-36-1710 EXEMPTION FOR CASUAL EXCISE ITEMS	EXEMPTION FOR FOOD STAMP PURCHASES	EXEMPTION FOR CERTAIN FOOD SALES	GRANDFATHER CLAUSE EXEMPTION FOR CERTAIN PURCHASES BY CONTRACTORS	NOTE
Abbeville	Local Option 5/1/92	Yes	Yes	Yes	Yes	No	Yes	
Aiken	Capital Projects 1/1/2013	Yes	Yes	No	Yes	Yes	Yes	1 & 26
Allendale	Local Option 5/1/92	Yes	Yes	Yes	Yes	No	Yes	5
	Capital Projects 5/1/09	Yes	Yes	No	Yes	No	Yes	1 & 5
Anderson	No Local Sales and Use Tax is Imposed in this County							25
Bamberg	Local Option 5/1/92	Yes	Yes	Yes	Yes	No	Yes	29
	Capital Project 5/1/13	Yes	Yes	No	Yes	Yes	Yes	1 & 29
Barnwell	Local Option 5/1/99	Yes	Yes	Yes	Yes	No	Yes	
Beaufort	No Local Sales and Use Tax is Imposed in this County							6
Berkeley	Local Option 5/1/97	Yes	Yes	Yes	Yes	No	Yes	17
	Transportation 5/1/09	Yes	Yes	No	Yes	No	Yes	1 & 17
Calhoun	Local Option 5/1/05	Yes	Yes	Yes	Yes	No	Yes	
Charleston	Local Option 7/1/91	Yes	Yes	Yes	Yes	No	Yes	8
	Transportation 5/1/05	Yes	Yes	No	Yes	No	Yes	1 & 8
	Ed. Capital Imp. 3/1/11	Yes	Yes	No	Yes	Yes	Yes	1 & 8
Cherokee	Cherokee School 7/1/96	Yes	Yes	No	Yes	Yes	Yes	1 & 13
	Local Option 5/1/09	Yes	Yes	Yes	Yes	No	Yes	18
Chestar	Local Option 5/1/94	Yes	Yes	Yes	Yes	No	Yes	3
	Capital Projects 5/1/09	Yes	Yes	No	Yes	No	Yes	1 & 3

COUNTY	LOCAL SALES AND USE TAX AND EFFECTIVE DATE	EXEMPTIONS 12-36-2130 STATE EXEMPTIONS	EXEMPTION FOR MAXIMUM TAX ITEMS	EXEMPTION FOR CASUAL EXCISE ITEMS	EXEMPTION FOR FOOD STAMP PURCHASES	EXEMPTION FOR CERTAIN FOOD SALES	GRANDFATHER CLAUSE EXEMPTION FOR CERTAIN PURCHASES BY CONTRACTORS	NOTE
Chesterfield	Local Option 5/1/97	Yes	Yes	Yes	Yes	No	Yes	4
	Chesterfield School 9-1-00	Yes	Yes	No	Yes	Yes	Yes	1 & 4
Clarendon	Local Option 5/1/97	Yes	Yes	Yes	Yes	No	Yes	11
	Clarendon Schools 6/1/04	Yes	Yes	No	Yes	Yes - until 6/30/05 No - effective 7/1/05	Yes	1 & 11
Colleton	Local Option 7/1/91	Yes	Yes	Yes	Yes	No	Yes	
Darlington	Local Option 5/1/97	Yes	Yes	Yes	Yes	No	Yes	10
	Darlington School 2/1/04	Yes	Yes	No	Yes	Yes	Yes	1 & 10
Dillon	Local Option 5/1/96	Yes	Yes	Yes	Yes	No	Yes	7
	School District 10/1/08	Yes	Yes	No	Yes	Yes	Yes	1 & 7
Dorchester	Transportation 5/1/05	Yes	Yes	No	Yes	No	Yes	1
Edgefield	Local Option 5/1/92	Yes	Yes	Yes	Yes	No	Yes	
Fairfield	Local Option 5/1/06	Yes	Yes	Yes	Yes	No	Yes	
Florence	Local Option 5/1/94	Yes	Yes	Yes	Yes	No	Yes	15
	Capital Projects 5/1/14	Yes	Yes	No	Yes	Yes	Yes	1 & 15
Georgetown	No Local Sales and Use Tax is Imposed in this County							25
Greenville	No Local Sales and Use Tax is Imposed in this County							25
Greenwood	No Local Sales and Use Tax is Imposed in this County							23
Hampton	Local Option 7/1/91	Yes	Yes	Yes	Yes	No	Yes	9
	Capital projects 5/1/13	Yes	Yes	No	Yes	Yes	Yes	1 & 9

COUNTY	TYPE OF LOCAL SALES AND USE TAX AND EFFECTIVE DATE	EXEMPTION 12-36-2130 STATE EXEMPTIONS	EXEMPTION FOR MAXIMUM TAX ITEMS	EXEMPTION FOR CASUAL EXCISE ITEMS	EXEMPTION FOR FOOD STAMP PURCHASES	EXEMPTION FOR CERTAIN FOOD SALES	EXEMPTION CLAUSE FOR CERTAIN EXEMPTION FOR PURCHASES BY CONTRACTORS	NOTE
<i>Jasper</i>	Local Option 7/1/91	Yes	Yes	Yes	Yes	No	Yes	2
	Jasper School 12/1/02	Yes	Yes	No	Yes	Yes	Yes	1 & 2
<i>Kershaw</i>	Local Option 5/1/97	Yes	Yes	Yes	Yes	No	Yes	
<i>Lancaster</i>	Local Option 5/1/92	Yes	Yes	Yes	Yes	No	Yes	19
	Capital Projects 5/1/09	Yes	Yes	No	Yes	No	Yes	1 & 19
<i>Laurens</i>	Local Option 5/1/99	Yes	Yes	Yes	Yes	No	Yes	
<i>Lee</i>	Local Option 5/1/96	Yes	Yes	Yes	Yes	No	Yes	14
	Capital Projects 5/1/13	Yes	Yes	No	Yes	Yes	Yes	1 & 14
<i>Lexington</i>	Lexington Schools 3/1/12	Yes	Yes	No	Yes	Yes	Yes	1 & 24
<i>Murion</i>	Local Option 7/1/91	Yes	Yes	Yes	Yes	No	Yes	28
	Capital Projects 5/1/13	Yes	Yes	No	Yes	Yes	Yes	1 & 28
<i>Marlboro</i>	Local Option 5/1/92	Yes	Yes	Yes	Yes	No	Yes	27
	Marlboro Schools 2/1/13	Yes	Yes	No	Yes	Yes	Yes	1 & 27
<i>McCormick</i>	Local Option 7/1/91	Yes	Yes	Yes	Yes	No	Yes	
<i>Newberry</i>	Capital Projects 4/1/12	Yes	Yes	No	Yes	No	Yes	1 & 22
<i>Oconee</i>	No Local Sales and Use Tax is Imposed in this County							25
<i>Orangeburg</i>	Capital Projects 4/1/13	Yes	Yes	No	Yes	Yes	Yes	1 & 31
<i>Pickens</i>	Local Option 5/1/95	Yes	Yes	Yes	Yes	No	Yes	
<i>Richland</i>	Local Option 5/1/05	Yes	Yes	Yes	Yes	No	Yes	30

COUNTY	LOCAL SALES AND USE TAX AND EFFECTIVE DATE	12-36-2130 STATE EXEMPTIONS	EXEMPTION FOR MAXIMUM TAX ITEMS	EXEMPTION FOR CASUAL EXCISE ITEMS	FOR FOOD STAMP PURCHASES	FOR CERTAIN FOOD SALES	CLAUSE EXEMPTION FOR CERTAIN PURCHASES BY CONTRACTORS	REMARKS
Saluda	Local Option 5/1/92	Yes	Yes	Yes	Yes	No	Yes	
Spartanburg	No Local Sales and Use Tax is Imposed in this County							25
Sumter	Local Option 5/1/96	Yes	Yes	Yes	Yes	No	Yes	20
	Capital Projects 5/1/09	Yes	Yes	No	Yes	No	Yes	1 & 20
Union	No Local Sales and Use Tax is Imposed in this County							25
Williamsburg	Local Option 5/1/97	Yes	Yes	Yes	Yes	No	Yes	
York	Capital Projects 1/1/12	Yes	Yes	No	Yes	Yes	Yes	1 & 21

March 1, 2015		SALES AND PURCHASES EXEMPT FROM LOCAL SALES AND USE TAXES						
COUNTY	TYPE OF LOCAL SALES AND USE TAX AND EFFECTIVE DATE	12-36-2120 12-36-2130 STATE EXEMPTIONS	12-36-2110 EXEMPTION FOR MAXIMUM TAX ITEMS	12-36-1710 EXEMPTION FOR CASUAL EXCISE ITEMS	EXEMPTION FOR FOOD STAMP PURCHASES	EXEMPTION FOR CERTAIN FOOD SALES	GRANDFATHER CLAUSE EXEMPTION FOR CERTAIN PURCHASES BY CONTRACTORS	NOTE
Abbeville	Local Option 5/1/92	Yes	Yes	Yes	Yes	No	Yes	
Aiken	Capital Projects 1/1/13	Yes	Yes	No	Yes	Yes	Yes	1 & 26
	Ed. Capital Imp. 3/1/15	Yes	Yes	No	Yes	Yes	Yes	1 & 26
Allendale	Local Option 5/1/92	Yes	Yes	Yes	Yes	No	Yes	5
	Capital Projects 5/1/09	Yes	Yes	No	Yes	No	Yes	1 & 5
Anderson	Ed. Capital Imp. 3/1/15	Yes	Yes	No	Yes	Yes	Yes	1 & 32
Bamberg	Local Option 5/1/92	Yes	Yes	Yes	Yes	No	Yes	29
	Capital Project 5/1/13	Yes	Yes	No	Yes	Yes	Yes	1 & 29
Barnwell	Local Option 5/1/99	Yes	Yes	Yes	Yes	No	Yes	
Beaufort	No Local Sales and Use Tax is Imposed in this County							6
Berkeley	Local Option 5/1/97	Yes	Yes	Yes	Yes	No	Yes	17
	Transportation 5/1/09	Yes	Yes	No	Yes	No	Yes	1 & 17
Calthoun	Local Option 5/1/05	Yes	Yes	Yes	Yes	No	Yes	
Charleston	Local Option 7/1/91	Yes	Yes	Yes	Yes	No	Yes	8
	Transportation 5/1/05	Yes	Yes	No	Yes	No	Yes	1 & 8
	Ed. Capital Imp. 3/1/11	Yes	Yes	No	Yes	Yes	Yes	1 & 8
Cherokee	Local Option 5/1/09	Yes	Yes	Yes	Yes	No	Yes	18
	Ed. Capital Imp. 3/1/15	Yes	Yes	No	Yes	Yes	Yes	1 & 18

COUNTY	TYPE OF LOCAL SALES AND USE TAX AND EFFECTIVE DATE	12-36-2120 12-36-2130 STATE EXEMPTIONS	12-36-2110 EXEMPTION FOR MAXIMUM TAX ITEMS	12-36-1710 EXEMPTION FOR CASUAL EXCISE ITEMS	EXEMPTION FOR FOOD STAMP PURCHASES	EXEMPTION FOR CERTAIN FOOD SALES	"GRANDFATHER CLAUSE" EXEMPTION FOR CERTAIN PURCHASES BY CONTRACTORS	NOTE
Chester	Local Option 5/1/94	Yes	Yes	Yes	Yes	No	Yes	3
	Capital Projects 5/1/09	Yes	Yes	No	Yes	No	Yes	1 & 3
Chesterfield	Local Option 5/1/97	Yes	Yes	Yes	Yes	No	Yes	4
	Chesterfield School 9-1-00	Yes	Yes	No	Yes	Yes	Yes	1 & 4
Clarendon	Local Option 5/1/97	Yes	Yes	Yes	Yes	No	Yes	11
	Clarendon Schools 6/1/04	Yes	Yes	No	Yes	Yes - until 6/30/05 No - effective 7/1/05	Yes	1 & 11
Colleton	Local Option 7/1/91	Yes	Yes	Yes	Yes	No	Yes	
Darlington	Local Option 5/1/97	Yes	Yes	Yes	Yes	No	Yes	10
	Darlington School 2/1/04	Yes	Yes	No	Yes	Yes	Yes	1 & 10
Dillon	Local Option 5/1/96	Yes	Yes	Yes	Yes	No	Yes	7
	School District 10/1/08	Yes	Yes	No	Yes	Yes	Yes	1 & 7
Durham	Transportation 5/1/05	Yes	Yes	No	Yes	No	Yes	1
Edgefield	Local Option 5/1/92	Yes	Yes	Yes	Yes	No	Yes	
Fairfield	Local Option 5/1/06	Yes	Yes	Yes	Yes	No	Yes	
Florence	Local Option 5/1/94	Yes	Yes	Yes	Yes	No	Yes	15
	Capital Projects 5/1/14	Yes	Yes	No	Yes	Yes	Yes	1 & 15
Georgetown	No Local Sales and Use Tax is Imposed in this County							25
Greenville	No Local Sales and Use Tax is Imposed in this County							25
Greenwood	No Local Sales and Use Tax is Imposed in this County							22

COUNTY	TYPE OF LOCAL SALES AND USE TAX AND EFFECTIVE DATE	12-36-2120 12-36-2130 STATE EXEMPTIONS	12-36-2110 EXEMPTION FOR MAXIMUM TAX ITEMS	12-36-1710 EXEMPTION FOR CASUAL EXCISE ITEMS	EXEMPTION FOR FOOD STAMP PURCHASES	EXEMPTION FOR CERTAIN FOOD SALES	"GRANDFATHER CLAUSE" EXEMPTION FOR CERTAIN PURCHASES BY CONTRACTORS	NOTE
Hampton	Local Option 7/1/91	Yes	Yes	Yes	Yes	No	Yes	9
	Capital projects 5/1/13	Yes	Yes	No	Yes	Yes	Yes	1 & 9
Horry	Ed. Capital Imp. 3/1/09	Yes	Yes	No	Yes	Yes	Yes	1 & 16
Jasper	Local Option 7/1/91	Yes	Yes	Yes	Yes	No	Yes	2
	Jasper School 12/1/02	Yes	Yes	No	Yes	Yes	Yes	1 & 2
Kershaw	Local Option 5/1/97	Yes	Yes	Yes	Yes	No	Yes	
Lancaster	Local Option 5/1/92	Yes	Yes	Yes	Yes	No	Yes	19
	Capital Projects 5/1/09	Yes	Yes	No	Yes	No	Yes	1 & 19
Laurens	Local Option 5/1/99	Yes	Yes	Yes	Yes	No	Yes	
Lee	Local Option 5/1/96	Yes	Yes	Yes	Yes	No	Yes	14
	Capital Projects 5/1/13	Yes	Yes	No	Yes	Yes	Yes	1 & 14
Lexington	Lexington Schools 3/1/12	Yes	Yes	No	Yes	Yes	Yes	1 & 24
Marion	Local Option 7/1/91	Yes	Yes	Yes	Yes	No	Yes	28
	Capital Projects 5/1/13	Yes	Yes	No	Yes	Yes	Yes	1 & 28
Marlboro	Local Option 5/1/92	Yes	Yes	Yes	Yes	No	Yes	27
	Marlboro Schools 2/1/13	Yes	Yes	No	Yes	Yes	Yes	1 & 28
McCormick	Local Option 7/1/91	Yes	Yes	Yes	Yes	No	Yes	
Newberry	Capital Projects 4/1/12	Yes	Yes	No	Yes	No	Yes	1 & 22

COUNTY	TYPE OF LOCAL SALES AND USE TAX AND EFFECTIVE DATE	12-36-2120 12-36-2130 STATE EXEMPTIONS	12-36-2110 EXEMPTION FOR MAXIMUM TAX ITEMS	12-36-1710 EXEMPTION FOR CASUAL EXCISE ITEMS	EXEMPTION FOR FOOD STAMP PURCHASES	EXEMPTION FOR CERTAIN FOOD SALES	"GRANDFATHER CLAUSE" EXEMPTION FOR CERTAIN PURCHASES BY CONTRACTORS	NOTE
Orangeburg	Capital Projects 4/1/13	Yes	Yes	No	Yes	Yes	Yes	1 & 31
Pickens	Local Option 5/1/95	Yes	Yes	Yes	Yes	No	Yes	
Richland	Local Option 5/1/05	Yes	Yes	Yes	Yes	No	Yes	30
	Transportation 5/1/13	Yes	Yes	No	Yes	No	Yes	1 & 30
Saluda	Local Option 5/1/92	Yes	Yes	Yes	Yes	No	Yes	
Spartanburg	No Local Sales and Use Tax is Imposed in this County							25
Sumter	Local Option 5/1/96	Yes	Yes	Yes	Yes	No	Yes	20
	Capital Projects 5/1/09	Yes	Yes	No	Yes	No	Yes	1 & 20
Union	No Local Sales and Use Tax is Imposed in this County							25
Williamsburg	Local Option 5/1/97	Yes	Yes	Yes	Yes	No	Yes	
York	Capital Projects 1/1/12	Yes	Yes	No	Yes	Yes	Yes	1 & 21

May 1, 2015

SALES AND PURCHASES EXEMPT FROM LOCAL SALES AND USE TAXES

COUNTY	TYPE OF LOCAL SALES AND USE TAX AND EFFECTIVE DATE	12-36-2120 12-36-2130 STATE EXEMPTIONS	12-36-2110 EXEMPTION FOR MAXIMUM TAX ITEMS	12-36-1710 EXEMPTION FOR CASUAL EXCISE ITEMS	EXEMPTION FOR FOOD STAMP PURCHASES	EXEMPTION FOR CERTAIN FOOD SALES	"GRANDFATHER" CLAUSE EXEMPTION FOR CERTAIN PURCHASES BY CONTRACTORS	NOTE
Abbeville	Local Option 5/1/92	Yes	Yes	Yes	Yes	No	Yes	
Aiken	Capital Projects 1/1/2013	Yes	Yes	No	Yes	Yes	Yes	1 & 26
	Ed. Capital Imp. 3/1/15	Yes	Yes	No	Yes	Yes	Yes	1 & 26
Allendale	Local Option 5/1/92	Yes	Yes	Yes	Yes	No	Yes	5
	Capital Projects 5/1/09	Yes	Yes	No	Yes	No	Yes	1 & 5
Anderson	Ed. Capital Imp. 3/1/15	Yes	Yes	No	Yes	Yes	Yes	1 & 32
Bamberg	Local Option 5/1/92	Yes	Yes	Yes	Yes	No	Yes	29
	Capital Project 5/1/13	Yes	Yes	No	Yes	Yes	Yes	1 & 29
Barnwell	Local Option 5/1/99	Yes	Yes	Yes	Yes	No	Yes	
Beaufort	No Local Sales and Use Tax is Imposed in this County							6
Berkeley	Local Option 5/1/97	Yes	Yes	Yes	Yes	No	Yes	17
	Transportation 5/1/09	Yes	Yes	No	Yes	No	Yes	1 & 17
Calhoun	Local Option 5/1/05	Yes	Yes	Yes	Yes	No	Yes	
Charleston	Local Option 7/1/91	Yes	Yes	Yes	Yes	No	Yes	8
	Transportation 5/1/05	Yes	Yes	No	Yes	No	Yes	1 & 8
	Ed. Capital Imp. 3/1/11	Yes	Yes	No	Yes	Yes	Yes	1 & 8
Cherokee	Local Option 5/1/09	Yes	Yes	Yes	Yes	No	Yes	18
	Ed. Capital Imp. 3/1/15	Yes	Yes	No	Yes	Yes	Yes	1 & 18

	LOCAL SALES AND USE TAX AND EFFECTIVE DATE	12-36-2130 STATE EXEMPTIONS	EXEMPTION FOR MAXIMUM TAX ITEMS	EXEMPTION FOR CASUAL EXCISE ITEMS	FOR FOOD STAMP PURCHASES	FOR CERTAIN FOOD SALES	CLAUSE EXEMPTION FOR CERTAIN PURCHASES BY CONTRACTORS	
<i>Chester</i>	Local Option 5/1/94	Yes	Yes	Yes	Yes	No	Yes	3
	Capital Projects 5/1/09	Yes	Yes	No	Yes	No	Yes	1 & 3
<i>Chesterfield</i>	Local Option 5/1/97	Yes	Yes	Yes	Yes	No	Yes	4
	Chesterfield School 9-1-00	Yes	Yes	No	Yes	Yes	Yes	1 & 4
<i>Clarendon</i>	Local Option 5/1/97	Yes	Yes	Yes	Yes	No	Yes	11
	Clarendon Schools 6/1/04	Yes	Yes	No	Yes	Yes - until 6/30/05 No - effective 7/1/05	Yes	1 & 11
<i>Colleton</i>	Local Option 7/1/91	Yes	Yes	Yes	Yes	No	Yes	1 & 33
	Capital Projects 5/1/15	Yes	Yes	No	Yes	Yes	Yes	
<i>Darlington</i>	Local Option 5/1/97	Yes	Yes	Yes	Yes	No	Yes	10
	Darlington School 2/1/04	Yes	Yes	No	Yes	Yes	Yes	1 & 10
<i>Dillon</i>	Local Option 5/1/96	Yes	Yes	Yes	Yes	No	Yes	7
	School District 10/1/08	Yes	Yes	No	Yes	Yes	Yes	1 & 7
<i>Dorchester</i>	Transportation 5/1/05	Yes	Yes	No	Yes	No	Yes	1
<i>Edgefield</i>	Local Option 5/1/92	Yes	Yes	Yes	Yes	No	Yes	
<i>Fairfield</i>	Local Option 5/1/06	Yes	Yes	Yes	Yes	No	Yes	
<i>Florence</i>	Local Option 5/1/94	Yes	Yes	Yes	Yes	No	Yes	15
	Capital Projects 5/1-14	Yes	Yes	No	Yes	Yes	Yes	1 & 15
<i>Georgetown</i>	Capital Projects 5/1/15	Yes	Yes	No	Yes	No	Yes	1 & 34

	LOCAL SALES AND USE TAX AND EFFECTIVE DATE	12-36-2130 STATE EXEMPTIONS	EXEMPTION FOR MAXIMUM TAX ITEMS	EXEMPTION FOR CASUAL EXCISE ITEMS	FOR FOOD STAMP PURCHASES	FOR CERTAIN FOOD SALES	CLAUSE EXEMPTION FOR CERTAIN PURCHASES BY CONTRACTORS	
<i>Hampton</i>	Local Option 7/1/91	Yes	Yes	Yes	Yes	No	Yes	9
	Capital projects 5/1/13	Yes	Yes	No	Yes	Yes	Yes	1 & 9
<i>Horry</i>	Ed. Capital Imp. 3/1/09	Yes	Yes	No	Yes	Yes	Yes	1 & 16
<i>Jasper</i>	Local Option 7/1/91	Yes	Yes	Yes	Yes	No	Yes	2
	Jasper School 12/1/02	Yes	Yes	No	Yes	Yes	Yes	1 & 2
<i>Kershaw</i>	Local Option 5/1/97	Yes	Yes	Yes	Yes	No	Yes	
<i>Lancaster</i>	Local Option 5/1/92	Yes	Yes	Yes	Yes	No	Yes	19
	Capital Projects 5/1/09	Yes	Yes	No	Yes	No	Yes	1 & 19
<i>Laurens</i>	Local Option 5/1/99	Yes	Yes	Yes	Yes	No	Yes	
<i>Lee</i>	Local Option 5/1/96	Yes	Yes	Yes	Yes	No	Yes	14
	Capital Projects 5/1/13	Yes	Yes	No	Yes	Yes	Yes	1 & 14
<i>Lexington</i>	Lexington Schools 3/1/12	Yes	Yes	No	Yes	Yes	Yes	1 & 24
<i>Marion</i>	Local Option 7/1/91	Yes	Yes	Yes	Yes	No	Yes	28
	Capital Projects 5/1/13	Yes	Yes	No	Yes	Yes	Yes	1 & 28
<i>Marlboro</i>	Local Option 5/1/92	Yes	Yes	Yes	Yes	No	Yes	27
	Marlboro Schools 2/1/13	Yes	Yes	No	Yes	Yes	Yes	1 & 27
<i>McCormick</i>	Local Option 7/1/91	Yes	Yes	Yes	Yes	No	Yes	
<i>Newberry</i>	Capital Projects 4/1/12	Yes	Yes	No	Yes	No	Yes	1 & 22
<i>Curry</i>	No Local Sales and Use Tax is Imposed in this County							25

COUNTY	LOCAL SALES AND USE TAX AND EFFECTIVE DATE	12-36-2130 STATE EXEMPTIONS	EXEMPTION FOR MAXIMUM TAX ITEMS	EXEMPTION FOR CASUAL EXCISE ITEMS	FOR FOOD STAMP PURCHASES	FOR CERTAIN FOOD SALES	CLAUSE EXEMPTION FOR CERTAIN PURCHASES BY CONTRACTORS	
Orangeburg	Capital Projects 4/1/13	Yes	Yes	No	Yes	Yes	Yes	1 & 31
Pickens	Local Option 5/1/95	Yes	Yes	Yes	Yes	No	Yes	
Richland	Local Option 5/1/05	Yes	Yes	Yes	Yes	No	Yes	30
	Transportation 5/1/13	Yes	Yes	No	Yes	No	Yes	1 & 30
Saluda	Local Option 5/1/92	Yes	Yes	Yes	Yes	No	Yes	
Spartanburg	No Local Sales and Use Tax is Imposed in this County							25
Sumter	Local Option 5/1/96	Yes	Yes	Yes	Yes	No	Yes	20
	Capital Projects 5/1/09	Yes	Yes	No	Yes	No	Yes	1 & 20
Union	No Local Sales and Use Tax is Imposed in this County							25
Williamsburg	Local Option 5/1/97	Yes	Yes	Yes	Yes	No	Yes	
York	Capital Projects 1/1/12	Yes	Yes	No	Yes	Yes	Yes	1 & 22

Please note that this chart includes only general local option taxes collected by the Department of Revenue on behalf of the counties and school districts. It does not include the local taxes on sales of accommodations or on sales of prepared meals that are collected directly by the counties or municipalities.

SALES AND PURCHASES EXEMPT FROM LOCAL SALES AND USE TAXES								
RESERVATION LOCATED IN YORK AND LANCASTER COUNTIES	TYPE OF LOCAL SALES AND USE TAX AND EFFECTIVE DATE	12-36-2120 12-36-2130 STATE EXEMPTIONS	12-36-2110 EXEMPTION FOR MAXIMUM TAX ITEMS	12-36-1710 EXEMPTION FOR CASUAL EXCISE ITEMS	EXEMPTION FOR FOOD STAMP PURCHASES	EXEMPTION FOR CERTAIN FOOD SALES	GRANDFATHER CLAUSE EXEMPTION FOR CERTAIN PURCHASES BY CONTRACTORS	NOTE
Catawba Indian Reservation	Tribal Tax (See Notes #12 and #13)	Yes	See Note #13	See Note #13	Yes	See Note #12	See Note #13	12 & 13

CHART 5: MUNICIPAL SALES AND USE TAXES¹⁴

SALES AND PURCHASES EXEMPT FROM LOCAL SALES AND USE TAXES								
Municipality	TYPE OF LOCAL SALES AND USE TAX AND EFFECTIVE DATE	12-36-2120 12-36-2130 STATE EXEMPTIONS	12-36-2110 EXEMPTION FOR MAXIMUM TAX ITEMS	12-36-1710 EXEMPTION FOR CASUAL EXCISE ITEMS	EXEMPTION FOR FOOD STAMP PURCHASES	EXEMPTION FOR CERTAIN FOOD SALES	GRANDFATHER CLAUSE EXEMPTION FOR CERTAIN PURCHASES BY CONTRACTORS	NOTE
Myrtle Beach	Tourism Development 8/1/09	Yes	Yes	No	Yes	Yes	Yes	1

LOCAL TAX RATES:

Each local tax listed in the above charts is imposed at a rate of 1%, except for the Charleston County Transportation Tax which is imposed at a rate of 1/2 of 1% (Charts #1, #2, and #3) and the Catawba Tribal Sales and Use Tax (Chart #4). See Notes #12 and #13 for information on the tax rates and the application of either the State sales and use tax or the Catawba Tribal Sales and Use Tax for sales (deliveries) made on the Catawba Indian Reservation.

REMITTANCE OF LOCAL SALES AND USE TAXES BY RETAILERS:

For information on when a retailer is required to remit a local sales and use tax when delivering product to a purchaser in another county, see SC Revenue Ruling #09-9.¹⁵

¹³ Chart 4 concerns the Catawba Tribal Sales and Use Tax; however, see Notes #12 and #13 for information on the tax rates and the application of either the State sales and use tax or the Catawba Tribal sales and use tax for sales (deliveries) made on the Catawba Indian Reservation.

¹⁴ Chart 5 concerns the Local Tourism Development Sales and Use Tax that may only be imposed by municipalities located in a county where revenue from state accommodations tax is at least \$14 million in a fiscal year. As of the date of this publication, only Horry County meets this criterion; therefore, only municipalities in Horry County may impose the Local Tourism Development Sales and Use Tax at this time.

¹⁵ For a detailed discussion of this matter, see also SC Revenue Ruling #05-16. However, please note that SC Revenue Ruling #09-9 modifies SC Revenue Ruling #05-16 since at the time it was issued all local

For information on when a retailer is required to remit a local sales and use tax when delivering product to a purchaser in another county, see SC Revenue Ruling #09-9.¹⁶

TYPES OF EXEMPTIONS:

State Exemptions - 12-36-2120: Except for sales of unprepared food exempt from the 6% state sales and use tax under Code Section 12-36-2120(75), sales of tangible personal property exempt from the State sales and use tax are exempt from the local sales and use tax if marked "Yes" under this column.

Note: Sales of unprepared food are only exempt from a local sales and use tax if the local sales and use tax law specifically exempts such sales. For information on the exemption for sales of unprepared food from local sales and use taxes, see the discussion below entitled "Exemption for Certain Food Sales."

Exemption for Maximum Tax Items- 12-36-2110: Sales of items subject to a maximum tax under the State sales and use tax law [i.e. aircraft, motor vehicles, motorcycles, boats, trailers and semitrailers pulled by truck tractors, horse trailers, recreational vehicles (including tent campers, travel trailers, park models, park trailers, motor homes, and fifth wheels), self-propelled light construction equipment, unassembled aircraft, manufactured homes, musical instruments and office equipment purchased by certain religious organizations and fire safety education trailers] are exempt from the local sales and use tax if marked "Yes" under this column.

Exemption for Casual Excise Tax Items - 12-36-1710: Sales of items subject to the casual excise tax under Code Section 12-36-1710 through Code Section 12-36-1740 (i.e. motor vehicles, motorcycles, boats, motors, and airplanes required to be registered, titled, or licensed) are exempt from the local sales and use tax if marked "Yes" under this column.

Exemption for Food Stamp Purchases: Sales of food purchased with food stamps are exempt from the State sales and use tax; therefore, such sales are exempt from the local sales and use tax if marked "Yes" under this column.

Exemption for Certain Food Sales: Sales of certain foods are exempt from the local sales and use tax if marked "Yes" under this column. Sales of food which are eligible to be purchased with United States Department of Agriculture food stamps come under this exemption. This exemption applies to everyone, not just persons using food stamps.

¹⁶ For a detailed discussion of this matter, see also SC Revenue Ruling #05-16. However, please note that SC Revenue Ruling #09-9 modifies SC Revenue Ruling #05-16 since at the time it was issued all local

- * Any food intended to be eaten at home by people, including snacks, beverages and seasonings
- * Seeds and plants intended to grow food (not birdseed or seeds to grow flowers)
- * Cold items, which may include salads or sandwiches, intended to be eaten at home by people

Items which cannot be purchased with food stamps and are, therefore, subject to these local sales and use taxes are:

- * Alcoholic beverages, such as beer, wine, or liquor
- * Hot beverages ready to drink, such as coffee
- * Tobacco
- * Hot foods ready to eat
- * Foods designed to be heated in the store
- * Hot and cold food to be eaten at a lunch counter, in a dining area or anywhere else in the store or in a nearby area such as a mall food court
- * Vitamins and medicines (Note: Sales of certain medicines are exempt from the State sales and use tax, and therefore, are also exempt from all local sales and use taxes.)
- * Pet food
- * Any non-food items such as tissue, soap or other household goods

For more detailed information on this food exemption, see SC Regulation 117-337.

"Grandfather Clause" Exemption for Certain Purchases By Construction

Contractors: All the local sales and use taxes discussed in this publication exempt purchases of building materials for use under a construction contract if both of the following conditions are met:

- A. 1. the construction contract is executed before the imposition date; or
2. a written bid is submitted before the imposition date culminating in a

SC Department of Revenue
ATTN: Registration
P.O. Box 125
Columbia, SC 29214-0140

A "verified copy" is a copy accompanied by a statement, signed under penalties of perjury, that it is true and correct. If the contractor is a corporation, the statement is to be signed by an officer of the corporation or an employee authorized to sign. If the contractor is a partnership, the statement is to be signed by a general partner. If the contractor is a sole proprietorship, the owner is to sign.

Special Exemption Certificate. In order for a contractor to purchase building materials for a particular contract free of the local tax, the contractor must complete Form ST-10-C ("Application for Exemption from Local Option Tax") and submit it to the Department of Revenue. If the Department determines the contract in question meets the above requirements, the contractor will be issued a special exemption certificate (Form ST-35). The certificate may only be used to purchase building materials for the contract for which it is issued and may not be used to purchase anything other than building material. If the contractor uses this certificate to make purchases free of the local tax, upon which the tax should have been paid, then the contractor will be held liable for the tax. **Also, the certificate does not allow the contractor to make purchases of building materials free of the State tax.**

An exemption certificate (Form ST-35) issued by the Department of Revenue to a prime contractor under this exemption may not be used by a subcontractor nor may a prime contractor use a subcontractor's exemption certificate. Each contractor must obtain his own certificate for each construction contract.

Note #1: Only local option taxes automatically exempt casual excise tax items. All other local taxes would require the county to provide a specific exemption for casual excise tax items. By not exempting items subject to the casual excise tax ("No" in the "Casual Excise Items" column), counties imposing this local sales and use tax will impose the local tax on sales and purchases of trailers that can be pulled by vehicles other than truck tractors, sales of pole trailers and sales of boat motors not attached to a boat at the time of sale, but will not impose the local sales and use tax on items subject to a maximum tax under the State sales and use tax law.

Note #2: Since December 1, 2002, Jasper County has imposed two local sales and use taxes - a 1% Local Option Tax and a 1% Jasper School Tax. Jasper County has imposed the 1% Local Option Tax since July 1, 1991. From May 1, 1999 through November 30, 2002, Jasper County imposed a 1% Capital Projects Tax in addition to the 1% Local Option Tax.

1% Local Option Tax since May 1, 1994. Chester County had previously imposed another 1% Capital Projects Tax for the period of May 1, 1999 through April 30, 2000.

Note #4: Since September 1, 2000, Chesterfield County has imposed two local sales and use taxes - a 1% Local Option Tax and a 1% Chesterfield School Tax. Chesterfield County has imposed the 1% Local Option Tax since May 1, 1997.

Note #5: Since May 1, 2009, Allendale County has imposed two local sales and use taxes - a 1% Local Option Tax and a 1% Capital Projects Tax. Allendale County has imposed the Local Option Tax since May 1, 1992 and previously imposed a 1% Capital Projects Tax from May 1, 2001 until December 31, 2006. In November 2008, the citizens of Allendale County voted to impose a 1% Capital Projects Tax again, but the vote was not timely certified, which would have postponed the imposition of the tax until May 1, 2010. On February 25, 2009, the Governor signed Act No. 84 of 2009, making the 1% Capital Projects Tax in Allendale County effective May 1, 2009.

Note #6: Effective July 1, 2012, Beaufort County imposes no local sales and use tax and only imposes the state sales and use tax. Beaufort County imposed a 1% Transportation Tax from June 1, 1999 until November 30, 2000. In November 2006, the citizens of Beaufort County voted to impose a 1% Transportation Tax again, but the vote was not timely certified, which would have postponed the imposition of the tax until May 1, 2008. On February 19, 2006, the Governor signed Act No. 123 of 2007, making the 1% Transportation Tax in Beaufort County effective May 1, 2007. This 1% Transportation Tax expired at midnight on June 30, 2012.

Note #7: Since October 1, 2008, Dillon County has imposed two local sales and use taxes - a 1% Local Option Tax and a 1% School District Tax. Dillon County has imposed the 1% Local Option Tax since May 1, 1996. From May 1, 2003 until September 30, 2008, Dillon County imposed a 1% Capital Projects Tax in addition to the 1% Local Option Tax.

Note #8: Since March 1, 2011, Charleston County has imposed three local sales and use taxes - a 1% Local Option Tax, a 1/2 of 1% Transportation Tax, and a 1% Education Capital Improvement Tax. Charleston County has imposed the 1% Local Option Tax since July 1, 1991 and the 1/2 of 1% Transportation Tax since May 1, 2005. Prior to enacting the Transportation Tax, Charleston County was scheduled to impose another 0.5% Transportation Tax in May of 2003, but the tax was not imposed as a result of a South Carolina Supreme Court decision.

Note #9: Since May 1, 2013, Hampton County has imposed two local sales and use taxes - a 1% Local Option tax and a 1% Capital Projects Tax. Hampton County has imposed the 1% Local Option Tax since July 1, 1991. Hampton County previously imposed a 1% Capital Projects Tax from May 1, 2003 until December 31, 2009.

imposed the 1% Local Option Tax since May 1, 1997.

Note #11: Since June 1, 2004, Clarendon County has imposed two local sales and use taxes - a 1% Local Option Tax and a 1% Clarendon Schools Tax. Sales of foods that are eligible to be purchased with United States Department of Agriculture food stamps, which were exempt from the 1% Clarendon School Tax for the period of June 1, 2004 through June 30, 2005, are subject to the 1% Clarendon School Tax effective July 1, 2005, pursuant to Act No. 195 of 2005. Clarendon County has imposed the 1% Local Option Tax since May 1, 1997.

Note #12: Whether the State sales and use tax or the Catawba Tribal sales and use tax for sales (deliveries) made on the Catawba Indian Reservation applies is determined by the Catawba Indian Claims Settlement Act (Chapter 16, Title 27, South Carolina Code of Laws). The provisions specific to sales and use tax are in Code Section 27-16-130(H).

The Catawba Tribal sales and use tax expires on November 28, 2092.

The following chart provides a summary of these provisions:

<u>Delivery on the Reservation From:</u>	<u>Type Tax Applicable</u>	<u>Administered and Collected By:</u>
Location On the Reservation	Tribal Sales Tax (Equal to Combined State and Local Rate*)	DOR
Location Off the Reservation But in SC - Sales \$100 or less	State Sales Tax (Local taxes would not be applicable in these circumstances.)	DOR
Location Off the Reservation But in SC - Sales Over \$100	Tribal Sales Tax (Equal to Combined State and Local Rate*)	DOR
Location Off the Reservation and Outside the State - Seller Registered with DOR	State Use Tax (Local taxes would not be applicable in these circumstances.)	DOR
Location Off the Reservation and Outside the State - Seller Not Registered with DOR	Tribal Use Tax (Equal to Combined State and Local Rate*)	Catawba Indian Tribe

* Lancaster County imposes a 1% local option sales and use tax and a 1% Capital Projects Tax. York County imposes a 1% Capital Projects sales and use tax. These local taxes are in addition to the State sales and use tax. Therefore, **effective January 1, 2012**, the tribal sales tax and the tribal use tax are imposed at the following rates:

For sales (deliveries) made on the Reservation within Lancaster County:

8% for general sales of tangible personal property

- 1% for general sales of tangible personal property
- 8% for sales of accommodations
- 0% for sales of unprepared foods¹⁷

Please note that the rate for the tribal sales tax and the tribal use tax may increase or decrease dependent upon whether the total state and local sales and use tax rates change in Lancaster County or York County in the future.

For additional information, see SC Revenue Ruling #98-18.

Note #13: Maximum Tax Items: For sales (deliveries) made on the Reservation of tangible personal property subject to the maximum tax provisions, the tribal sales and use tax rate is 5% in each county (since the state sales and use tax on maximum tax items is 5% and maximum tax items are exempt from all local sales and use taxes), but the tax may not exceed the maximum tax set forth in Code Section 12-36-2110.

Casual Excise Tax Items: Counties imposing a local sales and use tax that do not exempt casual excise tax items will impose the local tax on sales and purchases of (a) trailers that can be pulled by vehicles other than truck tractors, (b) sales of pole trailers and (c) sales of boat motors not attached to a boat at the time of sale. Therefore, for sales (deliveries) of these trailers and boat motors made on the Reservation within each county, the tribal sales and use tax rate is 7% (since only the local option tax in Lancaster County exempts these casual excise items).

"Grandfather Clause" Exemption for Certain Purchases By Construction Contractors: As a result of any increase in the tribal sales and use tax rate due to the imposition of a new local sales and use tax in either Lancaster county or York county, there is an exemption from the portion of the tribal sales and use tax represented by the new local sales and use tax for certain purchases by construction contractors. For more information about this partial exemption, see the discussion earlier in this chapter concerning *"Grandfather Clause" Exemption for Certain Purchases By Construction Contractors* and the *Special Exemption Certificate*.

Note #14: Since May 1, 2013, Lee County has imposed two local sales and use taxes - a 1% Local Option Tax and a 1% Capital Projects Tax. Lee County has imposed the 1% Local Option Tax since May 1, 1996. Lee County previously imposed a 1% School District Tax from October 1, 2006 until September 30, 2011.

¹⁷ York County "re-imposed" its 1% Capital Projects Tax effective January 1, 2012. The prior 1% Capital

Projects Tax was imposed from May 1, 2007 until April 30, 2014, and a new Capital Projects Tax was "re-imposed" effective the next day on May 1, 2014. Because the referendum was held after June 3, 2009, the new Capital Projects Tax in Florence County exempts sales of unprepared food effective May 1, 2014, pursuant to Act No. 49 of 2009.

Note #16: Since May 1, 2014, Horry County has imposed only a 1% Education Capital Improvement Tax. From March 1, 2009 until April 30, 2014, Horry County imposed two local sales and use taxes - the Education Capital Improvement Tax and a 1% Capital Projects Tax. Horry County first imposed the Capital Projects Tax on May 1, 2007.

Note #17: Since May 1, 2009, Berkeley County has imposed two local sales and use taxes - a 1% Local Option Tax and a 1% Transportation Tax. Berkeley County has imposed the Local Option Tax since May 1, 1997.

Note #18: Beginning March 1, 2015, Cherokee County will impose two local sales and use taxes - a 1% Local Option Tax and a 1% Education Capital Improvement Tax. From May 1, 2009 through February 28, 2015, Cherokee County also had imposed two local sales and use taxes - a 1% School District Tax and a 1% Local Option Tax. Cherokee County began imposing the School District Tax on July 1, 1996.

Note #19: Since May 1, 2009, Lancaster County has imposed two local sales and use taxes - a 1% Local Option Tax and a 1% Capital Projects Tax. Lancaster County has imposed the Local Option Tax since May 1, 1992.

Note #20: Since May 1, 2009, Sumter County has imposed two local sales and use taxes - a 1% Local Option Tax and a 1% Capital Projects Tax. Sumter County has imposed the Local Option Tax since May 1, 1996.

Note #21: York County has "re-imposed" its 1% Capital Projects Tax. The original Capital Projects Tax was imposed from October 1, 2004 until December 31, 2011, and the new Capital Projects Tax went into effect the next day on January 1, 2012. Because the referendum was held after June 3, 2009, the new Capital Projects Tax in York County exempts sales of unprepared food effective January 1, 2012, pursuant to Act No. 49 of 2009.

Note #22: Newberry County has "re-imposed" its 1% Capital Projects Tax. The original Capital Projects Tax was imposed from April 1, 2005 until March 31, 2012, and the new Capital Projects Tax went into effect the next day on April 1, 2012. Because the referendum was held after June 3, 2009, the new Capital Projects Tax in Newberry County exempts sales of unprepared food effective April 1, 2012, pursuant to Act No. 49 of 2009.

Note #23: Effective July 1, 2012, Greenwood County imposes no local sales and use tax and only imposes the state sales and use tax. Greenwood County imposed a 1% Capital Projects Tax from May 1, 2007 through June 30, 2012.

extended for seven years by Act No. 88 of 2012.

Note #25: The Counties of Greenville, Oconee, Spartanburg, and Union have never imposed a local sales and use tax. However, this chapter does not address local taxes on sales of accommodations or on sales of prepared meals that are collected directly by the counties or municipalities.

Note #26: Since March 1, 2015, Aiken County has imposed two local sales and use taxes - a 1% Capital Projects Tax and a 1% Education Capital Improvement Tax. Aiken County "re-imposed" its 1% Capital Projects Tax effective January 1, 2013. The original Capital Projects Tax was imposed from April 1, 2006 until December 31, 2012. Because the referendum was held after June 3, 2009, the new Capital Projects Tax in Aiken County exempts sales of unprepared food effective January 1, 2013, pursuant to Act No. 49 of 2009.

Note #27: Since February 1, 2013, Marlboro County has imposed two local sales and use taxes - a 1% Local Option Tax and a 1% School District Tax. Marlboro County has imposed the 1% Local Option Tax since May 1, 1992.

Note #28: Since May 1, 2013, Marion County has imposed two local sales and use taxes - a 1% Local Option Tax and a 1% Capital Projects Tax. Marion County has imposed the Local Option Tax since July 1, 1991.

Note #29: Since May 1, 2013, Bamberg County has imposed two local sales and use taxes - a 1% Local Option tax and a 1% Capital Projects Tax. Bamberg County has imposed the Local Option Tax since May 1, 1992.

Note #30: Since May 1, 2013, Richland County has imposed two local sales and use taxes - a 1% Local Option Tax and a 1% Transportation Tax. Richland County has imposed the Local Option Tax since May 1, 2005.

Note #31: Orangeburg County has "re-imposed" its 1% Capital Projects Tax. The original Capital Projects Tax was imposed from April 1, 2006 until March 31, 2013, and the new Capital Projects Tax went into effect the next day on April 1, 2013. Because the referendum was held after June 3, 2009, the new Capital Projects Tax in Orangeburg County exempts sales of unprepared food effective April 1, 2013, pursuant to Act No. 49 of 2009.

Note #32: Effective March 1, 2015, Anderson County imposes a 1% Education Capital Improvement Tax. This will be the first local sales and use tax imposed by Anderson County.

held after June 3, 2009, the Capital Projects Tax in Colleton County exempts sales of unprepared food, pursuant to Act No. 49 of 2009. Colleton County has imposed the Local Option Tax since July 1, 1991.

Note #34: Effective May 1, 2015, Georgetown County imposes a 1% Capital Projects Tax. This is the first local sales and use tax imposed by Georgetown County. Because the referendum was held after June 3, 2009, the Capital Projects Tax in Georgetown County exempts sales of unprepared food, pursuant to Act No. 49 of 2009.

These charts include only general local option taxes collected by the Department of Revenue on behalf of the counties, municipalities, school districts, and the Catawba Indian tribal government. They do not include the local taxes on sales of accommodations or on sales of prepared meals that are collected directly by the counties or municipalities.

Nexus

A. General Information

Nexus is a sufficient connection between a person and a state, and a sufficient connection between an activity, property, or transaction and a state, that allows the state to subject the person, and the activity, property, or transaction to its taxing jurisdiction. The Due Process and Commerce Clauses of the United States Constitution and other federal statutes provide limitations on a state's powers to tax out of state business.

Over the years, the courts have provided limitations and guidelines in determining whether certain activities create nexus in a taxing state. For example, see *Quill Corp. v. North Dakota* 502 U.S. 808, 112 S. Ct. 1904, 119 L. Ed. 2d 27 (1992), *Complete Auto Transit, Inc. v. Brady*, 430 U.S. 274, 97 S. Ct. 1076, 51 L. Ed. 326 (1977), *Miller Brothers v. Maryland*, 347 U.S. 340, 74 S. Ct. 535, 98 L. Ed. 744 (1954), *Scripto, Inc. v. Carson*, 362 U.S. 207, 80 S. Ct. 52, 4 L. Ed. 2d 54 (1960), *National Bellas Hess, Inc. v. Department of Revenue*, 386 U.S. 753, 87 S.Ct. 1389, 18 L.Ed.2d 505 (1967), *Helicopteros Nacionales de Colombia, S.A. v. Hall*, 104 S. Ct. 1868 (1984), and *National Geographic Society v. California Bd. of Equal.*, 430 U.S. 551, 97 S. Ct. 1386, 51 L. Ed. 2d 631 (1977).

The purpose of this advisory opinion is to provide written guidance from the Department concerning sales and use tax nexus creating activities.

Because of the importance of this issue to taxpayers, the complexity of nexus issues and the changes taking place in this area, the Department issued its responses to the issues raised in these surveys as an advisory opinion, South Carolina Revenue Ruling #07-3. The provisions of South Carolina Revenue Ruling #14-4 are incorporated into this chapter.

This opinion reflects the Department's official position regarding sales and use tax nexus at this time. Since developments in this area are constantly taking place, any response is subject to change due to a future statute, regulation, court decision, or advisory opinion.

Any change in South Carolina's position as set forth in this document that is not the result of a court case or change in statute or regulation will be prospective. Any change that is the result of a court case will apply to all periods open under the statute unless the court states otherwise and any change in statute or regulation will be applicable as of the effective date established by the General Assembly.

Questions concerning the existence of nexus with South Carolina should be directed to the Department's Nexus/Discovery Section at 803-898-5235 or 803-898-5695

Each response is based upon the specific facts described in the survey question and the following assumptions:

- The business is selling tangible personal property¹ at retail to residents or others in South Carolina;
- Each specific survey question by itself was the only possible nexus creating activity or relationship a business has in South Carolina;² and,
- The activities described are not “de minimis” unless the question or answer specifically states otherwise.

A “yes” response indicates the activity or relationship will, by itself, create nexus with South Carolina. A “no” response indicates the activity or relationship will, by itself, not create nexus with South Carolina. However, it is important to note that a combination of several different activities or relationships, even if each by itself does not create nexus, may create nexus with South Carolina. In addition, any variance from the facts stated in a survey question, or any additional facts not stated in a survey question, may change the answer set forth in this document.

Each response refers only to sales and use tax nexus. Activities that create nexus for sales and use tax purposes differ from those that create nexus for other tax purposes

¹ See South Carolina Code §12-36-60 for the definition of “tangible personal property” and the various imposition provisions of Chapter 36 of Title 12 (sales and use tax provisions) for information as to services and intangibles that are “tangible personal property” by definition.

² Even though some survey questions specifically state that the activity represents the corporation’s “sole activity” in South Carolina, all other survey questions represent the corporation’s sole activity in South

A. General Activities

YES NO

- | | | |
|--|--------------------------|-------------------------------------|
| 1. The business holds a certificate of authority to conduct business in South Carolina, or is otherwise registered with the Secretary of State or any other regulatory agency in South Carolina. | ☐ | ☒ |
| 2. The business maintains a bank account in South Carolina. | ☐ | ☒ |
| 3. The business is listed in the local telephone books of cities in South Carolina. | ☐ | ☒ |
| 4. The business uses local phone numbers in South Carolina, which are forwarded to its headquarters in another state. | ☐ | ☒ |

B. Property in South Carolina

YES NO

- | | | |
|---|-------------------------------------|--------------------------|
| 1. The business' sole activity in South Carolina is maintaining or using a place of business for selling tangible personalty. | ☒ | ☐ |
| 2. The business' sole activity in South Carolina is maintaining or using a place of business for storing ³ tangible personal property. | ☒ | ☐ |
| 3. The business' sole activity in South Carolina is maintaining inventory in South Carolina. | ☒ | ☐ |
| 4. The business' sole activity in South Carolina is maintaining or using a distribution facility. | ☒ | ☐ |

Note: South Carolina enacted a limited "safe harbor" nexus statute for persons who placed a distribution facility in service in South Carolina after December 31, 2010, but before January 1, 2013. This answer does not apply to a person who has met the investment and job requirements of Code Section 12-36-2691 before January 1, 2013. For persons who met these investment and job requirements, this "safe harbor" is applicable until the earlier of (a) January 1, 2016; (b) when the person no longer meets the requirements of the statute; or (c) the effective date of a law enacted by Congress that allows states to require sales tax collection for taxpayers that do not have substantial nexus. For all other person, this "safe harbor" is no longer available and the above answer is applicable.

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|--|-------------------------------------|-------------------------------------|
| 5. The business' sole activity in South Carolina is maintaining tangible personal property for lease through a representative. | ☒ | ☐ |
| 6. The business' sole activity in South Carolina is the existence of unrelated in-state office (e.g. advertising). | ☒ | ☐ |
| 7. The business' sole activity in South Carolina is licensing software for use in South Carolina and | | |
| (a) the business sold and delivered the licensed software into South Carolina via a tape, disk, flash drive, or some other form of tangible personal property as defined in the South Carolina sales and use tax law; or, | ☒ | ☐ |
| (b) the business sold and delivered the licensed software into South Carolina as an attachment to an e-mail or a download from a website. | ☐ | ☒ |
| Note: See SC Revenue Rulings #12-1, 11-2, 03-5 and 96-3. | | |
| 8. The business' sole activity in South Carolina is that of a mail-order catalog seller with property or solicitors in South Carolina. | ☒ | ☐ |
| 9. The business' sole activity in South Carolina is the drop shipment of catalogs in South Carolina, for mailing to residents within South Carolina. | ☒ | ☐ |
| Note: See Question D.4 for the application of nexus to a business that uses a company in South Carolina to drop-ship merchandise to customers. | | |
| 10. The business sells tangible personal property to residents in South Carolina from outside of South Carolina (e.g., telephone, over the Internet, via catalog/direct mail, or otherwise) and delivers merchandise to customers in South Carolina in returnable containers. | ☒ | ☐ |
| 11. The business sells tangible personal property at retail to businesses in South Carolina from outside of South Carolina (e.g., telephone, over the Internet, or otherwise) and delivers the merchandise to customers by the business' tractor-trailers or railcars and leaves the trailer or railcar with the customer for a specified number of days or until the next delivery is made during which the customer will remove the merchandise from the trailer or railcar. | ☒ | ☐ |
| 12. The business sells tangible personal property to residents in South Carolina from outside of South Carolina (e.g., telephone, over the Internet, via catalog/direct mail, or otherwise) and provides in-state | ☒ | ☐ |

- | | YES | NO |
|--|-------------------------------------|-------------------------------------|
| 1. The business' sole activity in South Carolina is the presence of a representative selling in South Carolina. | ☒ | ☐ |
| 2. The business authorizes an employee or third party (e.g., independent contractor, affiliated company or other representative) to install, deliver, service, or repair merchandise in South Carolina or hires independent contractor to perform warranty or repair services on tangible personal property in South Carolina. (The repairs may be under warranty for which there is no separate charge or may be under warranty for which there was a separate charge.) | ☒ | ☐ |
| 3. The business uses an employee or third party in South Carolina (e.g., independent contractor, affiliated company, or other representative) to investigate, handle or resolve customer issues, provide training or technical assistance, or otherwise provide customer service to customers in South Carolina. | ☒ | ☐ |
| 4. The business' sole activity in South Carolina is an employee/representative providing training to South Carolina customers. | ☒ | ☐ |
| 5. The business' sole activity in South Carolina is an employee/representative providing trouble-shooting to South Carolina customers. | ☒ | ☐ |
| 6. The business sells tangible personal property to residents in South Carolina from outside the state (e.g., by telephone, over the Internet, via catalog/direct mail, or otherwise) and has an employee visit South Carolina four or more times during the year. | ☒ | ☐ |
| 7. The business' sole activity in South Carolina is telemarketing activity into South Carolina (telemarketer not located in South Carolina). | ☐ | ☒ |
| 8. The business' sole activity in South Carolina is the use of a telemarketing firm with a South Carolina office. | ☒ | ☐ |
| 9. The business hires an unrelated call center or fulfillment center located in South Carolina to process telephone or electronic orders that primarily derive from out-of-state customers. | ☒ | ☐ |
| 10. The business' sole activity in South Carolina is using an in-state photographer, if the vendor's products are shipped to South Carolina during the photographic sessions. | ☒ | ☐ |
| 11. The business collects delinquent accounts using a collection agency in | ☒ | ☐ |

property or services to customers in South Carolina, and

- | | | |
|---|-------------------------------------|--------------------------|
| (a) the South Carolina affiliate sells similar merchandise and uses common trade names, trademarks or logos; or, | ☒ | ☐ |
| (b) uses the South Carolina affiliate to accept returns, take orders, perform customer service or distribute advertising materials on its behalf. | ☒ | ☐ |
| 13. The business sells tangible personal property to residents in South Carolina from outside the state and authorizes an employee or third party (e.g., sales representative, independent contractor, or affiliated company) to solicit sales in South Carolina. | ☒ | ☐ |
| 14. The business' sole activity in South Carolina is soliciting through independent agents. | ☒ | ☐ |
| 15. The business' sole activity in South Carolina is using a broker to arrange rentals of customer mailing lists, that constitute tangible personal property under the South Carolina sales and use tax law, to vendors in South Carolina and other states. | ☒ | ☐ |
| 16. The business' in-state representative maintains an in-home office. | ☒ | ☐ |

Note: This answer applies whether or not the business reimburses the in-state representative for the costs of maintaining the in-home office. In addition, as noted elsewhere in this advisory opinion, it is not necessary that a representative maintain an in-state office in order for nexus to exist.

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|--|-------------------------------------|--------------------------|
| 17. The business sells tangible personal property to residents in South Carolina from outside of South Carolina (e.g., telephone, over the Internet, via catalog/direct mail, or otherwise) and ships its product for distribution to a third-party distributor located in South Carolina that performs the functions such as labeling, packaging, and shipping. | ☒ | ☐ |
|--|-------------------------------------|--------------------------|

Note: This answer assumes that the third-party distributor did not purchase the merchandise, but is providing a service on behalf of a retailer selling tangible personal property to South Carolina residents.

- | | | |
|--|-------------------------------------|--------------------------|
| 18. The business sells tangible personal property to residents in South Carolina from outside of South Carolina (e.g., telephone, over the Internet, via catalog/direct mail, or otherwise) and makes remote sales of tangible personal property to South Carolina residents and holds two or more one-day seminars in South Carolina. | ☒ | ☐ |
|--|-------------------------------------|--------------------------|

19. The business sells tangible personal property to residents in South Carolina from outside of South Carolina (e.g., telephone, over the Internet, via catalog/direct mail, or otherwise) and makes remote sales of tangible personal property to South Carolina residents and holds two or more one-day seminars in South Carolina, and has its employees visit South Carolina five times during the year. ☒ ☐

20. The business sells gifts cards in affiliated South Carolina stores. ☒ ☐

21. The business makes remote sales of "canned software," that constitutes tangible personal property under the South Carolina sales and use tax law, to residents of South Carolina and then sends a representative to customize it to meet the customer's specific needs or to provide other Information Technology services. ☒ ☐

22. The business sells tangible personal property while temporarily located in South Carolina for up to three days. ☐ ☐

Note: The answer depends on whether or not the business' presence or sales are de minimis, the business' intent with respect to returning to the state, the value of the sales, and other facts and circumstances. However, even if nexus is not established, the seller must be licensed and remit the tax on all sales made by the employee during the employee's time in the state

23. The business sells tangible personal property to residents in South Carolina from outside of South Carolina (e.g., telephone, over the Internet via catalog/direct mail, or otherwise) and produces an "info-commercial" that runs on an in-state television channel and pays commissions to the local TV station based on a percentage of sales to South Carolina customers who made purchases using the phone number or website address displayed on the infomercial." ☐ ☐

Note: The answer depends on the facts and circumstances (e.g., nexus may exist if the advertising consists of a personal endorsement by a local personality)

D. Delivery

YES NO

1. The business' sole activity in South Carolina is in-state delivery via company-owned vehicles. ☒ ☐

2. The business' sole activity in South Carolina is the presence of a representative to deliver merchandise in South Carolina⁴. ☒ ☐

- | | |
|---|--|
| 3. The business delivers merchandise in South Carolina by means other than common carrier or the U.S. Postal Service. | ☒ ☐ |
| 4. The business uses a company in South Carolina to drop-ship merchandise to customers. | ☐ ☒ |

Note: See SC Revenue Ruling #98-8. In addition, see Question B.9 for the application of nexus to a business whose sole activity in South Carolina is the drop shipment of catalogs in South Carolina for mailing to residents within South Carolina.

E. Transactions with South Carolina Printers⁵.

- | | |
|---|--|
| | YES NO |
| 1. The business' sole activity in South Carolina is using a South Carolina printing company to print catalogs or advertisements, if the vendor's personnel enter the state occasionally (1-3 times per year) during the printing process. | ☐ ☒ |

Note: See Code Section 12-36-75

- | | |
|---|--|
| 2. The business' sole activity in South Carolina is using a South Carolina printing company to print catalogs or advertisements, if the vendor's personnel do not enter South Carolina during the printing process. | ☐ ☒ |
|---|--|

Note: See Code Section 12-36-75.

- | | |
|--|--|
| 3. The business' sole activity in South Carolina is using a South Carolina printing company where the taxpayer's printing materials or printed goods are stored. | ☐ ☒ |
|--|--|

Note: See Code Section 12-36-75.

F. Advertising

- | | |
|--|--|
| | YES NO |
| 1. The business' sole activity in South Carolina is spillover advertising from neighboring states. | ☐ ☒ |

Note: This answer assumes that the advertiser and retailer have no physical presence in South Carolina.

2. The business' sole activity in South Carolina is that of a mail-order catalog seller with only mail communication in the state. ☐ ☒

Note: This answer assumes that the retailer has no physical presence in South Carolina and that the catalogs are not mailed from within South Carolina.

3. The business' sole activity in South Carolina is mailing catalogs to South Carolina consumers. ☐ ☒

Note: This answer assumes that the retailer has no physical presence in South Carolina and that the catalogs are not mailed from within South Carolina.

4. The business is an Internet-based retailer with an out-of-state home office and enters into an agreement with a South Carolina operator of a website. The website operator hosts advertisements directing consumers to the website of the out-of-state retailer, and is paid each time an ad is displayed (per impression). ☐ ☒

5. The business' sole activity in South Carolina is advertising on local media (e.g., newspapers, radio, TV). ☐ ☐

Note: The answer depends on the facts and circumstances (e.g., nexus may exist if the advertising consists of a personal endorsement by a local personality)

6. The business' sole activity in South Carolina is advertising on national media, which may be circulated in South Carolina (e.g., national magazines or TV). ☐ ☐

Note: The answer depends on the facts and circumstances (e.g., nexus may exist if the advertising consists of a personal endorsement by a local personality)

7. The business' sole activity in South Carolina is advertising on satellite TV. ☐ ☐

Note: The answer depends on the facts and circumstances (e.g., nexus may exist if the advertising consists of a personal endorsement by a local personality)

G. Other Issues

YES NO

1. The business sells tangible personal property over the Internet and operates a website which is maintained on a server that is owned by the business and located in South Carolina. ☒ ☐

2. The business makes remote sales of digital content such as music and video that is downloaded by residents of South Carolina.

☐☒

Sales of digital content that is downloaded is not subject to the tax.

3. The business sells tangible personal property to residents in South Carolina from outside of South Carolina (e.g., telephone, over the Internet, via catalog/direct mail, or otherwise) and is the single member in a single member LLC that is a disregarded entity and is operating in South Carolina.

☒☐

Note: As stated in the "Introduction," the above answers are based on the assumption that the business is selling tangible personal property at retail to residents or others in South Carolina and that each specific question by itself was the only possible nexus creating activity or relationship a business has in South Carolina. However, it is important to note that a combination of several different activities or relationships, even if each by itself does not create nexus, may create nexus with South Carolina. In addition, any variance from the facts stated in a question, or any additional facts not stated in a question, may change the answer set forth in this document.

Manufacturers, Processors, and Compounders

A. General Information

Manufacturers, processors, and compounders are eligible for numerous exclusions and exemptions from sales and use tax.¹ This chapter provides a more detailed discussion of the most common exemptions available to manufacturers, processors, and compounders, such as the sales tax exemption for machinery used in manufacturing, processing, compounding, mining, or quarrying tangible personal property for sale;² ingredient parts;³ electricity;⁴ fuel;⁵ packaging;⁶ and sales for resale.⁷

B. Machines, Parts, and Attachments

General Information. The “machine exemption”⁸ exempts from sales and use tax purchases of machines used in manufacturing, processing, compounding, mining, or quarrying tangible personal property for sale. The term “machines” includes the parts of machines, attachments, and replacements used, or manufactured for use, on or in the operation of the machines and which are necessary to the operation of the machines and are customarily so used or are necessary to comply with the order of an agency of the United States or of South Carolina for the prevention or abatement of pollution of air, water, or noise that is caused or threatened by a machine used in manufacturing, processing, recycling, compounding, mining, or quarrying tangible personal property for sale. This exemption does not include automobiles or trucks.

The applicability of this machine exemption depends on whether the machine is integral and necessary to the manufacturing process⁹ - i.e., is the machine an essential and indispensable component part of the manufacturing process and is it used on an ongoing and continuous basis during the manufacturing process. The court in *Hercules Contractors and Engineers, Inc. v. South Carolina Tax Commission*, 313 S.E. 2d 300 (1984) set forth a test for determining if a machine is integral and necessary to the manufacturing process; two South Carolina court decisions in 2003 have followed and clarified this theory. Each is briefly discussed below.

¹ South Carolina Code §§12-36-2120 and 12-36-120 and SC Regulation 117-302.

² South Carolina Code §12-36-2120(17).

³ South Carolina Code §12-36-120(2).

⁴ South Carolina Code §12-36-2120(19).

⁵ South Carolina Code §12-36-2120(9).

⁶ South Carolina Code §§12-36-2120(14) and 12-36-120(4).

⁷ South Carolina Code §12-36-120(1).

⁸ South Carolina Code §12-36-2120(17).

property that was produced in connection with the manufacture of textile products for sale was a machine. The Court held that the wastewater treatment facility was a machine and that its various parts and attachments (such as vats, basins, tanks, pumps, other mechanical devices, troughs, and pipes) are integral and necessary to the operation of the system as a whole.

The following test was used by the Court in determining what is an exempt “machine.” Are improvements, either fastened or loose,

1. Used directly in manufacturing the products that the establishment intended to produce;
2. Necessary and integral part of the manufacturing process;
3. Used for the purpose of manufacturing the product it was intended to produce; and
4. Not benefiting the land generally, and will not serve various users of the land.

The Court further defined the term “machine” to include “the concept of combination” (*i.e.*, combination of mechanical powers, parts, attachments and devices to perform some function and produce a certain effect or result integral and necessary to the manufacturing process) and held that the statute “does not require a machine to have moving parts if it is an integral part of the manufacturing process” and that the statute makes no distinction “as to whether a machine is a fixture or personal property.”

Springs Industries, Inc., v. South Carolina Department of Revenue, South Carolina Court of Appeals, No. 2003-UP-029, January 8, 2003 (*unpublished*), *certiorari denied*, October 8, 2003. *Springs* involved the applicability of the machine exemption to “machines used in manufacturing” at a textile plant, and to chemicals used at the plant’s wastewater treatment facilities to purify manufacturing waste. The court held that machinery is exempt if it is integral and necessary to the manufacturing process and used in an ongoing and continuous basis during the manufacturing process.

Anonymous Corporation v. South Carolina Department of Revenue (02-ALJ-17-0350-CC). This case involved whether buildings or parts of buildings could be exempt under the machine exemption. The Administrative Law Court held that building materials, such as paint and sealants, foundations, structural steel, steel decking and checkers plates for buildings, hangers and supports for process piping, and architectural roofing and siding, purchased to construct a manufacturing facility were not exempt as a machine.

machine is integral and necessary to the manufacturing process.

C. Machine Exemption – General Rule

A machine qualifies for the machine exemption if the machine meets the following three requirements:¹⁰

1. The machine is used at a manufacturing facility whose purpose is manufacturing a product “for sale.” It does not apply to machines used at a facility whose purpose may be retailing, wholesaling, or distributing. For example, machines used by an industrial baker manufacturing breads for sale may be exempt; however, similar machines used by a local retail bakery are not exempt.
2. The machine is used in, and serves an essential and indispensable component part of the manufacturing process and is used on an ongoing and continuous basis during the manufacturing process. Note: A machine “integral and necessary” to the manufacturer, such as a machine used solely for warehouse, distribution, or administrative purposes, is not exempt under the machine exemption since it is not “integral and necessary” to the manufacturing process.
3. The machine must be substantially used (not necessarily exclusively used) in manufacturing tangible personal property for sale, *i.e.*, more than one-third of a machine’s use is for manufacturing.

A machine meeting the above requirements may be exempt even if it does not have moving parts or is a fixture upon the real estate where it stands. However, buildings and parts of buildings, as well as other improvements which benefit the land generally and may serve other users of the land, are not exempt.¹¹

D. Machines - Replacement Parts and Attachments

Parts of machines, attachments, and replacements used, or manufactured for use, on or in the operation of exempt machines are also exempt under the machine exemption if they are

- (1) used on or in the operation of exempt machines,
- (2) manufactured for use on or in the operation of exempt machines,
- (3) integral and necessary to the operation of exempt machines, and
- (4) customarily so used.

be used by the manufacturer without any fabrication or alteration by the manufacturer, except the usual and customary minor adjustment. It must be a standard part or attachment customarily used and, further, that the machine or machinery on which it is used would not do the work for which it was designed if it were not used. This exempts all parts and attachments without which the machine would do no work, and exempts parts and attachments designed to increase the efficiency of the machine.¹²

E. Examples of Exempt Machines or Machine Parts

Examples of exempt machines or parts of machines include the following:

- material handling or mechanical conveyor machines feeding the first processing machine; the machine that discharges the finished product from the last machine used in the process; material handling machinery used for transporting in process material from one process stage to another
- chemicals, including greases, oils, lubricants, and coolants, used in an exempt manufacturing machine that are essential to the functioning of the exempt machine during the manufacturing process
- tanks which are a part of the chain of processing operations (the exemption does not include storage tanks)
- transformers, capacitors, and voltage regulators used by manufacturers, processors, or compounders as a part of their manufacturing, processing, or compounding machinery
- machines used to condition air (including humidification systems) for quality control during the manufacturing process of tangible personal property made from natural fibers and synthetic materials
- recording instruments attached to manufacturing machines
- belting purchased for use on a particular machine used in manufacturing tangible personal property for sale
- materials used by manufacturers or contactors in building machines that will manufacture tangible personal property for sale

¹² See SC Regulation 117-302.5 for guidance in determining what qualifies as a part or attachment to a

Examples of taxable machines or parts include the following:

- material handling machinery and/or mechanical conveyors up to the point where the materials go into process
- chemicals used to clean non-exempt machines, such as storage tanks, or the manufacturing facility
- paint used on exempt manufacturing machines to prevent machine corrosion
- greases, oils (*e.g.*, motor oils, gear oils, or chain oils), lubricants, and coolants used in an exempt manufacturing machine when such items are not integral and necessary to the manufacturing process, such as those that are not essential in ensuring the functioning of the machine during the manufacturing process
- machines used for maintenance purposes (*i.e.*, machines used to maintain nonexempt machines that are not integral and necessary to the manufacturing process, or are not used on an ongoing, continuous basis to maintain exempt manufacturing machines that are integral and necessary to the manufacturing process), such as pressure washing machines and ultrasonic cleaning machines used to clean non-exempt machines or parts, such as storage tanks
- storage racks used to store raw materials or finished goods, or storage tanks used to store raw materials, gasses, or water
- warehouse machines used for warehouse purposes, such as loading and unloading, storing, or transporting raw materials or finished products
- storage tanks and piping leading to and from storage tanks and piping bringing gas or water into the plant
- power lines bringing electricity into the plant
- administrative machines, furniture, equipment and supplies such as office computers, paper, or items used for the personal comfort, convenience, or use of employees

G. Machines – A Structure versus A Building

The machine exemption can apply to a machine that is a "structure." However, a structure that is a building is not a "machine," and the materials used to construct the building are not exempt from sales and use tax as a machine, part, or attachment used in manufacturing.¹³

constitutes a machine.¹⁵

See Section S of this chapter for information on an exemption for the sale of construction material used in constructing a manufacturing facility meeting certain investment and job requirements.

H. Pollution Abatement Machines¹⁶

Pollution control machines qualify for the machine exemption when installed and operated for compliance with an order of an agency of the United States or of this state to prevent or abate air, water, or noise pollution caused or threatened by the operation of other exempt machines used in the mining, quarrying, compounding, processing, and manufacturing of tangible personal property for sale.¹⁷

Examples of prior Department determinations illustrate the application of the machine exemption to pollution abatement machines:

1. The Department held that stack liners and ash pond pipes and pumps located at a taxpayer's electrical generating facility were exempt from sales and use tax as pollution abatement machines on the grounds that these items were "operated exclusively in the abatement of pollution caused by the production of electricity."¹⁸
2. The Department determined that certain parts, attachments, and components of a chimney stack used in the manufacture of electricity were "machines" required by state and federal law and were necessary and integral to the manufacture of electricity, and, therefore, were exempt from sales and use tax.¹⁹

I. Machines Owned by Someone Other Than a Manufacturer

Ownership of the machine by the manufacturer is not required to qualify for the machine exemption. The use of a machine determines whether it is exempt from sales and use tax.²⁰

This issue was considered in *Hercules*. The Court reviewed whether the machine exemption applied to materials purchased to build a waste treatment facility that was owned by a South Carolina town and used substantially by a manufacturer in the

¹⁴ South Carolina Revenue Ruling #89-7.

¹⁵ South Carolina Private Letter Ruling #90-3.

¹⁶ South Carolina Code §12-36-2120(17) and SC Regulation 117-302.6

¹⁷ South Carolina Code §12-36-2120(17).

¹⁸ South Carolina Commission Decision #92-19.

¹⁹ See also South Carolina Private Letter Ruling #92-9. See also *Hercules Contracting and Engineers, Inc. v. South*

to the machine's ownership, since the facility satisfied a pollution control requirement and thereby allowed the manufacturer to remain in operation.²¹

J. Machines Used Substantially in Manufacturing (Dual Usage Machines)

"Substantial" use, but not "exclusive" use, of a machine in the manufacture of tangible personal property for sale is required in order for the machine exemption to apply. Several examples illustrating this principle are provided below.

For example, the purchase of a forklift that is used substantially to move materials from one stage of the production process to another (an exempt purpose) and also used to load trucks (a non-exempt purpose) is allowed the machine exemption from sales and use tax. In addition, purchases of parts for the forklift are also exempt from tax.

Further, this principle was reviewed in *Hercules* where the Court determined that a municipally owned waste treatment facility was a machine used substantially in the manufacture of tangible personal property for sale. At this facility, approximately 35% of the waste treated was from a manufacturing plant and the rest was from ordinary municipal sources. The Court concluded that the machine exemption does not provide that the manufacturing use has to be exclusive nor does it require that the manufacturing use be the primary use to which the facility is devoted. In accordance with a regulation approved by the General Assembly, more than one-third of a machine's use in manufacturing is substantial.²²

K. Tangible Personal Property that is an "Ingredient or Component Part" or "Used Directly" in the Process

South Carolina does not tax the sale of tangible personal property to a manufacturer or compounder that is an ingredient or component part of the tangible personal property or products manufactured or compounded for sale.²³

Further, South Carolina does not tax the sale of tangible personal property "used directly" in manufacturing, compounding, or processing tangible personal property for sale.²⁴ An item is "used directly" if the materials or products so used come in direct contact with and contribute to bring about some chemical or physical change in the ingredient or component properties during the period in which the fabricating, converting, or processing takes place.²⁵

²¹ See also *Southeastern-Kusan v. South Carolina Tax Commission*, 280 S.E. 2d 57 (1981).

²² SC Regulation 117-302.5. See also *Anonymous Corporation v. South Carolina Department of Revenue* (06-CP-40-0103), Court of Common Pleas for the Fifth Judicial Circuit (2008).

²³ South Carolina Code §12-36-120(2).

- (1) acetylene, oxygen, and other gases sold to manufacturers or compounders that enter into and become an ingredient or component part of the tangible personal property or products which he manufactures or compounds for sale, or which are used directly in fabricating, converting, or processing the materials or products being manufactured or compounded for sale, or
- (2) plates attached by the manufacturer to his product for identification purposes and which become a part of the product.

L. Electricity

The sale of electricity used by manufacturers, processors, miners, quarriers, or cotton gins to manufacture, mine, or quarry tangible personal property for sale is exempt from the tax.²⁷

This exemption applies to electricity that provides lighting necessary for the operation of machines used in manufacturing tangible personal property for sale and to electricity used to control plant atmosphere as to temperature and/or moisture content, in the quality control of tangible personal property being manufactured or processed for sale.²⁸

This exemption does not apply to sales of electricity used in administrative offices, supervisory offices, parking lots, storage warehouses, maintenance shops, safety control, comfort air conditioning, elevators used in carrying personnel, housekeeping equipment and machinery, machines used in manufacturing tangible personal property not for sale, cafeterias, canteens, first aid rooms, supply rooms, water coolers, drink boxes, unit heaters, and waste house lights.²⁹

M. Coal, Coke, and Other Fuel

The sale of coal, coke, or other fuel to manufacturers and electric power companies for the generation of heat or power used in manufacturing tangible personal property for sale or the generating of electric power or energy for use is exempt from the tax.³⁰ For purposes of this exemption, mining and quarrying are considered to be manufacturing. The sale of coal, coke or other fuel to manufacturers for the production of by-products or for the generation of electric power or energy for use in manufacturing tangible personal property for sale is also exempt.³¹

This exemption applies to fuel used to control plant atmosphere as to temperature and/or moisture content in the quality control of tangible personal property being manufactured or processed for sale.

²⁶ SC Regulation 117-302.1.

²⁷ South Carolina Code §12-36-2120(19).

²⁸ SC Regulation 117-302.4.

Sales of fuel that will be used for test flights of aircraft by the manufacturer of the aircraft, or used in the transportation of an aircraft prior to its completion from one facility of the manufacturer to another facility of the manufacturer, are exempt from the tax if certain requirements are met.³² The exemption does not apply to fuel used for the transportation of major component parts for construction or assembly or fuel used for the transportation of personnel.

In order to qualify for this exemption, the taxpayer must notify the Department in writing before the first month it uses the exemption and must, over a seven year period, invest at least seven hundred fifty million dollars in real or personal property or both comprising or located at a single manufacturing facility and create at least three thousand eight hundred full-time new jobs at the single manufacturing facility.

The exemption only applies to taxpayers that notify the Department prior to October 31, 2015 of their intent to utilize the exemption.³³

O. Packaging

The sale of materials, containers, cores, labels, sacks, or bags that are used incident to the sale and delivery of tangible personal property are not subject to the tax.³⁴ The terms “materials,” “containers,” and “cores” are defined as follows:³⁵

“Materials” include wrapping paper, twine, strapping, nails, staples, wire, lumber, cardboard, adhesives, tape, waxed paper, plastic materials, aluminum foils, and pallets used in packaging tangible personal property incident to its sales and delivery and used by manufacturers, processors, or compounders in shipping tangible personal property.

“Containers” include paper, plastic or cloth sacks, bags, boxes, bottles, cans, cartons, drums, barrels, kegs, carboys, cylinders, and crates.

“Cores” include spools, spindles, cylindrical tubes and the like on which tangible personal property is wound.

This sales and use tax exclusion applies to labels affixed to manufactured articles to identify such products only when such labels are passed on to the ultimate consumer of such products, and to excelsior, cellulose wadding, paper stuffing, sawdust and other packing materials used to protect products in transit. This exclusion does not apply to address stickers and shipping tags, and materials used to preserve property during shipment, such as dry ice and rust preventives.

³² South Carolina Code §12-36-2120(9)(e) and (f).

³³ Act No. 124 of 2009, Section 2B.

Sales by manufacturers and compounders of tangible personal property are not taxable if the property is sold for resale (e.g., a wholesale sale).³⁶ Further, a manufacturer is considered to be making a wholesale sale and not liable for South Carolina sales and use tax when the manufacturer, at the request of a retailer, drop ships its product in South Carolina and bills the retailer for the product. See South Carolina Revenue Ruling #98-8 for further information on drop shipments.

A resale certificate, Form ST-8A, can be used by retailers to purchase tangible personal property for resale. It is not necessary that a resale certificate be obtained for each purchase; the seller must maintain only one resale certificate per customer. By accepting the resale certificate and having it on file, the seller is relieved of the tax liability. Sales to users or consumers are taxable. It is not required that Form ST-8A be used. A letter from the purchaser to the seller or a resale certificate from another state is acceptable provided it contains the same information requested on Form ST-8A. In addition, the "Uniform Sales and Use Tax Certificate" published by the Multistate Tax Commission ("MTC") may be used by a purchaser for the purpose of purchasing tangible personal property that will be resold, leased, or rented in the normal course of the purchaser's retail business.³⁷

Q. Material Handling Systems and Equipment³⁸

Sales of material handling systems and equipment for use in the operation of a manufacturing facility³⁹ are exempt from the tax if certain requirements are met. This exemption includes, but is not limited to, racks used in the operation of a manufacturing facility, whether or not used to support all or part of the facility structure:

The following are examples of material handling systems and material handling equipment that qualify for the exemption when used in the operation of a manufacturing facility or a distribution facility that meets the requirement of the exemption:

- Automated storage and retrieval systems
- Carts
- Conveyors
- Cranes
- Dollies Forklifts (including battery chargers designed for the forklift)⁴⁰
- Hand Trucks
- Hoppers

³⁶ South Carolina Code §12-36-120(1).

³⁷ See South Carolina Revenue Procedure #08-2 for further information on the acceptance of a resale certificate, Form ST-8A, and the liability for the tax.

³⁸ See South Carolina Code § 12-36-2120(51) and SC Revenue Ruling #13-3 for a detailed analysis of what qualifies for the material handling exemption.

³⁹ This exemption also applies to distribution facilities complying with the notice requirements and meeting the investment requirements of the exemption.

Racks
Shelving
Stackers
Tanks

The exemption does not apply to any material handling systems or material handling equipment that is not used in the operation of a manufacturing facility or a distribution facility (e.g., mail carts, shelving used in the office for books and records, office computers, copiers, and similar office equipment) and does not apply to any material handling systems or material handling equipment used in a manufacturing facility or distribution facility that does not meet all the requirements of the exemption.

In order to qualify for this exemption, the taxpayer must notify the Department in writing before the first month it uses the exemption and must, over a five year period, invest at least thirty-five million dollars in real or personal property in South Carolina.

R. Computer Equipment

Sales of computer equipment that will be used in connection with a manufacturing are exempt from the tax if certain requirements are met.⁴¹

In order to qualify for this exemption, the taxpayer must notify the Department in writing before the first month it uses the exemption and must, over a seven year period, invest at least seven hundred fifty million dollars in real or personal property or both comprising or located at a single manufacturing facility and create at least three thousand eight hundred full-time new jobs at the single manufacturing facility.

"Computer equipment" means original or replacement servers, routers, switches, power units, network devices, hard drives, processors, memory modules, motherboards, racks, other computer hardware and components, cabling, cooling apparatus, and related or ancillary equipment, machinery, and components, the primary purpose of which is to store, retrieve, aggregate, search, organize, process, analyze, or transfer data or any combination of these, or to support related computer engineering or computer science research.⁴²

The exemption only applies to taxpayers that notify the Department prior to October 31, 2015 of their intent to utilize the exemption.⁴³

⁴¹ South Carolina Code §12-36-2120(65)(b). An exemption for computer equipment also applies to technology intensive facilities, as defined in South Carolina Code §12-6-3360(M)(14)(b), complying with the notice requirements and investment requirements set forth in South Carolina Code §12-36-2120(65)(a).

Sales of construction materials used in the construction of a single manufacturing facility are exempt from the tax if certain requirements are met.⁴⁴

The taxpayer must meet one of two sets of investment and job requirements:

- (1) The taxpayer must make a capital investment of at least one hundred million dollars in real and personal property at a single site in the State over an eighteen month period.⁴⁵
- (2) The taxpayer must make a capital investment of at least seven hundred fifty million dollars in real and personal property at the facility over a seven year period and must create at least three thousand eight hundred full-time new jobs at the facility over a seven year period. This exemption for this investment became effective November 1, 2009 and only applies to taxpayers that notify the Department prior to October 31, 2015 of their intent to utilize the exemption.⁴⁶

In order to qualify for this exemption, the taxpayer must notify the Department in writing before the first month it uses the exemption.

⁴⁴ South Carolina Code §12-36-2120(67).

⁴⁵ This exemption, requiring a capital investment of at least one hundred million dollars in real and personal property at a single site in the State over an eighteen month period, also applies to distribution facilities or

Agriculture

A. General Information

The agriculture industry enjoys numerous exclusions and exemptions from sales and use tax. This chapter will provide a more detailed discussion of the common exclusions and exemptions available to persons in the agriculture industry.

B. Machines, Parts and Attachments¹

The sale of farm machinery that is used in planting, cultivating or harvesting farm crops for sale is exempt from the tax. The exemption also applies to replacement parts and attachments.

Planting includes all necessary steps in the preparation of the soil prior to, and including, the planting and sowing of the seed.

Cultivation includes the loosening of the soil around growing plants, control of moisture content in the soil, and weed and pest control.

Harvesting begins with the gathering of the crop and ends when the crop is placed in a temporary or permanent storage area. However, it also includes the additional preparation for storage or sale of certain crops such as the curing of tobacco, grains and peanuts and the grading and packaging of peaches, cucumbers, tomatoes, etc.

The machinery exemption also applies to:

- machinery used in constructing terraces, drainage and irrigation ditches; dikes used to control the water level in cultivated fields; and land clearing prior to cultivation of the soil;
- machinery specially designed for irrigation purposes, including pumps, pipes, spigots, etc. when sold for use in the cultivation of farm crops;
- farm dairy tanks used in the production and preservation of milk on dairy farms;
- farm wagons substantially used in planting, cultivating or harvesting farm crops (i.e., hay, corn, peaches) for sale in their original state of production or preparation for sale; and
- pasteurizing machines, cooling machines, mechanical separators, homogenizing machines and bottling machines used by dairies in the production of milk for sale. Milking machines do not come within the exemption for farm machinery.

the tax. See SC Regulation 117-301.5 for more details.

The machinery exemption does **not** apply to:

- automobiles and trucks;
- farm wagons not substantially used in planting, cultivating or harvesting farm crops (i.e., hay, corn, peaches) for sale in their original state of production or preparation for sale;²
- machinery used in constructing fences and buildings and repairing machinery and equipment; and
- farm implements such as hoes, pitchforks and shovels.

C. Livestock³

The sale of livestock is exempt from the tax.⁴ Livestock is defined as domesticated animals customarily raised on South Carolina farms for use primarily as beasts of burden or food. Livestock also means mammals raised for their pelts or furs.

The practical result of the above is to exempt from the tax horses, mules, cattle, swine, sheep, goats, rabbits, ostriches and any other animals raised as food for human consumption, domesticated fish produced for human consumption, and chinchillas.

Animals such as dogs, cats, reptiles, fowls (except baby chicks and poults), minnows, worms, fish (except those cultivated for human consumption), and animals of a wild nature are not considered livestock.

D. Feed⁵

The sale of feed used in the production and maintenance of livestock⁶ is exempt from the tax. Horse feed,⁷ rabbit feed used in the production and maintenance of rabbits for human consumption, and feed used in the production and maintenance of fry, fingerlings and fish are exempt.

² For example, the sale or purchase of a farm wagon for use solely in (a) hauling tractors, harvesting equipment, or cattle; or (b) hauling farm crops (i.e., hay, corn, peaches) from a storage area to market or to a buyer is **not** exempt from the sales and use tax. If a farm wagon is used for both exempt and nonexempt purposes, then the sale or purchase of the farm wagon is exempt from the sales and use tax only if it is used substantially (not merely incidentally) in the planting, cultivating, or harvesting of farm crops (i.e., hay, corn, peaches) for sale in their original state of production or preparation for sale.

³ SC Regulation 117-301.1

⁴ South Carolina Code §12-36-2120(4).

⁵ SC Regulation 117-301.2

Seeds and Seedlings⁸

Insecticides, chemicals, fertilizers, soil conditioners, seeds and seedlings used solely in the production for sale of farm, grove, vineyard or garden products are exempt from the tax.⁹ This exemption includes:

- explosives (chemicals) used solely in the production for sale of farm, grove, vineyard or garden products;
- medicines (chemicals) used solely in the production for sale of livestock;
- insecticides, chemicals, fertilizers, soil conditioners, seeds and seedlings used solely in the production for sale of timber and timber products, nursery products, and poultry and poultry products;
- insecticides and chemicals, including washing powder, soap, etc., used by dairy operators at the dairy barn in the production for sale of products of the dairy; and
- bull semen used solely in the production for sale of livestock.

This exemption does not apply to liquid petroleum gas used for burning grass and weeds around farm crops.

F. Containers and Labels¹⁰

Containers and labels used in preparing agriculture products for sale and used in preparing turpentine gum, gum spirits of turpentine, and gum resins for sale are exempt from the tax.¹¹ For the purposes of this exemption, "containers" means boxes, crates, bags, bagging, ties, barrels, and other containers.

This exemption applies to bags sold to:

- wholesale grain and feed dealers for use as furnished containers of corn and oats;
- cotton dealers or ginneries for use as furnished containers of cotton seed;
- produce dealers for use as furnished containers of potatoes, cabbage, etc;

⁸ SC Regulation 117-301.3.

⁹ South Carolina Code §12-36-2120(6).

¹⁰ SC Regulation 117-301.4.

vines; and

- nurserymen for use as furnished containers of nursery stock.

Wrapping paper, wrapping twine, paper bags, and containers, used incident to the sale and delivery of tangible personal property are exempt.¹²

The above exemptions do not apply to tobacco twine used by farmers incident to the curing of tobacco.

G. Fuel¹³

Fuel used in farm machinery and farm tractors used in planting, cultivating or harvesting farm crops and fuel used to cure agricultural products are exempt from the tax.¹⁴ This applies to fuel used in curing grain in grain elevators for storage or sale.

H. Electricity and Gas¹⁵

Sales of electricity and gas to farmers for use in the production of livestock and milk are exempt from the tax. Sales of electricity for residential purposes and irrigating crops are also exempt. Sales of electricity for other uses are taxable.

The following sales of electricity and gas are exempt:

- sales of electricity and natural and liquefied petroleum gas to farmers for use in the production of livestock or milk;¹⁶
- sales of electricity for irrigating farms crops;¹⁷ and
- sales of electricity and gas for residential purposes.¹⁸

Sale of electricity and gas to farmers for other uses are taxable.

¹² South Carolina Code §12-36-2120(14).

¹³ SC Regulation 117-301.6.

¹⁴ South Carolina Code §12-36-2120, subsections (15) and (18).

¹⁵ SC Regulation 117-301.7.

¹⁶ South Carolina Code §12-36-2120(32).

Commercial Housing of Poultry and Livestock¹⁹

Sales of building material, supplies, fixture, and equipment used in the construction, repair, or improvement a commercial housing of poultry or livestock, or that becomes part of a self-contained enclosure or structure designed, constructed and used for the commercial housing of poultry or livestock, are exempt from the tax.²⁰

This exemption applies to:

- wood chips for use on the floors of self-contained enclosures or structures specifically designed, constructed, and used for the commercial housing of poultry;²¹
- fencing and fencing supplies when used to surround an area on all sides in order to protect livestock or poultry raised or maintained for commercial purposes. The exemption is applicable when the fencing and fencing supplies are used within a building such as a barn or a chicken house or used to surround a field that is specifically set aside and used for livestock or poultry that is raised or maintained for commercial purposes;²² and
- watering tubs, feed troughs, and hay feeders placed within a fenced in area specifically set aside and used for livestock or poultry, provided the livestock and poultry within the enclosure are being raised or maintained for commercial purposes.²³

The exemption does not apply to fencing and fencing supplies used to surround a field where crops are grown.

J. Sales by Farmers²⁴

Sales of farm products are exempt if sold in their original state of production and sold by the farmer or a member of the farmer's immediate family. This exemption not only applies to sales of farm products by individuals; it also applies to sales by corporations and other entities. The exemption applies to food products, ornamental plants, timber, and grass sod.

The exemption is not applicable if the farmer processes his product beyond the usual and customary preparation for sale. For example, where a farmer also operates a processing plant, he cannot claim the exemption for sales of these processed products.

¹⁹ SC Regulation 117-301.8.

²⁰ South Carolina Code §12-36-2120(45).

²¹ South Carolina Information Letter #95-1.

²² South Carolina Revenue Ruling #05-11

The hatchery operator may purchase under his retail license hatchery eggs for use in hatching baby chicks for sale. Hatchery eggs may be sold free of the tax to a hatchery operator not having a retail license, provided, the seller thereof takes from such operator a certificate that the property is for resale either in the original form or as baby chicks or as full grown chickens. Hatcheries engaged in the business of hatching baby chicks for others from eggs grown by those other persons (custom hatching) are rendering a service which is not subject to the tax.

Construction Contractors

A. General Information

A construction contractor is the user or consumer of everything he buys. A "construction contractor" is a person or business making repairs, alterations, or additions to real property.¹

In general, all purchases by construction contractors, including building materials,² are retail purchases and are subject to South Carolina sales or use tax. A contractor who buys building materials in another state and brings them into South Carolina for use on a construction contract in South Carolina is liable for South Carolina use tax.³ A credit is allowed against South Carolina use tax for the total taxes (state and local) due and paid in another state.⁴

The following are examples of transactions where the contractor is not subject to South Carolina sales and use tax:

- (1) The contractor buys property from a South Carolina supplier and the supplier delivers the property to the contractor (or to an agent or donee of the contractor) outside South Carolina.⁵
- (2) The contractor purchases tangible personal property in South Carolina for use on contracts outside South Carolina. To come within this exclusion, the contractor must perform some work on the property in South Carolina and the property must not be brought back into South Carolina.⁶

¹ SC Regulation 117-314.2.

² SC Regulation 117-314.2 defines "building materials" to mean any material used in making repairs, alterations or additions to real property, including "such tangible personal property as lumber, timber, nails, screws, bolts, structural steel, elevators, reinforcing steel, cement, lime, sand, gravel, slag, stone, telephone poles, fencing, wire, electric cable, brick, tile, glass, plumbing supplies, plumbing fixtures, pipe, pipe fittings, prefabricated buildings, electrical fixtures, built-in cabinets and furniture, sheet metal, paint, roofing materials, road building materials, sprinkler systems, air conditioning systems, built-in-fans, heating systems, floorings, floor furnaces, crane ways, cross-ties, railroad rails, railroad track accessories, tanks, builders hardware, doors, door frames, window frames, water meters, gas meters, well pumps, and any and all other tangible personal property which becomes a part of real property."

³ South Carolina Code §12-36-1310(A) and South Carolina Revenue Ruling #89-16.

⁴ South Carolina Code §12-36-1310(C).

⁵ South Carolina Code §12-36-1310(C).

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

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

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

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

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

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

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

- (1) maintains a place of business;
- (2) qualifies to do business;
- (3) solicits and receives purchases or orders by an agent or salesman; or
- (4) distributes catalogs, or other advertising matter, and by reason of that distribution receives and accepts orders from residents within the State.⁷

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

- (1)(a) selling or auctioning tangible personal property whether owned by the person or others;
- (b) furnishing accommodations to transients for a consideration, except an individual furnishing accommodations of less than six sleeping rooms on the same premises, which is the individuals [sic] place of abode;

- (d) operating a laundry, cleaning, dyeing, or pressing establishment for a consideration;
- (e) selling electric power or energy;
- (f) selling or furnishing the ways or means for the transmission of the voice or of messages between persons in this State for a consideration. A person engaged in the business of selling or furnishing the ways or means for the transmission of the voice or messages as used in this subitem (f) is not considered a processor or manufacturer;...

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

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

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

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

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

- (a) sales of building materials⁸ to construction contractors, builders, or landowners for resale or use in the form of real estate;

* * * *

⁸ SC Regulation 117-314.2 states: "Building materials" when purchased by builders, contractors, or landowners for use in adding to, repairing or altering real property are subject to either the sales or use tax at the time of purchase by such builder, contractor, or landowner. "Building materials" as used in the Sales and Use Tax Law includes any material used in making repairs, alterations or additions to real property. "Builders," "contractors," and "landowners" mean and include any person, firm, association or corporation making repairs, or additions to real property. The term "building materials" includes such tangible personal property as lumber, timber, nails, screws, bolts, structural steel, elevators, reinforcing steel, cement, lime, sand, gravel, slag, stone, telephone poles, fencing, wire, electric cable, brick, tile, glass, plumbing supplies, plumbing fixtures, pipe, pipe fittings, prefabricated buildings, electrical fixtures, built-in cabinets and furniture, sheet metal, paint, roofing materials, road building materials, sprinkler systems, air conditioning systems, built-in-fans, heating systems, floorings, floor furnaces, crane ways, crossties, railroad rails, railroad track accessories, tanks, builders hardware, doors, door frames, window frames, water meters, and

manufacturer must pay the sales tax based on the fair market value at the time and place where used or consumed;

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

* * * *

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

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

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

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

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

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

(Emphasis added.)

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

on "gross proceeds of sales" or "sales price." However, installation labor, if separately stated on the bill to the customer and reasonable, would not be subject to the tax.

Furthermore, if a retailer truly serves as a contractor or subcontractor in the traditional sense for some transactions (e.g., bids on a project against others, enters into a contract upon winning the bid process, etc.), then the building materials purchased for those contracts may be purchased tax paid as a contractor. Generally, in order to purchase building material tax paid as a contractor, the retailer would need to demonstrate, based on its books and records and how it operates, that these purchases were purchases at retail for a construction contract. If the retailer is unable to demonstrate that the purchases were for a construction contract, the retailer's transactions with its customers will be treated either as retail sales and installations subject to the tax at the time of the sale or "withdrawals for use" subject to the tax at the time the tangible personal property is withdrawn from inventory.⁹

C. Construction Contracts with Manufacturers

Unlike most purchases by construction contractors, the purchase of materials that are components of machines which are used in manufacturing tangible personal property for sale may be purchased tax free.¹⁰ Often, a construction contractor will have a contract with a manufacturer, processor or compounder that has an exemption certificate and is entitled to the exemption for machines, parts and attachments.

Since construction contractors usually cannot make tax free purchases, the Department has developed several methods by which a contractor may purchase tax free all items to be used in building machines, parts and attachments for manufacturers that are exempt from tax. These methods are:

Manufacturer Letter to Contractor's Suppliers – The manufacturer furnishes documentation, in the form of a letter, to the contractor's suppliers establishing that the item is not subject to the tax. The manufacturer agrees to reimburse the party liable for the tax if a transaction is later determined to be subject to the tax. The contractor does not use the manufacturer's exemption certificate.

Agency Agreement – The contractor enters into a limited agency agreement with the manufacturer, and the contractor is allowed to use the manufacturer's exemption certificate. As an agent, the contractor is legally acting for the principal. The manufacturer is liable for any taxes due, so it is important for the agreement to be in writing and clearly state what the contractor can and cannot buy with the certificate. This is usually used for large projects.

⁹ See Chapter 6 ("Gross Proceeds of Sales" and "Sales Price"), Section F for a discussion of "withdrawals for use."

with the manufacturer whereby the manufacturer will accept liability and responsibility for payment of all the sales and use tax due on the project. This is only available for large projects and the use of this method is at the sole discretion of the Department. This is referred to as a "Special 19 Agreement."

Single Sale Exemption Certificate – The contractor completes Form ST-8 and extends it to the supplier indicating the purchase is exempt under the "machine exemption."¹¹ A certificate must be extended for each purchase. The contractor assumes full liability for the tax if it is determined that the purchase was used for a non-exempt purpose.

D. Light Construction Equipment

The law provides a maximum tax of \$300 on purchases of light construction equipment used for construction purposes, *i.e.*, building or making additions to real property.¹² The equipment must be self-propelled with a maximum of 160 net engine horsepower. Form ST-405 may be completed by the purchaser and given to the retailer in order to limit the tax to \$300. The local option sales and use taxes collected by the Department do not apply to sales subject to the \$300 maximum tax.

If light construction equipment is leased, it is subject to the \$300 maximum tax if the lease is in writing and has a stated term of, and remains in force for, a period in excess of 90 continuous days. The taxpayer may pay the total tax due at the time the lease is executed or with each lease payment until the \$300 is paid.

The Department has concluded that the \$300 maximum tax does not apply to equipment used to maintain or repair property, such as tractors, loaders and other self-propelled equipment used to maintain golf courses, parks and campgrounds.¹³

E. Construction Material Used to Construct a Single Manufacturing or Distribution Facility

South Carolina exempts from sales and use tax construction materials used in the construction of a single manufacturing or distribution facility, or one that serves both purposes, with a capital investment of at least \$100 million in real and personal property at a single site in the State over an 18 month period.¹⁴

¹¹ South Carolina Code §12-36-2120(17).

¹² South Carolina Code §12-36-2110(A)(7).

construction of a single manufacturing facility where the taxpayer (1) invests at least \$750 million in real and personal property at the facility over a seven year period and (2) creates at least 3,800 new, full-time jobs over a seven year period. This exemption became effective November 1, 2009 and only applies to taxpayers that notify the Department prior to October 31, 2015 of their intent to utilize the exemption.¹⁵

The taxpayer, with respect to either exemption for construction material, must notify the Department in writing before the first month it uses the exemption and must notify the Department in writing that it has met the investment requirement or, after the expiration of the applicable investment period (18 months or seven years), that it has not met the investment requirement. This notification must also include the beginning date of the investment period.

F. Contracts with the Federal Government¹⁶

South Carolina exempts from sales and use tax tangible personal property purchased by a person under written contract with the federal government that

- becomes part of real or personal property owned by the federal government or
- transfers to the federal government, pursuant to a written contract.¹⁷

The exemption does not apply to purchases of items that do not transfer to the federal government, such as tools. Purchases made by contractors under contracts with state, county and municipal governments are not exempt from sales and use tax.

Further, South Carolina Revenue Ruling #04-9 provides that purchases by a construction subcontractor for use in a federal government construction project in South Carolina are exempt if (a) the subcontractor has a written contract with the general construction contractor that in turn has a written contract for the project with the federal government and (b) the subcontractor is an agent for the general contractor. In addition, purchases by a subcontractor of the subcontractor for use in a federal government construction project in South Carolina are not subject to the sales and use tax if the general contractor that has the written contract with the federal government has specifically granted his agent the authority to appoint a subagent that can bind the general contractor. The agency agreements with the subcontractors (as agents or subagents) must be in writing to meet the exemption requirement.¹⁸

¹⁵ Act No. 124 of 2009, Section 4B.

¹⁶ SC Regulation 117-314.11 and South Carolina Revenue Ruling #04-9.

¹⁷ South Carolina Code §12-36-2120(29).

Sales to, or purchases by, contractors under contracts with state, county and municipal governments generally are **not** exempt from the sales and use taxes.

H. Contractors that Manufacture or Fabricate Items that They Will Use in Constructing Real Property¹⁹

The state sales and use tax applies to businesses that manufacture or fabricate items, that they will use in constructing real property, as follows:

Standard Finished Products:

If the taxpayer produces "standard finished products" that it sells at wholesale or at retail on a regular and continuous basis; creates "a new and substantially different article having a distinctive name and substantially different character or use" than that of the raw materials from which it was made; and, is commonly thought of as a manufacturer, then the taxpayer is a "manufacturer" of "building materials." As a manufacturer, if the taxpayer uses such building materials in the performance of a construction contract, then the taxpayer is a "manufacturer/contractor," and is liable for the sales tax based on the fair market value of the building materials at the time and place where used or consumed - the job site. However, if the job site is located outside of South Carolina, then no tax is due.

In addition, as a "manufacturer/contractor," the taxpayer is entitled, to the extent applicable, to the exemptions and exclusions provided in South Carolina Code §§12-36-2120(9),²⁰ 12-36-2120(17),²¹ 12-36-2120(19)²² and 12-36-120.²³ Also, the credit provisions of South Carolina Code §12-36-1310(C)²⁴ may be applicable.

¹⁹ South Carolina Revenue Ruling #94-2. See also *Metromont Materials Corp. v. South Carolina Tax Commission*, Spartanburg County Court of Common Pleas, No. 84-CP-42-14 (1985).

²⁰ This code section provides exemptions for coal, or coke or other fuel sold to manufacturers for (a) use or consumption in the production of by-products, (b) the generation of heat or power used in manufacturing tangible personal property for sale and (c) the generation of electric power or energy for use in manufacturing tangible personal property for sale.

²¹ This code section provides an exemption for machines used in manufacturing tangible personal property for sale.

²² This code section provides an exemption for electricity used by manufacturers to manufacture tangible personal property for sale.

²³ This code section provides exclusions for the sale of (a) tangible personal property to a manufacturer as an ingredient or component part of the tangible personal property or products manufactured for sale, (b) tangible personal property used directly in manufacturing tangible personal property into products for sale and (c) materials, containers, cores, labels, sacks, or bags used incident to the sale and delivery of tangible personal property, or used by manufacturers in shipping tangible personal property.

a particular construction project. Such items are standard or interchangeable and have a resale value and a fair market value. These items are generally mass-produced and are suitable for use on many construction projects.

Unique Products:

If the taxpayer produces "unique products" that it uses in the performance of a construction contract, then the taxpayer is a contractor. As such, sales to, and purchases by, the taxpayer of the raw materials used to fabricate (within South Carolina) the unique product are subject to the sales and use tax. However, if the fabricated item will be used, and become a part of realty, at a job site located outside of South Carolina, then the sales to, and purchases by, the taxpayer of the raw materials used in the fabrication of that unique product are not subject to the sales and use tax.

If the unique product is fabricated out-of-state, sales to or purchases by, the contractor of the materials used to fabricate the unique product are not subject to the sales and use tax, provided the materials were not sold and delivered to the contractor within South Carolina.

In addition, as a contractor, the taxpayer is not entitled to the exemptions and exclusions provided in South Carolina Code §§12-36-2120(9),²⁵ 12-362120(17),²⁶ 12-36-2120(19)²⁷ and 12-36-120²⁸, unless a substantial portion of its business also includes the fabrication of "unique products" (and/or standard finished products) that it sells to contractors and other consumers. However, the credit provisions of South Carolina Code §12-36-1310(C)²⁹ may be applicable.

"Unique products" are items that are specifically designed for use on a particular construction project. Such items are not standard or interchangeable in any sense and have no resale value and no reasonable fair market value.

²⁵ This code section provides exemptions for coal, or coke or other fuel sold to manufacturers for (a) use or consumption in the production of by-products, (b) the generation of heat or power used in manufacturing tangible personal property for sale and (c) the generation of electric power or energy for use in manufacturing tangible personal property for sale.

²⁶ This code section provides an exemption for machines used in manufacturing tangible personal property for sale.

²⁷ This code section provides an exemption for electricity used by manufacturers to manufacture tangible personal property for sale.

²⁸ This code section provides exclusions for the sale of (a) tangible personal property to a manufacturer as an ingredient or component part of the tangible personal property or products manufactured for sale. (b) tangible personal property used directly in manufacturing tangible personal property into products for sale and (c) materials, containers, cores, labels, sacks, or bags used incident to the sale and delivery of tangible personal property, or used by manufacturers in shipping tangible personal property.

make improvements to realty, are subject to the sales and use tax based upon gross proceeds of sales or sales price, unless otherwise excluded or exempted from the tax.

I. Transient Construction Property³⁰

When a contractor is hired to build an office complex somewhere in South Carolina, the contractor may purchase various machinery, tools and equipment from out-of-state vendors for use at the South Carolina job site. These purchases are subject to the South Carolina sales tax or the use tax.

In addition, the contractor may import or bring into this State other machinery, tools and equipment, owned by the contractor and previously and substantially used on other jobs outside of South Carolina. Such machinery, tools and equipment is known as "transient construction property."³¹

"Transient construction property" is subject to a special imposition of the South Carolina use tax. This special imposition prorates the use tax to reflect the equipment's duration of use in South Carolina, provided the other state's statute has similar provisions for proration of the tax or depreciation of the tax base.³²

In summary, the use tax imposed on the use of transient construction property is computed as follows:

Step #1: Multiply the Original Purchase Price by the State Tax Rate.³³

Step #2: Divide the Duration of Time the Property is Used in South Carolina by the Property's Total Useful Life.³⁴

³⁰ South Carolina Code §12-36-1320 and South Carolina Revenue Ruling #89-11. Note: South Carolina Revenue Ruling #89-11 references the sales and use tax code sections prior to recodification in 1990; however, the taxation of transient construction property remained the same in South Carolina Code §12-36-1320 after recodification.

³¹ South Carolina Code §12-36-150 defines "transient construction property" to mean "motor vehicles, machines, machinery, tools, or other equipment, other tangible personal property brought, imported, or caused to be brought into this State for use, or stored for use, in constructing, building, or repairing any building, highway, street, sidewalk, bridge, culvert, sewer or water system, drainage or dredging system, railway system, reservoir or dam, power plant, pipeline, transmission line, tower, dock, wharf, excavation, grading or other improvement or structure, or any part of it."

³² South Carolina Code §12-36-1320.

³³ The State tax rate is 6% on all transient construction property except items that qualify for the maximum tax under South Carolina Code §12-36-2110. Items that qualify for the maximum tax under South Carolina Code §12-36-2110 are taxed at a State rate of 5%. Items subject to the State rate of 6% are also subject to any applicable local taxes administered and collected by the Department of Revenue on behalf of local jurisdictions. Items that qualify for the maximum tax under South Carolina Code §12-36-2110 are not subject to local taxes administered and collected by the Department of Revenue on behalf of local

Step #4: The Result of Step #3 is the State Use Tax due South Carolina on the transient construction property.

South Carolina will also allow a credit (prorated to reflect the equipment's duration of use in South Carolina) for sales tax paid another state, against the South Carolina use tax, on equipment previously used in another state if the out-of-state contractor's state will allow a similar credit.

Note: Machinery, tools and equipment purchased for first use in South Carolina is not "transient construction property" and is subject to the full amount of use tax;³⁵ however, such purchases qualify for the credit for sales and use taxes, if any, legally due and paid in another state on the purchase of such machinery, tools and equipment.³⁶

J. Local Sales and Use Taxes

The local sales tax is reportable by the contractor's supplier in the county and municipality where the tangible personal property is delivered.

The local use tax is reportable by county and/or municipality where the property is first stored, used or consumed. Form ST-389 provides information as to which type of local sales and use tax must be reported by county and municipality and which type of local sales and use tax must only be reported by county.

The liability for the local use tax, as with the state use tax, is on the contractor. The supplier may, however, be required to collect the tax from the contractor and remit it to the Department if the supplier has nexus with the county of delivery.

If the contractor takes delivery in one local tax county and pays that county's local sales tax to the supplier, he is not liable for the local use tax if he takes the property to another local tax county and stores, uses or consumes the property in that county, provided the local sales tax he paid is equal to or greater than the local use tax that would otherwise be due. If the local sales tax he paid is less than the local use tax, then the contractor owes the difference. Also, the contractor is relieved of the liability for the local use tax if he has a receipt from a retailer showing the retailer has collected the local use tax.

Construction contracts executed before the imposition date of the local option tax are exempt from the local option sales and use taxes. The exemption from the local tax also applies to written bids that are submitted before the imposition date, and that culminate in a contract executed before or after the imposition date. To come within the exemption, contractors must apply to the Department of Revenue, using Form ST-10-C. If the application is approved, an exemption certificate will be issued (ST-35). An application form must be filed for each contract, accompanied by a copy of each contract. A separate exemption certificate will be issued for each contract.

Communications

Communication technology is expanding every day. As such, new and emerging technologies will make available to consumers many new communication services in the future.

Communications are subject to sales and use tax under Chapter 36 of Title 12 pursuant to South Carolina Code §§12-36-910(B)(3) and 12-36-1310(B)(3), which impose the tax on the

gross proceeds accruing or proceeding from the charges for the ways or means for the transmission of the voice or messages, including the charges for use of equipment furnished by the seller or supplier of the ways or means for the transmission of the voice or messages[.] [Emphasis added.]

It has been the longstanding position of the Department that charges for the ways or means of communication include charges for access to, or use of, a communication system (the manner, method or instruments for sending or receiving a signal of the voice or of messages), whether this charge is based on a fee per a specific time period or per transmission. This is further supported by the definition of the terms "sale" and "purchase," which are defined in South Carolina Code §12-36-100 to include "a license to use or consume."

The South Carolina sales and use tax also addresses two other types of communication services by special imposition. South Carolina Code §§12-36-910(B)(5) and 12-36-1310(B)(5) impose the sales and use tax on the gross proceeds accruing or proceeding from the sale or recharge at retail for prepaid wireless calling arrangements.

"Prepaid wireless calling arrangements" means communication services that

- (i) are used exclusively to purchase wireless telecommunications;
- (ii) are purchased in advance;
- (iii) allow the purchaser to originate telephone calls by using an access number, authorization code, or other means entered manually or electronically; and
- (iv) are sold in units or dollars, which decline with use in a known amount.

All charges for prepaid wireless calling arrangements must be sourced to the (i) location in this State where the over-the-counter sale took place, (ii) shipping address, if the sale

address or location associated with the mobile telephone number if the sale did not take place at the seller's location and no item is shipped.¹

South Carolina Code §12-36-2645 imposes the sales and use tax on gross proceeds accruing or proceeding from the business of providing 900/976 telephone service except that the applicable rate of the tax is 11%.

A. Exemptions and Exclusions

The sales and use tax law provides several exemptions and exclusions for the charges taxed under South Carolina Code §§12-36-910(B)(3) and 12-36-1310(B)(3).

South Carolina Code §12-36-2120(11) exempts:

- (a) toll charges for the transmission of voice or messages between telephone exchanges;
- (b) charges for telegraph messages;
- (c) carrier access charges and customers access line charges established by the Federal Communications Commission or the South Carolina Public Service Commission; and
- (d) transactions involving automatic teller machines[.]

South Carolina Code §12-36-60, the definition of "tangible personal property" which by statute includes communications,² states in part:

Tangible personal property does not include the transmission of computer database information by a cooperative service when the database information has been assembled by and for the exclusive use of the members of the cooperative service. [Emphasis added.]

South Carolina Code §12-36-910(C) excludes from the sales and use tax the gross proceeds accruing or proceeding from charges for or use of data processing. "Data processing" means the manipulation of information furnished by a customer through all or part of a series of operations involving an interaction of procedures, processes, methods, personnel, and computers. It also means the electronic transfer of or access to that information. Examples of the processing include, without limitation, summarizing, computing, extracting, storing, retrieving, sorting, sequencing, and the use of computers.

¹ South Carolina Code §§12-36-910(5)(b) and 12-36-1310(5)(b).

² Also, since communications services are by statute "tangible personal property," there can be "wholesale

- (a) textbooks, books, magazines, periodicals, newspapers, and access to on-line information systems used in a course of study in primary and secondary schools and institutions of higher learning or for students' use in the school library of these schools and institutions;
- (b) books, magazines, periodicals, newspapers, and access to on-line information systems sold to publicly supported state, county, or regional libraries;

Items in this category may be in any form, including microfilm, microfiche, and CD ROM; however, transactions subject to tax under South Carolina Code §§12-36-910(B)(3) and 12-36-1310(B)(3) do not fall within this exemption; [Emphasis added.]

B. Taxable Communication Services³

Charges for the following communication services are subject to the sales and use tax pursuant to South Carolina Code §§12-36-910(B)(3) and 12-36-1310(B)(3):

- Telephone services,⁴ including telephone services provided via the traditional circuit-committed protocols of the public switched telephone network (PSTN), a wireless transmission system, a voice over Internet protocol (VoIP) or any of other method
- Teleconferencing services
- Paging services⁵
- Cable television services⁶
- Satellite programming services and other programming transmission services (includes, but is not limited to, emergency communication services and television, radio, music or other programming services)
- Fax transmission services⁷
- E-mail services⁸

³ SC Regulation 117-329 and South Carolina Revenue Ruling #06-8.

⁴ See South Carolina Code §12-36-2120(11) for exemptions specifically related to telephone services.

⁵ See South Carolina Information Letter #89-28.

⁶ Attorney General Opinion #82-41 (6/9/1982).

⁷ See South Carolina Code §12-36-1310(B)(3).

- Electronic filing of tax returns when the return is electronically filed by a person who did not prepare the tax return⁹
- Database access transmission services (online information services), such as legal research services, credit reporting/research services, charges to access an individual website¹⁰ (including Application Service Providers), etc. (not including computer database information services provided by a cooperative service when the database information has been assembled by and for the exclusive use of the members of the cooperative services)¹¹

Note: It is the Department's opinion that charges for mobile satellite communication services, such as automobile satellite radio programming or other mobile communication services, are sourced to the primary place of use of the customer (e.g., the residence of an individual customer) as defined in the Mobile Telecommunications Sourcing Act. (Pursuant to South Carolina Code §§12-36-910(B)(3) and 12-36-1310(B)(3), "charges for mobile telecommunications services...must be sourced in accordance with the Mobile Telecommunications Sourcing Act as provided in Title 4 of the United States Code.")

⁹ See South Carolina Revenue Ruling #91-20.

¹⁰ Charges for the ways or means for the transmission of the voice or messages are subject to the sales and use tax under Code Sections 12-36-910(B)(3) and 12-36-1310(B)(3). Charges by an Internet Service Provider ("ISP") that allow a customer to access the Internet ("Internet Access") are charges for the ways and means for the transmission of the voice or messages. However, as discussed below, the Department has not enforced the assessment and collection of the sales and use tax on Internet Access.

In 1998 Congress established a tax moratorium in the Internet Tax Freedom Act. The moratorium was later extended in the Internet Nondiscrimination Act. The moratorium prohibited the taxation of Internet Access, unless the tax was generally imposed and actually enforced prior to October 1, 1998. Although a few taxpayers were paying sales and use tax on Internet Access, the Department reviewed its enforcement of the tax with respect to Internet Access and determined in 1998 that it had not issued an advisory opinion specifically stating that charges for Internet Access were taxable, and did not have an audit policy to enforce the assessment and collection of the tax on Internet Access. Therefore, the Department determined that the collection of the sales and use tax was not grandfathered under the Congressional moratorium and therefore it could not tax Internet Access. Since charges to access or use an individual database, such as a website, did not constitute an access to the Internet, these charges did not come within the moratorium and were subject to the tax. In addition, charges to access or use an individual database, such as a website, were previously held subject to the tax in SC Revenue Ruling #89-14 as a "database access transmission."

An extension of the moratorium was enacted by Congress. In addition, the combination of past Department policies and the Congressional moratorium has created the equivalent of a longstanding administrative policy not to impose the sales and use tax on Internet Access. Therefore, the Department will only enforce collection of the sales and use tax, on Internet Access if Congress does not extend the moratorium again and the General Assembly enacts legislation or approves a regulation to impose the sales and use tax upon Internet Access. However, charges by a third party to access or use that third party's individual website will continue to be subject to the sales and use tax (e.g. monthly charges to access a sports website).

pursuant to South Carolina Code §§12-36-910(B)(5) or 12-36-2645:

- Prepaid wireless calling arrangements (sale or recharge at retail) as defined in South Carolina Code §12-36-910(B)(5) (For information on prepaid telephone calling cards that do not come within the definition of prepaid wireless calling arrangements, see South Carolina Revenue Ruling #04-4.)
- 900/976 telephone services (The State tax rate on this type of communication service is 11%, not 6%)

C. Non-Taxable Communication Services¹²

Charges for the following communication services are **not** subject to the sales and use tax imposed under South Carolina Code §§12-36-910(B)(3) and 12-36-1310(B)(3)

- Telephone services specifically exempted from the tax, such as toll charges between telephone exchanges and carrier access charges and customers access line charges established by the Federal Communications Commission or the South Carolina Public Service Commission¹³
- Telegraph messages¹⁴
- Communication services involving automatic teller machines¹⁵
- Data processing services¹⁶
- Computer database information services provided by a cooperative service when the database information has been assembled by and for the exclusive use of the members of the cooperative services¹⁷
- Electronic filing of tax returns when the return is electronically filed by a person who prepared the tax return¹⁸
- Non-Automated Voice Mail Messaging Services, including Non-Automated Answering and Messaging Services
- Other charges specifically exempt from the tax under State law or federal law

¹² SC Regulation 117-329 and South Carolina Revenue Ruling #06-8.

¹³ South Carolina Code §12-36-2120(11).

¹⁴ South Carolina Code §12-36-2120(11).

¹⁵ South Carolina Code §12-36-2120(11).

¹⁶ SC Regulation 117-329; South Carolina Revenue Ruling #06-8; South Carolina Private Letter Ruling #13-1; South Carolina Private Letter Ruling #12-2; South Carolina Private Letter Ruling #04-1.

¹⁷ South Carolina Private Letter Ruling #12-2; South Carolina Private Letter Ruling #04-1.

customer's home or business for the purpose of burglary and fire protection were not subject to the sales and use taxes since such charges were not charges for access to, or use of, a communication system (ways or means for the transmission of the voice or messages). The sale or lease of equipment to the customer, or the use of the equipment by the monitoring company, was held subject to the tax based on the specific facts and circumstances.¹⁹

D. "Bundled Transactions"

For a customer bill rendered on or after January 1, 2004 that includes telecommunications services in a bundled transaction, where the nonitemized price is attributable to properties or services that are taxable and nontaxable, the portion of the price attributable to any nontaxable property or service is subject to tax unless the provider can reasonably identify that portion from its books and records kept in the regular course of business for purposes other than sales taxes.

Note: A "bundled transaction" is "a transaction consisting of distinct and identifiable properties or services, which are sold for one nonitemized price but which are treated differently for [sales and use] tax purposes."

Note: This publication attempts to list as many communication services as possible that the Department has held in the past as subject to the tax, whether through formal advisory opinions, audits or informal advice provided to taxpayers. Charges for other communication services not listed in this publication are still subject to the tax if they constitute charges for the ways or means for the transmission of the voice or messages and are not otherwise exempted under the law.

Catawba Indian Reservation - State and Tribal Sales and Use Taxes

A. The Catawba Indian Claims Settlement Act

Chapter 16, Title 27 of the South Carolina Code of Laws is known as "The Catawba Indian Claims Settlement Act" ("The Act"). The Act is based on the agreement in principle reached between the State of South Carolina and the Catawba Indian Tribe to settle differences between the two parties.

This act took effect on November 29, 1993 when the Governor certified that the Counties of York and Lancaster had taken all actions required of them by the Settlement Agreement and that the federal implementing legislation enacted by Congress and signed in law by the President was consistent with the Settlement Agreement.

South Carolina Code §27-16-130 of the Catawba Indian Claims Settlement Act reads, in part:

(H) The Tribe, its members, and the Tribal Trust Funds are liable for the payment of all state and local sales and use taxes to the same extent as any other person or entity in the State, except as specifically provided as follows:

- (1) Purchases made by the Tribe for tribal government functions during ninety-nine years from the effective date of this chapter are exempt from state and local sales and use taxes.
- (2) Catawba pottery and artifacts made by members of the Tribe and sold on or off the Reservation by the Tribe or members of the Tribe are exempt from state and local sales and use taxes.
- (3) During ninety-nine years from the effective date of this chapter, the sale on the Reservation of all other items, made on or off the Reservation, are exempt from state and local sales and use taxes but are subject to a special tribal sales tax levied by the Tribe equal to the state and local sales tax that would be levied in the jurisdiction encompassing the Reservation but for this exemption.
 - (a) The South Carolina sales and use tax laws, regulations, and rulings apply to the special tribal sales tax, and the special tribal sales tax must be administered and collected by the South Carolina Tax Commission.¹

special tribal sales tax revenues periodically to the Tribe at no cost to the Tribe.

- (c) The tribal sales tax does not apply to retail sales occurring on the Reservation as a result of delivery from outside the Reservation when the gross proceeds of sale are one hundred dollars or less. If it does not apply, the state sales tax applies.
- (d) The Tribe shall impose a tribal use tax on the storage, use, or other consumption on the Reservation of tangible personal property purchased at retail outside the State when the vendor does not collect the tax. However, use taxes collected by a vendor which is not located in the State are subject to state use taxes, and the use tax must be remitted to the State and not the Tribe. Use taxes not collected by the vendor and remitted to the State are subject to the tribal use tax and must be collected directly by the Tribe.

B. Application of State and Tribal Sales and Use Taxes to Sales of Tangible Personal Property Delivered on the Reservation

Based on the Catawba Indian Claims Settlement Act, the following chart outlines the application of sales and use taxes to sales to individual members of the Catawba Indian Tribe:

<u>Delivery on the Reservation From:</u>	<u>Type Tax Applicable</u>	<u>Administered and Collected By:</u>
Location On the Reservation	Tribal Sales Tax (Equal to Combined State and Local Rate)	DOR
Location Off the Reservation But in SC – Sales \$100 or less	State Sales Tax (6%) *	DOR
Location Off the Reservation But in SC – Sales Over \$100	Tribal Sales Tax (Equal to Combined State and Local Rate)	DOR
Location Off the Reservation and Outside the State – Seller Registered with DOR.	State Use Tax (6%) *	DOR
Location Off the Reservation and Outside the State – Seller Not Registered with DOR	Tribal Use Tax (Equal to Combined State and Local Rate)	Catawba Indian Tribe

tax and a 1% Capital Projects Tax. York County imposes a 1% Capital Projects sales and use tax. These local taxes are in addition to the State sales and use tax. Therefore, **effective January 1, 2012**, the tribal sales tax and the tribal use tax are imposed at the following rates:

For sales (deliveries) made on the Reservation within Lancaster County:

- 8% for general sales of tangible personal property
- 9% for sales of accommodations
- 2% for sales of unprepared foods

For sales (deliveries) made on the Reservation within York County:

- 7% for general sales of tangible personal property
- 8% for sales of accommodations
- 0% for sales of unprepared foods²

Please note that the rate for the tribal sales tax and the tribal use tax may increase or decrease dependent upon whether the total state and local sales and use tax rates change in Lancaster County or York County in the future.

C. Purchases by the Tribe for Tribal Government Functions³

Sales to, or purchases by, the Catawba tribal government for tribal government functions are exempt from state and local sales and use taxes until November 28, 2092 (99 years after the Act took effect on November 29, 1993). Sales to, or purchases by, the Catawba tribal government for tribal government functions will be subject to state and local sales and use taxes beginning November 29, 2092.

D. Artifacts Made by Members of the Tribe⁴

Catawba pottery and artifacts made by members of the Tribe and sold on or off the Reservation by the Tribe or members of the Tribe are exempt from state and local sales and use taxes. Unlike the other exemptions enacted in South Carolina Code §27-16-130(H), this exemption does not automatically expire on November 28, 2092 (99 years after the Act took effect on November 29, 1993).

² York County "re-imposed" its 1% Capital Projects Tax effective January 1, 2012. The prior 1% Capital Projects Tax imposed in York county expired on December 31, 2011 and the new Capital Projects Tax became effective the next day on January 1, 2012. In addition, the new 1% Capital Projects Tax in York County exempts sales of unprepared food effective January 1, 2012.

means objects, including tools, weapons and ornaments, produced or shaped by the workmanship of one or more members of the Catawba Indian Tribe that are associated with the culture or history of the Tribe.

E. Sales on the Reservation⁵

Sales on the Reservation (whether the tangible personal property is made on or off the Reservation) are exempt from state and local sales and use taxes until November 28, 2092 (99 years after the Act took effect on November 29, 1993), except for retail sales occurring on the Reservation as a result of delivery from outside the Reservation when the gross proceeds of sale are one hundred dollars or less. Sales occurring on the Reservation as a result of delivery from outside the Reservation are subject to state and local sales and use taxes when the gross proceeds of the sale are one hundred dollars or less. Sales on the Reservation will be subject to state and local sales and use taxes beginning November 29, 2092.

Sales on the Reservation (whether the tangible personal property is made on or off the Reservation) are subject to the Catawba tribal sales and use tax until November 28, 2092 (99 years after the Act took effect on November 29, 1993), except for retail sales occurring on the Reservation as a result of delivery from outside the Reservation when the gross proceeds of sale are one hundred dollars or less. Sales occurring on the Reservation as a result of delivery from outside the Reservation are subject to state and local sales and use taxes when the gross proceeds of sale are one hundred dollars or less. Sales on the Reservation will no longer be subject to the Catawba tribal sales and use tax beginning November 29, 2092.

F. Tangible Personal Property Made by Members of the Tribe (Other than Artifacts)

Delivered Off the Reservation within South Carolina

When tangible personal property, other than pottery and artifacts made by members of the Tribe, is sold and delivered by a retailer to a location in South Carolina but outside the reservation, sales of these items off the Reservation are subject to state and local sales taxes and are not subject to the tribal sales tax.

Delivered Off the Reservation Outside of South Carolina

When tangible personal property is sold and delivered by a retailer to a location outside of South Carolina, sales of these items off the Reservation and outside of South Carolina are exempt from the tribal tax and the state tax.⁶

common carrier for delivery outside of South Carolina, sales of these items off the Reservation and outside of South Carolina are exempt from the tribal tax and the state tax.⁷

G. Accommodations

Accommodations furnished on the Reservation are subject to the tribal sales tax at a rate of 9% for accommodations furnished in Lancaster County and at a rate of 8% for accommodations furnished in York County. Additional guest charges imposed on the Reservation are subject to the tribal sales tax at a rate of 8% in Lancaster County and at a rate of 7% in York County.

H. Maximum Tax Items

For sales (deliveries) made on the Reservation of tangible personal property subject to the maximum tax provisions, the tribal sales and use tax rate is 5%⁸ in each county (since the state sales and use tax on maximum tax items is 5% and maximum tax items are exempt from all local sales and use taxes), but the tax may not exceed the maximum tax set forth in South Carolina Code §12-36-2110.⁹

⁷ South Carolina Code §12-36-2120(36).

⁸ Since the state sales and use tax rate for maximum tax items is 5%, the tribal tax rate for items subject to the maximum tax must equal the combined state and local rate for the counties in which the reservation is located. At this time, the rate of maximum tax items would be 5% (equal to the 5% state rate and the 0% local rate since maximum tax items are not subject to local taxes).

Motion Picture Production Companies

South Carolina Code Title 12, Chapters 36 and 62 contain two film industry sales and use tax incentives designed to promote South Carolina as a filming location.

The incentive available in Chapter 62 is a sales and use tax exemption for all qualifying tangible personal property used in connection with the South Carolina filming by a "motion picture production company" that is approved by the South Carolina Film Commission at the South Carolina Department of Parks, Recreation and Tourism.

The other incentive is a sales and use tax exemption for certain supplies, machinery, and electricity used by a "motion picture company" for use in filming or producing motion pictures in South Carolina. Since the qualifying requirements and approval process of each incentive differs, the applicable South Carolina law should be carefully reviewed.

A general overview of each incentive is provided below.

A. "Motion Picture Production Company" Comprehensive Exemption

To qualify for the sales and use tax exemption provided in South Carolina Code §12-62-30 on funds expended in South Carolina in connection with the filming or production of motion pictures in South Carolina, a motion picture production company must meet the following criteria:

1. The company must be a "motion picture production company" as defined in South Carolina Code §12-62-20(4). It is a company engaged in the business of producing motion pictures intended for a national theatrical release or for television viewing. It is not a company owned, affiliated, or controlled, in whole or in part, by a company or person that is in default on a loan made by the State or a loan guaranteed by the State.

A "motion picture" is defined in South Carolina Code §12-62-20(3) as a feature-length film, video, television series, or commercial made in whole or in part in South Carolina, and intended for national theatrical or television viewing or as a television pilot produced by a motion picture production company. It does not include the production of television coverage of news and athletic events or a production produced by a motion picture production company if records, as required by 18 U.S.C. 2257, are to be maintained by that motion picture production company with respect to any performer portrayed in that

2. The company must intend to spend \$250,000 or more in the aggregate in connection with the filming or production of one or more motion pictures in South Carolina within a consecutive 12-month period.
3. The company must complete an application and obtain approval as a certified motion picture production company from the South Carolina Department of Parks, Recreation and Tourism. An estimate of the total expenditures expected to be made in South Carolina in connection with the filming or production must be filed with the South Carolina Department of Parks, Recreation and Tourism before South Carolina filming begins.

The application and certification procedures can be obtained from the South Carolina Film Commission at the South Carolina Department of Parks, Recreation and Tourism at 803-737-0490. There is no application fee.

Important Points to Remember

1. Once the South Carolina Department of Parks, Recreation and Tourism notifies the Department of Revenue that the company is approved and meets the qualifying requirements, the Department of Revenue will issue the motion picture production company a Form ST-433, "Motion Picture Production Company Sales and Use Tax Exemption Certificate." The company should provide a copy of the exemption certificate to the retailer to purchase items used in connection with the South Carolina filming free of sales and use tax.
2. This exemption applies to the 6% state sales and use taxes, the 7% state sales tax on accommodations, the 6% sales tax on additional guest charges, the 5% rental surcharge, the 11% sales and use tax on 900/976 telephone numbers, and any local sales and use taxes collected by the Department of Revenue on behalf of a local jurisdiction.
3. The exemption expires on the date filming or production ends.
4. An approved company that fails to spend \$250,000 within a consecutive 12-month period is liable for the sales and use taxes that would have been paid had the approval not been granted.
5. This incentive does not apply to the production of television coverage of news and athletic events.
6. Expenditures that qualify toward the \$250,000 requirement include purchases of services or intangibles in South Carolina, purchases or rentals of tangible personal property in South Carolina, and purchases or rentals of real property located in South Carolina.

company in whose name the exemption certificate has been issued since the exemption only applies to sales to or purchases by, the motion picture production company.

Examples of persons who are not authorized to use the exemption certificate include, but are not limited to, (1) cast and crew purchasing items for their personal use and (2) subcontractors or others providing services to the motion picture production company.

Examples of Exempt Tangible Personal Property¹

Aircraft
Animals
Automobiles and other vehicles²
Cameras and camera parts
Catering
Cleaning supplies
Cleanup equipment
Computer equipment
Construction and hardware materials
Copies
Copy machines
Filming supplies (*e.g.*, film stock, flats (panels of scenery), sandbags, etc.)
Food
Gasoline and other fuels (however, motor fuel taxes may apply)³
Generators/grip and lighting equipment
Hairstyle supplies
Hand tools

¹ The exemption only applies to purchases by the motion picture production company, provided such purchases are used in connection with the filming or production of a motion picture, purchased by the motion picture production company, and all other requirements of the statute are met. For example, the purchase of hairstyling supplies by a motion picture production company are exempt, but the purchase of such supplies by an independently owned hairstyling service company that has been hired by a motion picture production company to provide hairstyling services are subject to the tax.

² The rental for periods of thirty-one days or less of private passenger vehicles, trucks under 26,001 pounds gross vehicle weight (for non-business purposes), and trailers with a gross weight of not more than 6,000 pounds are subject to state and local sales and use taxes and a 5% rental surcharge. By statute, the 5% rental surcharge is a sales tax. Therefore, motion picture production companies meeting the requirements of the incentive in South Carolina Code §§12-62-30 and 12-62-40 are also exempt from the 5% rental surcharge.

³ As a general rule, gasoline and undyed diesel fuel are subject to the \$0.16 a gallon motor fuel tax and are exempt from sales and use taxes and dyed diesel fuel and dyed kerosene are subject to sales and use taxes (unless otherwise exempt under the law) and exempt from the \$0.16 a gallon motor fuel tax. As such, the exemption certificate (Form ST-433) issued to the motion picture production company does not need to be presented upon the purchase of gasoline and undyed diesel fuel, but should be presented to the retailer to

Portable dressing rooms and offices
Portable toilets
Production supplies (*e.g.*, editing supplies)
Props (*e.g.*, vehicles, furniture, books, paintings, clothing, shrubbery)
Technical equipment and machinery (*e.g.*, boom, cables, cranes, dolly, editing equipment, grip truck, matte, tape, teleprompter)
Telephones
Vehicles (*e.g.*, props, dressing room vehicles, camera cars, equipment vehicles)
Walkie talkies
Wardrobe

Examples of Exempt Services and Charges⁴

Communication services, such as

Cable and satellite programming televisions services
Database access transmission services (On-line information services)
E-mail services
Fax transmission services
Paging services
Prepaid wireless calling arrangements
Teleconferencing services
Telephone services, including cell phone service

Additional guest charges at places furnishing sleeping accommodations, such as

In-room movies
Laundering and drycleaning services
Rental of meeting rooms
Room Service
Telephone charges

Electricity
Laundering, drycleaning, dyeing or pressing services⁵

⁴ The services and charges listed in this category are normally subject to the tax under South Carolina Code §§12-36-910(B), 12-36-920, 12-36-1310(B), 12-36-1110 and 12-36-2645, but are exempt when purchased by a motion picture production company meeting the requirements of the South Carolina Motion Picture Incentive Act for use in connection with the filming or production of a motion picture.

⁵ Certain drycleaning facilities are participating in the Drycleaning Facility Restoration Trust Fund and are

Warranty, maintenance and similar service contracts for tangible personal property

Note: For more detailed information concerning the taxation of additional guest charges at places furnishing sleeping accommodations, see SC Regulation 117-307.1. For more detailed information concerning the taxation of certain communication services, see SC Regulation 117-329 and South Carolina Revenue Ruling #06-8.

Examples of Nontaxable Services, Nontaxable Intangibles, and Nontaxable Real Property Transactions⁶

The following are examples of professional and other personal services, intangibles, and real property transactions upon which the South Carolina sales and use tax is not imposed.

Services

- Accounting services
- Airline and aircraft charter services
- Casting services
- Chauffeured limousine services
- Clerical services
- Construction services
- Filming and production services provided by the director, the actors, the crew, writers, editors, choreographers, stunt persons, dialog coaches, musicians, technical advisors, designers, hairstylists, makeup artists, wardrobe persons, and similar persons providing services
- Garbage disposal services
- Hairstyling/cosmetic services
- Janitorial services
- Legal services
- Meteorological services
- Musical services
- Payroll services
- Research services
- Scouting services

⁶ These are examples of professional and other personal services, intangibles, and real property transactions upon which the South Carolina sales and use tax is not imposed. Since the film industry operates in many states and must deal with varying sales and use tax laws, this list merely provides examples of services, intangibles, and real property transactions the charges for which are not taxable in South Carolina. However, it is important to note that purchases by persons providing these services to a motion picture production company or any other person are subject to the tax. For example, charges by a janitorial service company to a motion picture production company or any other person are not subject to the tax, however

Typing services
Intangibles
Music royalties
Story rights payments
Real Property Transactions
Auditorium rentals
Back lot rentals
Casting facility rentals
Dressing room rentals
Location rentals or fees
Office space rentals
Parking lot rentals
Screening room rentals
Stage rentals
Warehouse rentals

For additional information concerning this exemption, see South Carolina Revenue Ruling #08-12.

B. “Motion Picture Company” Limited Exemption for Supplies and Equipment

South Carolina Code §12-36-2120(43) exempts from sales and use tax supplies, technical equipment, machinery, and electricity sold to motion picture companies for use in filming or producing motion pictures in South Carolina.

The terms “motion picture company” and “motion picture” defined in Chapter 36 of Title 12 differ from the terms “motion picture production company” and “motion picture” defined in Chapter 62 of Title 12, as discussed above in item (a). The definitions applicable to this exemption are:

1. “Motion picture company” is a company generally engaged in the business of filming or producing motion pictures.
2. “Motion picture” is any audiovisual work with a series of related images either on film, tape, or other embodiment, where the images shown in succession impart an impression of motion together with accompanying sound, if any, which is produced, adapted, or altered for exploitation as entertainment, advertising, promotional, industrial, or educational media.

1. To receive an exemption certificate for this limited exemption, the motion picture company must apply to the Department of Revenue on Form ST-10, "Application for Certificate." There is no application fee. Usually, a visit will be made to the company's site to determine if a certificate should be issued.
2. Once approved, the Department of Revenue will issue the company an exemption certificate on Form ST-9. A copy of this certificate should be given to the retailer upon purchase of the exempt item.
3. The exemption applies to all state sales and use taxes and all local sales and use taxes collected by the Department of Revenue on behalf of a local jurisdiction.
4. An application or approval from the South Carolina Film Commission is not needed for this exemption.

Chapter 20

Medicine, Prosthetics and Medical Supplies¹

A. Exemptions for Medicines, Prosthetic Devices, and Other Medical Supplies

The following exemptions are available with respect to medicines, prosthetic devices and certain other medical supplies:

Medicine sold by prescription.² In order for this exemption to be applicable, the medicine must be of a type that requires a prescription, the sale must require a prescription, and must actually be sold by prescription. As such, sales of medicine to a hospital, nursing home, or a similar institution or doctor are not exempt since such sales do not require a prescription.

Prescription medicines used to prevent respiratory syncytial virus.³ In order for this exemption to be applicable, the medicine must be of a type that requires a prescription; however, the medicine does not need to be sold by prescription. As such, sales of these medicines (to be used for the above purposes) to a hospital, nursing home, or a similar institution or doctor are exempt.

Prescription medicines and therapeutic radiopharmaceuticals used in the treatment of rheumatoid arthritis, cancer, lymphoma, leukemia, or related diseases.⁴ In order for this exemption to be applicable, the medicine must be of a type that requires a prescription (other than therapeutic radiopharmaceuticals); however, the medicine does not need to be sold by prescription. As such, sales of these medicines and therapeutic radiopharmaceuticals (to be used for the above purposes) to a hospital, nursing home, or a similar institution or doctor are exempt.

¹ See South Carolina Revenue Ruling #14-3.

² South Carolina Code §12-36-2120(28)(a). See *Home Medical Systems, Inc. v. South Carolina Department of Revenue*, 382 S.C. 556, 677 S.E. 2d 582 (2009). See also *Associated Medical Specialist, P.A. v. South Carolina Tax Commission and South Carolina Department of Revenue*, SC Ct. of App., Unpublished Opinion No. 97-LJP-447 (1997). (Note, this case dealt with prescription medicines purchased by doctors to treat cancer; however, the exemption for prescription medicines used in the treatment of cancer, lymphoma, leukemia, or related diseases or used to relieve the effects of any such treatment was not available at the time. It was subsequently enacted by the General Assembly in 1998 and became effective on June 28, 1999 (Act 262, Session 7 of 1999)).

however, the medicine does not need to be sold by prescription. As such, sales of these medicines (to be used for the above purposes) to a hospital, nursing home or doctor are exempt.

Free samples of prescription medicine distributed by its manufacturer and any use of these free samples.⁶ In order for this exemption to be applicable, the medicine must be of a type that requires a prescription.

Medicine donated by its manufacturer to a public institution of higher education for research or for the treatment of indigent patients.⁷ This exemption applies to all types of medicines, not just prescription medicines.

Hypodermic needles, insulin, alcohol swabs, blood sugar testing strips, monolet lancets, dextrometer supplies, blood glucose meters, and other similar diabetic supplies.⁸ While a prescription is not required, in order for this exemption to be applicable, these items must be sold to a diabetic under the written⁹ authorization and direction of a physician.

Disposable medical supplies.¹⁰ In order for this exemption to be applicable, disposable medical supplies such as bags, tubing, needles, and syringes, must be dispensed by a licensed pharmacist in accordance with an individual prescription written for the use of a human being by a licensed health care provider, must be used for the intravenous administration of a prescription drug or medicine, and must come into direct contact with the prescription drug or medicine. This exemption applies only to supplies used in the treatment of a patient outside of a hospital, skilled nursing facility, or ambulatory surgical treatment center. The exemption applies to "disposable" medical supplies sold on or after August 17, 2000 and does not apply to items that are reusable such as electronic pumps and other medical equipment. In addition, the exemption does not apply to supplies, such as gauze, that do not require a prescription in order to be sold to the patient.

Prosthetic devices sold by prescription.¹¹ In order for this exemption to be applicable, the sale must require a prescription and the device must actually be sold by prescription and the device must replace a missing part of the body. A device that merely replaces a missing function is not exempt.¹² As such, sales of prosthetic devices to a hospital, nursing home, or a similar institution or doctor are not exempt since such sales do not require a prescription.

⁵ South Carolina Code §12-36-2120(28)(a).

⁶ South Carolina Code §12-36-2120(28)(a).

⁷ South Carolina Code §12-36-2120(28)(d).

⁸ South Carolina Code §12-36-2120(28)(b).

⁹ SC Regulation 117-332. See also *Drummond v. State of South Carolina*, Court of Common Pleas, Case No. 02-CP-40-4651 (2010).

¹⁰ South Carolina Code §12-36-2120(28)(c).

merely replaces a missing function is not exempt.¹⁴ The sale does not require a prescription.

Prescription drugs – Medicare Part A Nursing Home Patient.¹⁵ In order for this exemption to be applicable, the medicine must be of a type that requires a prescription; however, the medicine does not need to be sold by prescription. It must be sold to a nursing home to be dispensed to a Medicare Part A patient residing in the nursing home.

Prescription and over-the-counter medicines and medical supplies, including diabetic supplies, diabetic diagnostic equipment, and diabetic testing equipment, sold to a health care clinic that provides medical and dental care without charge to all of its patients¹⁶ In order for this exemption to be applicable, the medicine (whether prescription or over-the-counter) and medical supplies must be sold a health care clinic, the clinic must provide both medical and dental care, and the care must be provided without charge to all patients.

Durable medical equipment and related supplies as defined under federal and state Medicaid and Medicare laws. In order for the purchase of the durable medical equipment and related supplies to be exempt, the purchase must be paid directly by funds of South Carolina or the United States under the Medicaid or Medicare programs, state or federal law or regulation authorizing the payment must prohibit the payment of the sale or use tax, and the durable medical equipment and related supplies must be sold by a provider who holds a South Carolina retail sales license and whose principal place of business is located in South Carolina. Note: Effective January 1, 2013, sales meeting the requirements of this exemption are fully exempt from both state and local sales and use taxes.¹⁷

¹³ South Carolina Code §12-36-2120(28)(e).

¹⁴ See *Home Medical Systems, Inc. v. South Carolina Department of Revenue*, 382 S.C. 556, 677 S.E. 2d 582 (2009).

¹⁵ South Carolina Code §12-36-2120(28)(f).

¹⁶ South Carolina Code §12-36-2120(63).

¹⁷ An uncodified provision of the legislation that enacted this exemption in 2007 provided that the exemption would be phased in by reducing the rate of tax based on revenue projections by the Board of Economic Advisors. This uncodified provision was later amended in Act 32 of 2011 to establish a new phase in of the exemption as follows: The rate of tax imposed on the gross proceeds of sales of items meeting the requirements of the exemption in South Carolina Code §12-36-2120(74) is five and one-half percent for such sales from July 1, 2007. The rate of tax imposed on the gross proceeds of sales of items meeting the requirements of the exemption in South Carolina Code §12-36-2120(74) is three and one-half percent for such sales from July 1, 2011. The rate of tax imposed on the gross proceeds of sales of items meeting the requirements of the exemption in South Carolina Code §12-36-2120(74) is one and three-quarters percent for such sales from July 1, 2012. Effective January 1, 2013, the sales tax exemption on the gross proceeds of sales of items meeting the requirements of South Carolina Code §12-36-2120(74) is fully implemented. Local sales and use taxes will continue to apply until the exemption is fully implemented.

supervision of a physician in an office which is under the supervision of a physician, or in a Center for Medicare or Medicaid Services certified kidney dialysis facility.

This exemption will be phased-in depending upon the forecasts of annual general fund revenue growth as determined by the Board of Economic Advisors. On February 19, 2014, the Board of Economic Advisors notified the Department that the requirements have been met to implement this exemption.¹⁸

Accordingly, for July 1, 2014 - June 30, 2015, 50% of the gross proceeds of sales of qualifying sales or purchases are exempt from the State and local sales and use taxes. On or after July 1, 2015, qualifying sales or purchases are fully exempt from the State and local sales and use taxes.

B. Other Relevant Exemptions

The statute also provides several other exemptions that may or may not apply.

Sales to the federal government. South Carolina Code §12-36-2120(2) exempts sales of “tangible personal property...to the federal government. SC Commission Decision #93-2 held that sales paid for via Medicare or Medicaid are not sales to the federal government.

Sales to charitable hospitals. South Carolina Code §12-36-2120(47) exempts sales of tangible personal property to charitable hospitals that are exempt from property taxation under South Carolina Code §12-37-220; predominantly serve children; and where the care is provided without charge to the patient.

Sales of hearing aids. South Carolina Code §12-36-2120(38) exempts sales of “hearing aids, as defined by South Carolina Code §40-25-20(5).” Hearing aid batteries and cords are excluded from the definition of “hearing aid;” therefore, sales of these items are not exempt from the tax.

Sales during the sales tax holiday. South Carolina Code §12-36-2120(57) exempts from the sales and use tax:

- (a) sales taking place during a period beginning 12:01 a.m. on the first Friday in August and ending at twelve midnight the following Sunday of:
 - (i) clothing;
 - (ii) clothing accessories including, but not limited to, hats, scarves, hosiery, and handbags;
 - (iii) footwear;
 - (iv) school supplies including, but not limited to, pens, pencils, paper, binders, notebooks, books, bookbags, lunchboxes, and calculators;

sets, bath towels, shower curtains, bath rugs and mats, pillows, and pillow cases.

(b) The exemption allowed by this item does not apply to:

- (i) sales of jewelry, cosmetics, eyewear, wallets, watches;
- (ii) sales of furniture;
- (iii) a sale of an item placed on layaway or similar deferred payment and delivery plan however described;
- (iv) rental of clothing or footwear;
- (v) a sale or lease of an item for use in a trade or business.

(c) Before July tenth of each year, the department shall publish and make available to the public and retailers a list of those articles qualifying for the exemption allowed by this item.

Note: Since the sales tax holiday applies to clothing and footwear, the exemption may apply to certain clothing and footwear worn for medical reasons.

Unprepared Food Exemption

The gross proceeds of sales or sales price of "unprepared food that lawfully may be purchased with United States Department of Agriculture food coupons" are exempt from the sales and use tax.¹ This exemption does not apply to local sales and use taxes that are administered and collected by the Department on behalf of the counties and other jurisdictions, unless the local tax law specifically exempts the sales of such unprepared food.

Regulation on Unprepared Food Exemption

The following is the regulation concerning the exemption for unprepared foods. This regulation is printed here in its entirety since it is believed that it provides the best explanation of the exemption.

117-337 Sales of Unprepared Food

Effective November 1, 2007, South Carolina Code §12-36-2120(75) exempts from the state sales and use tax the gross proceeds of sales or sales price of "unprepared food that lawfully may be purchased with United States Department of Agriculture food coupons." This exemption does not apply to local sales and use taxes that are administered and collected by the Department on behalf of the counties and other jurisdictions, unless the local tax law specifically exempts the sales of such unprepared food.

The determination as to whether a sale of unprepared food is exempt from the state sales and use tax is based on whether the food is of a type that is eligible to be purchased with USDA food stamps, the type of location selling the food, and whether the food is being sold for immediate consumption, business or institutional consumption, or home consumption.

In other words, a food must be of a type eligible to be purchased with USDA food stamps and must also be sold for home consumption (based on the type of food and the type of location selling the food) to qualify for the exemption from the state sales and use tax under South Carolina Code §12-36-2120(75). For example, bottled soft drinks are eligible to be purchased with USDA food stamps, but if bottled soft drinks are sold at a concession stand at a festival, then the bottled soft drinks are sold for immediate consumption and not home consumption and the sale at the festival would be subject to the full state sales tax rate.

This regulation will explain which sales of food qualify or do not qualify for the exemption under South Carolina Code §12-36-2120(75).

For purposes of this regulation, the term "eligible food" is food eligible for the exemption under South Carolina Code §12-36-2120(75) that will be defined to include and exclude the following:

- (A) Foods eligible for the exemption under South Carolina Code §12-36-2120(75) include:
 - (1) Any food intended to be eaten at home by people, including snacks, beverages and seasonings;
 - (2) Seeds and plants intended to grow food (not birdseed or seeds to grow flowers); and,
 - (3) Cold items, which may include salads or sandwiches, intended to be eaten at home by people and that are not considered "prepared meals or food" as discussed below.
- (B) Food and other items which are not eligible for the exemption under South Carolina Code §12-36-2120(75) and are, therefore, subject to the full state sales and use tax rate (unless otherwise exempt) include:
 - (1) Alcoholic beverages, such as beer, wine, or liquor;
 - (2) Hot beverages ready-to-drink such as coffee;
 - (3) Tobacco;
 - (4) Hot foods ready to eat;
 - (5) Foods designed to be heated in the store;
 - (6) Hot and cold food to be eaten at a lunch counter, in a dining area or anywhere else in the store or in a nearby area such as a mall food court;
 - (7) Vitamins and medicines;
 - (8) Pet food;
 - (9) Any non-food items such as tissue, soap or other household goods;
 - (10) Meals or food shipped or delivered to businesses or institutions (hospitals, prisons, jails, nursing homes, etc.); and,
 - (11) Prepared meals or food as defined in SC Regulation 117-337.2.

- (A) "Prepared meals or food" is food for immediate consumption (based on the type of food and the type of location selling the food) and is not eligible for the exemption under South Carolina Code §12-36-2120(75), but is subject to the full state sales and use tax rate.

"Prepared meals or food" are meals or food sold by a business, or from an identifiable location within a business, which advertises, holds itself out to the public (e.g., offers hot food or the ability to heat food, provides seating, or provides utensils with the meal or food), or is perceived by the public as being engaged in the sale of ready-to-eat food or beverages to customers for their immediate consumption on or off the premises. Such a business, or identifiable location within a business, may be mobile or immobile and may or may not provide seating accommodations for its customers. For example, "prepared meals or food" includes, but is not limited to (a) meals or food sold by a restaurant, cafeteria, lunch wagon or cart, lunch counter, cafeteria, ice cream stand, tavern, night club, or other similar places or businesses engaged in the business of selling prepared meals or food for immediate consumption, (b) meals prepared and delivered by a meal delivery service; (c) meals sold to or at congregate meal sites; (d) meals or food sold at a grocery store, convenience store or any other similar store for the purpose of eating at or near the store, such as meals or food sold with eating utensils (e.g., plates, knives, forks, spoons, cups, napkins) provided by the seller, (e) meals or food sold at hotels, motels, or other places furnishing accommodations; (f) meals or food sold at newsstands, gift shops, and snacks bars located in offices or other public or commercial buildings; (g) meals or food sold at movies theaters, opera houses, fairs, carnivals, stadiums, auditoriums, amphitheaters, or similar entertainment or sports facilities; and (h) food sold through vending machines.

- (B) Exception: If a store, or an identifiable location within a store, advertises, holds itself out to the public (e.g., offers hot food or the ability to heat food, provides seating, or provides utensils with the meal or food), or is perceived by the public as being engaged in the sale of ready-to-eat food or beverages to customers for their immediate consumption on or off the premises and also sells food that is prepared for home consumption, sold for home consumption, and is not the type of food intended for immediate consumption, then such "home consumption" food is not considered "prepared meals or food" and would be "eligible food" exempt from the state sales and use tax under South Carolina Code §12-36-2120(75), provided it is not one of the foods listed above in SC Regulation 117-337.1(B) – Items (1) through (10).

The following are examples of this exception:

- (a) A grocery store has a deli/bakery that provides tables, chairs, benches, booths, counters or an area where customers may consume food in or near the store. In addition to other items, this deli/bakery area sells loaves of

use tax under South Carolina Code §12-36-2120(75), provided the sale is not for a party or gathering held at the store or delivered to a location other than a private residence.

- (b) A coffee shop sells individual slices of cake to be eaten with the coffee and other drinks sold at the shop. The shop also sells entire sheet cakes.

The sale at retail of the sheet cake is exempt from the state sales and use tax under South Carolina Code §12-36-2120(75), provided the sale is not for a party or gathering held at the shop or delivered to a location other than a private residence.

- (C) Some sales of meals or food may be exempt from the sales and use tax under other exemption provisions. For example, South Carolina Code §12-36-2120(10) provides exemptions from the sales and use tax for (1) meals or foodstuff used in furnishing meals to school children within school buildings on a nonprofit basis; (2) meals or foodstuff provided to elderly or disabled persons at home by certain nonprofit organizations; (3) prepared or packaged foodstuff sold to nonprofit organizations for the homeless and needy; or (4) meals or prepared or packaged foodstuff sold to public and nonprofit organizations for congregational or in-home service to the homeless, needy, disabled adults over eighteen years of age or persons over sixty years of age (provided the meals or packaged foodstuffs in this item (4) are eligible for purchase with USDA food coupons). South Carolina Code §12-36-2120(41) exempts from the sales and use tax tangible personal property, including meals or food, sold by certain nonprofit organizations.

117-337.3 General Rules

- (A) Sales of "Eligible Food" by Grocery, Convenience and Similar Stores Authorized to Accept Food Stamps:

Sales of "*eligible food*" by a grocery, convenience or similar store authorized to accept food stamps shall be deemed to be for home consumption and exempt from the state sales and use tax under South Carolina Code §12-36-2120(75).

However, if the store has an identifiable location which advertises, holds itself out to the public (e.g., offers hot food or the ability to heat food, provides seating, or provides utensils with the meal or food), or is perceived by the public as being engaged in the sale of ready-to-eat food or beverages to customers for their immediate consumption on or off the premises, then all sales of food from that identifiable location shall be deemed to be for immediate consumption and subject to the sales tax at the full state rate, unless the sale falls within the exception noted above in SC Regulation 117-337.2. For example, if a neighborhood grocery store also has a lunch counter, then sales from that lunch counter are for immediate

the sale is not for a party or gathering held at the store or delivered by the store to a business or institution.

(B) Sales of "Eligible Food" by Grocery and Other Stores Not Authorized to Accept Food Stamps:

Sales of "eligible food" by a grocery, convenience or similar store not authorized to accept food stamps but which is engaged in the retail sale of all sorts of canned foods and dry goods (e.g., tea, coffee, spices, sugar, and flour), and may also be engaged in the retail sale of fresh fruits and vegetables and fresh and prepared meats, fish, and poultry, shall be deemed to be for home consumption and exempt from the state sales and use tax under South Carolina Code §12-36-2120(75).

However, if the store has an identifiable location which advertises, holds itself out to the public (e.g., offers hot food or the ability to heat food, provides seating, or provides utensils with the meal or food), or is perceived by the public as being engaged in the sale of ready-to-eat food or beverages to customers for their immediate consumption on or off the premises, then all sales of food from that identifiable location shall be deemed to be for immediate consumption and subject to the sales tax at the full state rate unless the sale falls within the exception noted above in SC Regulation 117-337.2. For example, if a convenience store has an area where a customer can get a hot dog or sandwiches that are intended for immediate consumption (including ones intended to be heated in a microwave), then the sale of the hot dogs and sandwiches are for immediate consumption and subject to the full state rate. Any chips or drinks (whether fountain drinks or bottled drinks) sold with that hot dog or sandwich at the lunch counter are also for immediate consumption and subject to the full state rate.

(C) Sales of "Eligible Foods" to or by Vending Machine Operators for Sale through Vending Machines:

Sales of "*eligible food*" to or by vending machine operators for sale through vending machines are for immediate consumption and subject to the sales tax at the full state rate.

(D) Sales of "Eligible Food" to Institutions:

Sales of "*eligible food*" to the South Carolina Department of Corrections, city or county jails, hospitals, nursing homes, and colleges for use in providing meals to the prisoners, patients, or students are sales to institutions who, under the sales and use tax law, are the users or consumers of such food in carrying out their primary functions of incarcerating convicts, providing medical care or providing an education. As such, sales of such food are not for home consumption and are subject to the sales tax at the full state rate.

Sales of "*eligible food*" that is prepackaged with a non-eligible item, or sales in which a single price is established for a combination of an "*eligible food*" and a non-eligible item, are subject to the tax at the full state rate.

For example, if a grocery store advertises and sells a basket containing fruit and a bottle of wine, the exemption under South Carolina Code §12-36-2120(75) is not applicable. The full state rate applies.

(F) "Eligible Food" Purchased with Food Stamps:

"*Eligible food*" purchased with food stamps from a retailer authorized by the United States Department of Agriculture to accept food stamps are exempt from the sales and use tax.

117-337.4 Examples

The following examples are provided to assist in understanding the above provisions of this regulation:

- (a) Sales at retail of food delivered to offices and businesses are subject to tax at the full state rate.
- (b) Sales at retail of food delivered to day care centers and similar facilities are subject to tax at the full state rate.
- (c) Sales at retail of bottled water delivered to an individual's home are exempt from the state sales and use tax under South Carolina Code §12-36-2120(75). However, the lease of a water cooler unit to a residential customer is subject to the full state rate.

Sales at retail of bottled water delivered to a commercial enterprise are subject to the tax at the full state rate. The lease of a water cooler unit to a commercial enterprise is also subject to the full state rate.

- (d) Sales at retail of ground coffee, creamer, sugar, tea bags and other "coffee service" products delivered to a commercial enterprise are subject to the tax at the full state rate.
- (e) Sales at retail of drinks, coffee supplies, and snacks by an office supply store are exempt from the state sales and use tax under South Carolina Code §12-36-2120(75), unless shipped or delivered to a location other than a private residence. Shipments or deliveries to a location other than a private residence are subject to the full state rate.

brownies, whole fruit, or similar food products sold individually are subject to the tax at the full state rate.

However, sales at retail of these same food products by the loaf or tray are subject exempt from the state sales and use tax under South Carolina Code §12-36-2120(75) unless such loaf or tray is sold for a party or gathering held at or near the coffee shop or is delivered to a location other than a private residence. Sales at retail of these products by the loaf or tray for a party or gathering held at or near the coffee shop or that are delivered a location other than a private residence are subject to the tax at the full state rate.

(g) Sales at retail at a location that contains both a restaurant and a convenience or similar store under one roof are taxed at the full state rate for sales from the restaurant portion of the business and are exempt from the state sales and use tax under South Carolina Code §12-36-2120(75) for sales from the convenience or similar store portion of the business, unless an exception discussed previously in this regulation applies. For more detailed information, see the above sections of this regulation concerning restaurants and convenience or similar stores.

(h) Sales at retail of loaves of bread baked in and sold at a bakery in a grocery store are exempt from the state sales and use tax under South Carolina Code §12-36-2120(75), provided the loaf of bread sold is not "hot food."

117-337.5. Local Taxes

The exemption in South Carolina Code §12-36-2120(75) for "unprepared food that lawfully may be purchased with United States Department of Agriculture food coupons" does not apply to local sales and use taxes that are administered and collected by the Department on behalf of the counties and other jurisdictions, unless the local tax law specifically exempts the sales of such unprepared food.

This regulation is not applicable to any local tax administered and collected by a local jurisdiction.

117-337.6. Records

The seller of "*eligible food*" exempt from the state sales and use tax under South Carolina Code §12-36-2120(75) shall maintain sufficient documentation to substantiate that a sale qualifies for the exemption from the state sales and use tax, using any method of recording that properly reflects all purchases and sales of such items.

Administrative Requirements

Before engaging in any retail business in South Carolina, a retail license must be purchased from the Department.

A. Retail Licenses

The law provides for the following types of retail licenses:

Permanent locations. A \$50 license must be purchased for each permanent retail location.¹

Fairs, Carnivals, and Athletic Events: The single retail license covers sales of tangible personal property made from all stands under the immediate management or control of each operator. A separate license will not be required for each change of location provided the operator furnishes the Department an itinerary giving a schedule of locations and dates.²

Vending Machines: For persons engaged in the business of operating vending or coin-operated machines dispensing cigarettes or soft drinks in closed containers in South Carolina, each point from which the service for such machines or other tangible personal property originates, is considered to be a retail outlet and a retail license must be obtained for each such point of service.³

Also, an out-of-state retailer must purchase a retail license and collect the South Carolina use tax if the retailer has retail locations in South Carolina; maintains an office, warehouse or other place of business in South Carolina; has a salesperson in South Carolina soliciting orders on a regular basis; has an agent located in South Carolina; or delivers his/her goods on his/her own trucks.⁴

Artists and craftsmen. Every artist and craftsman making retail sales at arts and crafts shows and festivals of items they have created or assembled may purchase a \$20 license. This license may only be used at one location at a time.⁵

¹ South Carolina Code §12-36-510(A)(1) and SC Regulation 117-300.

² SC Regulation 117-300.5.

³ SC Regulation 117-300.2.

⁴ This is based on the concept of *nexus* - the minimal connection necessary between an out-of-state retailer and the state which allows the state to require the retailer to collect the use tax. What actually constitutes *nexus* is determined by the courts and may change from time to time, and you are advised to be

transient business may only be used for one location at a time. A retail license for a temporary business may only be used in one location⁶.

A *transient business* is a business, other than artists and craftsmen, not having a permanent retail location in South Carolina. A *temporary business* is a business that makes retail sales in South Carolina for no more than 30 consecutive days at any one location.

A licensed retailer may, upon written application and approval by the Department, have his retail dealer's license transferred from one location to another without incurring additional license tax liability, but only in cases where there is an abandonment of the licensed business location and a simultaneous moving to a new location. The licensed retailer making application for transfer must surrender his license of original issue and indicate on the license the address of his new location⁷. To notify the Department of a change in business location, the retailer should complete Form SC 8822.⁸

The Department may determine which retail license or licenses a retailer must obtain⁹.

A retail license is not required of:

- (a) persons selling at flea markets or conducting a yard sale no more than once a quarter;¹⁰
- (b) organizations devoted exclusively to public or charitable purposes conducting concession sales at festivals,¹¹ if all the net proceeds are used for those public or charitable purposes and if in advance of the festival its organizers provide the Department information necessary to ensure compliance with the law;¹²
- (c) persons furnishing accommodations to transients for one week or less in any calendar quarter;¹³
- (d) persons furnishing accommodations to transients where the rental income from such accommodations is wholly excluded from the gross income of the taxpayer pursuant to Internal Revenue Code Section 280A(g);¹⁴

⁶ South Carolina Code §12-36-510(A)(3).

⁷ SC Regulation 117-300.4.

⁸ Form SC 8822 can also be used for business name changes and other address changes.

⁹ South Carolina Code §12-36-510(D).

¹⁰ South Carolina Code §12-36-510(B)(1).

¹¹ For purposes of this provision, a festival does not include a recognized state or county fair.

¹² South Carolina Code §12-36-510(B)(2) and South Carolina Code §12-36-2120(39).

¹³ South Carolina Code §12-36-510(B)(3). Persons who rent accommodations for one week or less in any calendar quarter must still remit the sales tax on the accommodations annually by April 15th of the following year unless exempt unless otherwise exempt under South Carolina Code §12-36-920(A).

¹⁴ For this exception to apply, the taxpayer must rent the dwelling unit for less than 15 days during the

- (f) persons engaged in the business of operating vending or coin-operated machines dispensing any tangible personal property other than cigarettes or soft drinks in closed containers. If the person either (1) sells cigarettes or soft drinks in closed containers through vending machines or (2) sells any tangible personal property at retail through any means other than vending machines, they must obtain a retail license.

B. Obtaining a Retail License

A retail license may be obtained on-line by visiting the Department's website at www.dor.sc.gov and clicking on "South Carolina Business One Stop."

A retail license may also be obtained by filing an application (Form SCDOR-111) at one of the Department's five Taxpayer Service Centers (located in Greenville,¹⁶ Charleston,¹⁷ Florence,¹⁸ Myrtle Beach¹⁹ and Rock Hill²⁰) or at the main Columbia office.²¹

A completed application with the appropriate license tax amount may also be mailed to: South Carolina Department of Revenue, P.O. Box 125, Columbia, South Carolina 29214.

C. Operating Without a Retail License – Penalty

A person required to obtain a retail license that engages in business as a retailer in this State without a retail license or after the license has been suspended is guilty of a misdemeanor and, upon conviction, must be punished by a fine of not more than two hundred dollars or imprisonment not exceeding thirty days, or both. This offense is triable in magistrate's court. This provision also applies to each officer of a corporation which engages in business without a retail license or after the license is suspended.²² In addition, this provision²³ may be enforced by local law enforcement authorities as well as the Department.²⁴

Also, a person required to obtain a retail license who fails to pay the \$50 license tax or obtain the license within the time provided is liable for a penalty not to exceed five hundred dollars.²⁵

¹⁵ South Carolina Code §12-36-510(B)(4) and South Carolina Code §12-36-2120(41). See also South Carolina Revenue Procedure #03-6 and South Carolina Revenue Ruling #10-1 for a list of the type of nonprofit organizations eligible for this exemption and for other information related to this exemption.

¹⁶ 545 North Pleasantburg Drive, Suite 300, Greenville, SC, 29607; (864) 241-1200.

¹⁷ 2 Southpark Circle, Suite 100, Charleston, SC, 29407; (843) 852-3600.

¹⁸ 1452 West Evans Street, Florence, SC, 29501; (843) 661-4850.

¹⁹ 1330 Howard Parkway, Myrtle Beach, SC, 29577; (843) 839-2960.

²⁰ 454 South Anderson Rd., Business & Technology Ctr., Suite 202, Rock Hill, SC, 29730; (803) 324-7641.

²¹ 300A Outlet Pointe Blvd., Columbia, SC 29210; (803) 898-5000.

²² South Carolina Code §12-36-560.

When a business is closed, sold or otherwise transferred to another person, the retail license, as well as all other licenses issued by the Department, must be returned to the department for cancellation and the taxpayer must remit unpaid or accrued taxes.²⁷

The Department may refuse to issue a license to a person, and may revoke one or more licenses held by a person, who has failed to return a license and remit taxes.

E. Purchaser's Certificate of Registration

A Purchaser's Certificate of Registration is required for those businesses and nonprofit organizations **not** making retail sales who purchase tangible personal property from outside South Carolina and store, use or consume the property in South Carolina.²⁸ Those licensed as retailers do not need a Purchaser's Certificate of Registration.

An application for a Purchaser's Certificate of Registration (Form SCDOR-111) may be obtained at one of the Department's five Taxpayer Service Centers (located in Greenville,²⁹ Charleston,³⁰ Florence,³¹ Myrtle Beach³² and Rock Hill³³) or at the main Columbia office.³⁴

A completed application may also be mailed to: South Carolina Department of Revenue, P.O. Box 125, Columbia, South Carolina 29214. There is no charge for a Purchaser's Certificate of Registration.

F. Special Events Returns³⁵

In lieu of purchasing a retail license, certain retailers may report their sales on a special events return. A special event is any promotional show, trade show, fair or carnival for which an admissions fee is required. Also, the event must operate for less than 12 consecutive days.

A special events return may be used by a retailer who is **not** required to be licensed as an artist or craftsman, or who is **not** already licensed as a transient or temporary retailer.

²⁶ South Carolina Code §12-54-126. See also SC Regulation 117-300.6 for special rules regarding partnerships.

²⁷ Form C-278 is used to closeout an account with the Department for a business that has been sold or closed permanently.

²⁸ For more detailed information on use tax reporting requirements for business and nonprofit organizations, as well as individuals, see South Carolina Revenue Ruling #08-6.

²⁹ 545 North Pleasantburg Drive, Suite 300, Greenville, SC, 29607; (864) 241-1200.

³⁰ 2 Southpark Circle, Suite 100, Charleston, SC, 29407; (843) 852-3600.

³¹ 1452 West Evans Street, Florence, SC, 29501; (843) 661-4850.

³² 1330 Howard Parkway, Myrtle Beach, SC, 29577; (843) 839-2960.

³³ 454 South Anderson Rd., Business & Technology Ctr., Suite 202, Rock Hill, SC, 29730; (803) 324-7641.

for prompt payment is not allowed on such returns.

Special events returns are due within five days of the completion of the special event. However, the Department of Revenue may require earlier filing and payment, if deemed necessary.

G. Types of Paper Returns

Most taxpayers who are liable for the state and local taxes that are administered and collected by the Department must file Form ST-3. However, the type of form used depends on the taxpayer's business. The following forms are used depending on the taxpayer's business:

<u>Type</u>	<u>Form Number</u>	<u>Local Form Number</u>
General Form	ST-3	ST-389
Accommodations	ST-388	ST-389, ST-3T
Aviation Gasoline	ST-403	ST-389
Maximum Tax	ST-455	ST-389
Individual Use Tax	UT-3/UT-3W	No local form required
Casual Excise/Use Tax	ST-236	No local form required

Note: With respect to local sales and use tax that is administered and collected by the Department, retailers who are located in a county that does not impose a local sales and use tax and do not make deliveries into other counties that do impose a local sales and use tax, do not need to file the ST-389 with the state form.

Retailers that are either located in a county that does impose a local sales and use tax or that make deliveries into counties that do impose a local sales and use tax for which they are responsible for remitting to the Department, must file the ST-389 with the state form. See Chapter 14 and SC Revenue Ruling #09-9 for information on a retailer's responsibilities for remitting local sales and use taxes.

H. Reporting Requirements

Any tax due must be paid with the return and reported to the Department of Revenue under one of the following methods:

Monthly Returns. Generally, every taxpayer required to file their sales and/or use tax return must file the tax return on a monthly basis, unless permission is granted by the Department of Revenue to use one of the other methods listed below. The return is due by the 20th day of the month following the month in which liability for the tax arises³⁶. For example, sales made in April are reportable to the Department

periods. If permission is granted, the returns are due by the 20th day following the end of each 28-day period.³⁷

Quarterly returns. The Department of Revenue may allow a taxpayer to file quarterly, instead of monthly; if the taxpayer's monthly tax liability is \$100 or less.³⁸

Other Filing Periods. The Department of Revenue may authorize, in addition to monthly or quarterly, other filing periods.³⁹

Note: With respect to any return due (*e.g.*, monthly, quarterly, etc.), the taxpayer must file the return even if the taxpayer did not make any sales during that tax period or had a zero tax liability for that period.

Where a store has leased departments operated by other persons, each such person operating a leased department must make a separate return, if he keeps his own books and makes his own collections on accounts.⁴⁰

Where the store leasing such department keeps the books and makes collections for the leased department the store may, as agent for the lessee, make returns for such leased department and pay the taxes due. Note, however, the lessee shall not be relieved of his liability until the amount due has been paid. This method of accounting for the tax is authorized only by special permission of the Department.⁴¹

Where the store makes returns as agent for leased departments, it shall make separate returns for each department leased or shall make a consolidated return for both its business and the leased departments using "Schedule of Locations" to show a breakdown of gross proceeds of sales and other required information relating to its business and relating to each leased department. In any case, the lessor must obtain the permission of the Department of Revenue to make returns for his lessee.⁴²

I. Reporting and Paying the Tax Electronically

E-Sales

The South Carolina Department of Revenue Electronic Sales Tax System (ESales) is designed to give taxpayers a fast, free and secure way to file and pay their sales, use, accommodations, local option and special local taxes on-line.

³⁷ South Carolina Code §12-36-2570(D).

³⁸ South Carolina Code §12-36-2580.

³⁹ South Carolina Code §12-36-2590.

⁴⁰ SC Regulation 117-327.

ST3 - Sales and Use Tax Return

ST388 - Sales, Use, Accommodations and Local Option Tax Return

ST389 - Schedule for Local Taxes

ST455 - Maximum Tax and Special Filers Tax Return

The Department's ESales System will allow a retailer to make payment by EFW (Electronic Funds Withdrawal/Bank Draft) or credit card (MasterCard and VISA).

For more information, go to www.dor.sc.gov and click on Electronic Services. Then, click on the Sales link to get more details on ESales. For technical questions, call 803-896-1715.

Business Tax TeleFile

The Business Tax Telefile currently offers a convenient and paperless method of filing certain returns via a touchtone telephone. To qualify for this method, the retailer must:

- (1) Have zero in gross proceeds of sales and rentals, zero use tax liability, and zero withdrawals for use for the filing period covered; and
- (2) Be arranged to file Form ST-3, the State Sales and Use Tax Return.

The Business Tax Telefile System is available 24 hours a day/seven days a week.

A first time user is required to register on the Business Tax TeleFile System before filing. Registration can be handled directly on the system during the initial telephone call. The registration and filing process takes less than five minutes. Subsequent filings take less than three minutes. The procedure is completely paperless; mailing additional documentation to the Department of Revenue is not required. However, the retailer should maintain a copy of their report for their files.

To use the Business Tax TeleFile System, dial 803-898-5918 and follow the instructions. If assistance is needed with sales tax related questions, you can contact the DOR Sales Tax Help Line at (803) 896-1370. For all TeleFile support issues, you should contact the Electronic Services Help Line at (803) 896-1715

Electronic Filing Program (EFT/EDI)

The Department has designed an Electronic Filing Program (EFT/EDI) for the transmission of the payment and filing of tax return information for sales, use,

year, are required to file and pay electronically. Taxpayers with less than \$15,000 in tax due during a filing period may participate voluntarily with the EFT/EDI Program. For further information, call 1-800-476-0311.

A retailer interested in filing and paying one tax (e.g., sales tax, use tax, local sales tax, local use tax,) through EFT/EDI must file and pay all of these taxes through EFT/EDI. For example, a retailer cannot file and pay sales tax through this program and pay local option through a conventional process. Be aware that both the return and the payment must be filed and paid electronically; a retailer cannot choose to do one part electronically and the other by a different method.

Electronic payments can be made by using the ACH (Automated Clearing House) debit or credit method.

Advantages of participating in electronic programs include:

- (1) Eliminates paperwork, no more paper returns and checks;
- (2) Reduces return error potential due to no re-keying; no manual intervention;
- (3) Accurate timing of payment from the retailer's bank account; and
- (4) Comprehensive audit trail for both the return and the payment.

To register, please call 1-800-476-0311 or e-mail EDI@dor.sc.gov

J. Discount for Timely Payment

If returns are filed and the taxes paid in full by the due date, the taxpayer is allowed a discount on taxes due. For taxes less than \$100, you may take a 3% discount of the tax. For taxes of \$100 or more, your discount is 2% of the tax.⁴³

The maximum discount allowed per taxpayer (*all locations included*) during the state's fiscal year (*July 1 - June 30*) is \$3,000. The statute was amended (effective July 1, 2002) to increase that discount to a maximum of \$3,100 if the retailer files his sales and use tax returns electronically.⁴⁵

Nonresident retailers not required by law to collect South Carolina sales or use tax, but who voluntarily register to do so, are allowed a maximum discount of \$10,000 each fiscal year.

⁴³ South Carolina Code §12-54-250.

the June return filed in July and end with the May return filed in June.”

K. Cash Deposit or Bond

Transient retailers who have no permanent business location from which retail sales are made may be required to make a sufficient cash deposit or bond with the Department of Revenue to cover at least their annual sales tax liability. This cash deposit or bond must be made before receiving a retail license.⁴⁷

L. Recordkeeping

Every person subject to the sales and/or use taxes is required to keep “records, receipts, invoices and other pertinent papers in the form the Department requires.”⁴⁸ This includes records in electronic format.⁴⁹ Purchase invoices must show the names and addresses of vendors from whom purchases are made.⁵⁰

Separate records for wholesale sales and retail sales must be kept. If separate records are not kept, it is presumed all sales are at retail.⁵¹

Records must be kept for a period of **four years**.⁵²

The penalty for failing to keep records as required by the Department is a maximum of \$500 per return.⁵³

M. Assessments

The Department may assess unpaid taxes within three years of the date the taxpayer’s return was filed, or due to be filed, whichever occurs later.⁵⁴

For example, if a taxpayer files the May 2008 sales and use tax return on the due date, June 20, 2008, the Department has until June 20, 2011, to determine if additional taxes are due and assess the taxpayer for those taxes. If the taxpayer filed the May 2008 return late on August 30, 2008, then the Department has until August 30, 2011, to determine if additional taxes are due and assess the taxpayer for those taxes.

⁴⁶ South Carolina Code §12-36-2610.

⁴⁷ South Carolina Code §12-36-520.

⁴⁸ South Carolina Code §12-36-2540(A); South Carolina Code §12-54-210; SC Regulation 117-200; and SC Regulation 117-200.1.

⁴⁹ SC Regulation 117-200.2.

⁵⁰ South Carolina Code §12-36-2540(C).

⁵¹ South Carolina Code §12-36-2540(B).

⁵² SC Regulation 117-200.1.

⁵³ - - - - -

Department may assess for additional taxes after the three-year period if:

- (1) The taxpayer has consented in writing to extending the time period for assessing the tax.⁵⁵ This consent form must be completed before the three-year time limit expires. This consent form is usually completed at the beginning of the audit process when the taxpayer and the auditor agree to the period of time to be audited.
- (2) The taxpayer understates 20% of total taxes. In this case, the Department has six years to assess the taxpayer for the unpaid taxes.⁵⁶
- (3) The taxpayer has failed to file the return.⁵⁷ In this case, the Department may go back to August of 1985.⁵⁸
- (4) The taxpayer has filed a fraudulent return with the intent to evade the tax.⁵⁹ In this case, the Department may go back to August of 1985.⁶⁰
- (5) The taxpayer has failed to pay a use tax and the Department assesses the use tax as a result of information received from other state or local taxing authorities, regional or national tax administration organizations, or the federal government. The use taxes may be assessed within 12 months of receiving the information, but no later than 72 months after the last day the use tax may be paid without penalty.⁶¹

The taxpayer who collects from the purchaser a state or local sales or use tax that exceeds the amount allowed or required by state law, may be held liable for a penalty. The penalty could be up to 150% of the tax amount collected that exceeds the authorized amount.⁶²

⁵⁵ South Carolina Code §12-54-85(C)(4).

⁵⁶ South Carolina Code §12-54-85(C)(3).

⁵⁷ South Carolina Code §12-54-85(C)(2).

⁵⁸ South Carolina Code §12-54-85(C). At one time there was a statute that presumed that any tax due for more than 10 years had been paid. That statute was repealed effective August 1, 1995. Now there are no limitations on assessment of taxes where no return was filed and none on fraudulent returns. The Department has consistently taken the position that the former 10 year statute would continue to apply to taxes due before August 1, 1995; therefore it does not seek to make assessments for periods before August 1, 1985 (10 years prior to the August 1, 1995, effective date).

⁵⁹ South Carolina Code §12-54-85(C)(1).

⁶⁰ South Carolina Code §12-54-85(C). At one time there was a statute that presumed that any tax due for more than 10 years had been paid. That statute was repealed effective August 1, 1995. Now there are no limitations on assessment of taxes where no return was filed and none on fraudulent returns. The Department has consistently taken the position that the former 10 year statute would continue to apply to taxes due before August 1, 1995; therefore it does not seek to make assessments for periods before August 1, 1985 (10 years prior to the August 1, 1995, effective date).

Initial Process

- A. A taxpayer may seek a refund of any state tax by filing a written claim for refund with the Department of Revenue (Department).

Only the taxpayer legally liable for the tax may claim or receive a refund.⁶³ In the case of the sales tax, this is the retailer. In the case of the use tax, this is the purchaser. However,

- (1) with respect to sales tax, a purchaser who has paid the sales tax to the retailer for a specific transaction may claim and receive a refund if the retailer who paid the sales tax to the Department has assigned in writing the right to the refund of the sales tax to the purchaser.⁶⁴
- (2) with respect to the use tax, the retailer who collected the use tax from the purchaser and remitted to the Department may claim and receive the refund if the retailer establishes that the use tax has been repaid to the purchaser or the retailer has obtained written consent from the purchaser to claim and receive the use tax refund.⁶⁵

Also, the taxpayer legally liable for the tax (the retailer for sales tax and the purchaser for use tax) may assign in writing the refund to another person if the taxpayer legally liable for the tax has filed the claim for refund, the Department determines the claim is allowable, the amount of the refund is decided by the Department, and the Department has approved the refund.⁶⁶

For special rules concerning foreign diplomats, see South Carolina Code §12-60-470(C)(3).

- B. The refund claim must specify:⁶⁷

- (a) the taxpayer's name, address, and telephone number;
- (b) the appropriate taxpayer identification number or numbers;
- (c) the tax period or date for which the tax was paid;
- (d) the nature and kind of tax paid;

⁶³ South Carolina Code §12-60-470(C)(1).

⁶⁴ South Carolina Code §12-60-470(C)(1)(b).

⁶⁵ South Carolina Code §12-60-470(C)(1)(a).

⁶⁶

- (f) a statement of facts supporting the taxpayer's positions; and
 - (g) a statement outlining the reasons for the claim, including any law or other authority upon which the taxpayer relies.
- C. The refund claim must be filed within three years of the time the return was filed, or two years from date of payment, whichever is later. If no return was filed, the claim must be filed within two years from date of payment.⁶⁸
 - D. The appropriate division of the Department will decide what refund is due, if any, and give a written notice of its decision.
 - E. If a taxpayer's claim for refund is denied, the taxpayer can appeal by filing a written protest with the Department. The protest must be in writing and must be filed within 90 days from the date of the denial. The protest must also provide any information that was previously omitted but required for a refund claim as listed above.
 - F. If a refund is due, it must be first applied against other sales or use taxes due by the claimant and then against other state taxes due by the claimant.⁶⁹

Review by the Department of Revenue

- A. After the appeal, the taxpayer will be offered a conference with the person who denied the refund claim, and if requested, that person's supervisor. The purpose of the conference is to give the taxpayer a better understanding of the facts and issues and to also afford the taxpayer the opportunity to present additional information. At the Department's discretion, the conference may be conducted by telephone. After the conference, if the protest is not resolved, the file will be transferred to the Department's Office of General Counsel for Litigation.
- B. The Office of the General Counsel for Litigation will review the file and prepare a written Department Determination addressing the issues raised by the appeal. Once the Department's Director approves the Determination, it will be mailed to the taxpayer.

Contested Case Hearing before the Administrative Law Court

- A. A taxpayer can request a contested case hearing before the Administrative Law Court if the taxpayer disagrees with the Department Determination.

after the date of the Determination.

- C. The rules of the Administrative Law Court will control the request for a contested case hearing and the hearing.
- D. A refund denial will become final if the taxpayer does not request a contested case hearing within 30 days.

O. Penalties and Interest

Taxpayers who fail to file sales and use tax returns, or fail to pay these taxes when they are due, are subject to certain penalties. Penalties are imposed as follows:

Failure to file - This penalty is imposed at the rate of 5% of the taxes due for each month, or fraction of a month, the return is late. For example, if the May 2003 return is filed on June 30, 2003, it is 10 days late and the taxpayer is subject to a penalty equal to 5% of the tax due on that return. If this same return had not been filed until July 23, 2003, the taxpayer would be subject to a penalty equal to 10% of the tax due on that return.

Failure to pay - This penalty is imposed at the rate of 0.5% of the taxes due for each month, or fraction of a month, the taxes are late. For example, if the May 2003 return is filed on June 30, 2003, it is 10 days late and the taxpayer is subject to a penalty equal to 0.5% of the tax shown as due on that return. If this same return had not been filed until July 23, 2003, then the taxpayer would be subject to a penalty equal to 1% of the taxes shown as due on that return.

If the taxpayer is audited and taxes are found to be due, then the failure to pay penalty is not due if the taxes are paid within 10 days of the Department of Revenue's assessment for such taxes.

If the taxes found to be due under the audit are not paid within 10 days of the Department of Revenue's assessment, then the penalty is imposed at the rate of 0.5% of the taxes due for each month, or fraction of a month, from the 11th day after the assessment is issued until the taxes are paid.

P. Other Penalties

Other penalties, such as those imposed with respect to negligence,⁷⁰ fraud⁷¹ and operating without a retail license,⁷² can be found in Chapter 54 of Title 12 of the South Carolina Code of Laws.

⁷⁰ South Carolina Code §12-54-43(F)(1).

⁷¹

The Department, by law, imposes interest if a taxpayer fails to pay any sales and use taxes due. Interest is imposed at the same rate as provided in the Internal Revenue Code. The interest rate changes quarterly and such rate changes may be found on the Department's website (www.dor.sc.gov).⁷³ These are the same interest rates used by the Department in calculating the interest due a taxpayer if that taxpayer is issued a refund; however, two temporary provisos in the current state budget direct the Department to reduce the rate of interest paid on eligible refunds by three percentage points from the above rates for refunds paid from July 1st through June 30th.

R. Waiver of Penalties

The Department of Revenue has the authority to waive penalties imposed if there is reasonable cause to do so. Taxpayers who request a waiver or reduction of penalties imposed should do so in writing, and should set forth the reasons why such penalties should be waived or reduced. The Department of Revenue employee reviewing the request will then determine if a waiver or reduction of penalties is warranted under the guidelines established by the Department of Revenue in South Carolina Revenue Procedure #08-6.

S. Completion of an Audit

Initial Process

- A. When a division of the Department determines a taxpayer owes additional taxes, it will mail or deliver a proposed assessment.
- B. The proposed assessment is the first written notice a taxpayer will receive that says the taxpayer owes or requests that the taxpayer pays additional taxes, interest, or penalties. The term "proposed assessment" does not include the auditor's work papers or draft audit reports. If the taxpayer disagrees with a proposed assessment, the taxpayer is entitled to appeal the findings using the following procedures:
- C. If the taxpayer agrees with the proposed assessment, the amount due should be paid on or before the due date of the proposed assessment to avoid additional interest and penalties, if applicable.

⁷³ Interest rate information is published quarterly in an information letter issued by the Department. To

to pay over an agreed period of time. The taxpayer may contact the district manager of the nearest Taxpayer Service Center for additional information about installment agreements.

- D. A taxpayer may agree with portions of the proposed assessment and disagree with others. The portion of the assessment with which the taxpayer agrees may be paid to avoid additional interest and penalties, and the remainder can be appealed.
- E. If the taxpayer disagrees with part or all of the proposed assessment, the taxpayer may appeal by sending a written protest within 90 days from the date on the proposed assessment to the address on the proposed assessment. The written protest must contain:
 - (a) the taxpayer's name, address, and telephone number;
 - (b) the appropriate taxpayer identification number or numbers;
 - (c) the tax period or date for which the tax was proposed;
 - (d) the nature and kind of tax in dispute;
 - (e) a statement of facts supporting the taxpayer's position; and
 - (f) a statement outlining the reasons for the appeal, including any law or other authority upon which the taxpayer relies.

A taxpayer does not need to provide legal or other authority, as provided above, if the total amount of the proposed assessment is less than \$2,500.00, unless the taxpayer is a partnership, "S" corporation, exempt organization, or employee plan and the proposed tax is imposed by Chapters 6, 11, or 13 of Title 12. This exception does not apply to protests involving sales or use taxes.

- F. The Department may extend the time for filing a protest at any time before the period has expired.

Review by the Department of Revenue

- A. After a taxpayer files a protest, the taxpayer will be offered a conference with the person who issued the proposed assessment, and if requested, that person's supervisor. The purpose of the conference is to give the taxpayer a better understanding of the facts and issues and to also afford the taxpayer the opportunity to present additional information. At the Department's discretion, the conference may be conducted by telephone. After the conference, if the

- B. The Office of the General Counsel for Litigation will review the file and prepare a written Department Determination addressing the issues raised by the appeal. Once the Department's Director approves the Department Determination, it will be mailed to the taxpayer.

Contested Case Hearing Before the Administrative Law Court

- A. A taxpayer can request a contested case hearing before the Administrative Law Court if the taxpayer disagrees with the Department Determination.
- B. The request for a contested case hearing must be made in writing and filed with the Administrative Law Court within 30 days after the date of the Department Determination.
- C. The rules of the Administrative Law Court will control the request for a contested case hearing and the hearing.
- D. A final assessment will be sent to the taxpayer for payment, if the taxpayer does not properly request a contested case hearing within 30 days.

License Revocation

- A. The Department may deny or revoke any license issued by the Department for failure to pay taxes or certain regulatory violations.
- B. Notice will be sent to the taxpayer if a division of the Department proposes to deny or revoke your license.
- C. A taxpayer can appeal the denial or revocation by filing a written protest with the Department within 90 days of the notice. The written protest must contain:
 - (a) the taxpayer's name, address, and telephone number;
 - (b) the appropriate taxpayer identification number or numbers, if any;
 - (c) the kind of license in dispute;
 - (d) a statement of facts supporting the taxpayer's position; and
 - (e) a statement outlining the reasons for the appeal, including any law or other authority upon which the taxpayer relies.

the Department's District Manager who signed the denial or revocation. The District Manager will transfer the matter to the Department's Office of the General Counsel for Litigation if it cannot be resolved. The Office of the General Counsel for Litigation will review the file and prepare a written Department Determination addressing the issues raised by the appeal. Once the Department's Director approves the Department Determination, it will be mailed to the taxpayer.

- E. If a protest involves a regulatory violation of the alcoholic beverage laws, bingo laws, or other coin operated devices provisions, a written protest should be filed with the Department's Regulatory Division.
- F. A taxpayer can request a contested case hearing before the Administrative Law Court if the taxpayer disagrees with the Department Determination. The request for a contested case hearing must be made in writing and filed with the Administrative Law Court within 30 days after the date of the Department Determination. The rules of the Administrative Law Court will control the request for a contested case hearing and the hearing.

T. The Fairness in Lodging Act

The governing body of a county or municipality may impose, by ordinance, a local accommodations tax, on the gross proceeds derived from the rental or charges for accommodations furnished to transients as provided in South Carolina Code §12-36-920(A), not to exceed 3%. The revenue generated by this additional tax must be used exclusively for certain tourism purposes.⁷⁴

The "Fairness in Lodging Act,"⁷⁵ enacted on June 9, 2014, gives municipalities and counties the option of exercising additional enforcement authority and sharing data with the Department with respect to individuals who rent residential accommodations to tourists and fail to remit the local accommodations tax and the state sales tax on accommodations. The governing body of the municipality or county that imposes the local accommodations tax may implement the provisions of the Act through an ordinance and by providing a certified copy of the ordinance to the Director of the Department.⁷⁶ The provisions of the Act do not apply to any residential real property lawfully assessed for property tax purposes pursuant to South Carolina Code §12-43-220(c) when all rental income on the property is not included in gross income for federal income tax purposes pursuant to Internal Revenue Code §280A(g).⁷⁷

⁷⁴ South Carolina Code §6-1-520.

⁷⁵ South Carolina Code §6-1-810 through 6-1-825.

⁷⁶

implementing municipality or county must share helpful data in determining possible instances of noncompliance using returns and other documents filed with or available to them.⁷⁸ The municipality or county must include a notice with the annual property tax notices provided to owners of residential real property assessed at 6%.⁷⁹ The notice must include: details of local and state accommodations taxes required to be paid by persons renting residential real property to tourists; the intention of the municipality or county to vigorously enforce the requirements; and specific directions for obtaining additional information about the requirements, including names, addresses and telephone numbers of municipal or county officials able to answer questions, provide forms, and assist in compliance.⁸⁰

The implementing municipality or county may impose a one-time civil noncompliance penalty of \$500 to \$2,000 for each seven days that a property was rented. The one-time penalty is in addition to other penalties and interest imposed under the ordinance for failure to comply with local accommodations tax requirements of owners who rent residential accommodations to tourists. The county or municipality may not impose the additional penalty unless the owner received the notice as required under the Act. For purposes of enforcement and collection, the additional penalty is deemed a property tax on the rental property.⁸¹

The Act requires the Department of Revenue to identify websites containing "rent by owner" vacation rental opportunities and to request that the websites post a statement that owners of South Carolina rental properties must be licensed and collect applicable local and state fees and taxes.⁸²

The Act requires the Department to provide data and assistance to municipalities and counties that have implemented the Fairness in Lodging Act.⁸³ The county or municipality⁸⁴ and the Department⁸⁵ may share information in the performance of their duties required under the Fairness in Lodging Act.

⁷⁸ South Carolina Code §6-1-820(A).

⁷⁹ South Carolina Code §12-43-220(e).

⁸⁰ South Carolina Code §6-1-820(B).

⁸¹ South Carolina Code §6-1-820(C).

⁸² South Carolina Code §6-1-825.

⁸³ South Carolina Code §12-4-310(11).

Frequently Asked Questions

The following are some Frequently Asked Questions concerning the sales and use tax law. These questions are listed under the following categories:

- A. License and Registration
- B. Filing Returns
- C. Sales and Use Tax Rates
- D. What is Subject to the Sales and Use Tax?
- E. Government
- F. Churches and Other Nonprofit Organizations
- G. Internet Sales and Purchases
- H. Use Tax – Out-of State Purchases
- I. Construction
- J. Medicine and Medical Supplies
- K. Farmers
- L. Maximum Tax
- M. Administrative
- N. Refunds
- O. Penalties and Interest
- P. Local Taxes
- Q. Food
- R. Resale and Exemption Certificates
- S. Other
- T. Accommodations

The answers to these questions were written in a non-technical manner and if you have further questions please contact either the Department of Revenue or your tax professional. However, where deemed necessary, the answer is footnoted to reference code sections, regulations or advisory opinion that may help the reader better understand the issue.

1. Who needs a retail license or a use tax registration?

A retail license is required of every person in the business of selling tangible personal property at retail in South Carolina. A license must be obtained for each location of a business selling tangible personal property at retail. (Since the sales tax law applies to certain services, a retail license is required for each location selling at retail any service specifically subject to the sales tax.)

A use tax registration is of any business or nonprofit organization that is not licensed as a retailer and that regularly purchases tangible personal property for its own use from outside the state (not for resale) upon which the South Carolina sales or use tax has not been collected from the purchaser. (Since the use tax law applies to certain services, a use tax registration is required of any business or nonprofit organization that is not licensed as a retailer and that regularly purchases such a service for its own use from outside the state (not for resale) upon which the South Carolina sales or use tax has not been collected from the purchaser.)

Note: Retailers do not need to obtain a separate use tax registration since the sales tax return provides them the opportunity to remit the use tax on any property or service purchased for their own use (not for resale).

2. How do I obtain a retail license?

A retail license may be obtained by mail, online or in person.

To obtain a license by mail, complete Form SCDOR-111 and mail the application, along with \$50.00, to:

SC Department of Revenue
Registration Unit
Columbia, SC 29214-0140

To obtain a license online (via the Internet), go to www.scbos.com.

To obtain a license in person, visit anyone of the following Taxpayer Service Centers of the Department:

Charleston Service Center: 2 Southpark Circle
Suite 100
Charleston, S.C. 29407
Phone: 843-852-3600
Fax: 843-556-1780

P.O. Box 125
Columbia, S.C. 29214
Phone: 803-898-5000
Fax: 803-898-5822

Florence Service Center: 1452 West Evans Street
P.O. Box 5418
Florence, S.C. 29501
Phone: 843-661-4850
Fax: 843-662-4876

Greenville Service Center: 545 North Pleasantburg Drive, Suite 300
Greenville, SC 29607
Phone: 864-241-1200
Fax: 864-232-5008

Myrtle Beach Service Center: 1330 Howard Parkway
P.O. Box 30427
Myrtle Beach, S.C. 29588
Phone: 843-839-2960
Fax: 843-839-2964

Rock Hill Service Center: 454 South Anderson Road
Business and Technology Center
Suite 202
P.O. Box 12099
Rock Hill, S.C. 29730
Phone: 803-324-7641
Fax: 803-324-8289

3. What is the cost of a retail license and how long is it valid? Do I need to renew it every year?

The cost of each retail license is \$50.00 and the license is valid as long as the same retailer continues to operate the business at that location (unless revoked by the Department). If ownership of the business changes the retail license is no longer valid and the new owner must obtain a new retail license.

4. Do I need a retail license for each location of my retail business? Can I use one license at multiple locations?

A license is required for each location of the business.

If a retailer closes a location so as to move the business to a new location, the retailer does not need to purchase a new license. However, the retailer must turn the license over to the Department and provide the information as to the new location so the Department can issue a license with the new address of the business.

6. What qualifications do I have to meet to apply for and obtain a retail license?

To obtain a retail license, a person (a) must be engaged in the business of selling tangible personal property, or one of the specifically taxed services, at retail; (b) must complete an application; (c) must remit the \$50.00 fee with the application; and (d) must not have any outstanding tax liabilities of any kind with the Department of Revenue.

7. Why can I not transfer my retail license from my name to the new owner's name without paying another \$50?

Since the sales and use tax law specifically states that a retail license is not transferable or assignable, a retail license may not be transferred to another person when a business is sold.

8. Why can't I keep a retail license in case I "later on" decide to have a business?

Since a retail license may only be issued to a person engaged in the business of selling tangible personal property, or one of the specifically taxed services, at retail, a person who is no longer in that business must surrender the retail license to the Department immediately upon closing the business.

9. Where and what can I sell with this retail license?

A retail license is only valid for the one specific location; however, the Department also issues (i) a transient license to a business that does not have a permanent location in South Carolina but only operates at one location at a time and (ii) an artist or craftsman license that may only be used at one location at a time.

A retail license is for the purpose of selling as a business tangible personal property, or one of the specifically taxed services, at retail. For example, if a clothing store owner expands to begin selling furniture at the same location, a new retail license is not needed since both clothing and furniture are tangible personal property and the location where the sale takes place has not changed.

10. Do I have to have a retail license for flea market sales even if the items to be sold are used items?

If you sell at flea markets only once a quarter, you do not need a retail license

If you conduct a yard sale only once a quarter, you do not need a retail license unless conducting yard sales is a regular business in which you are engaged.

12. What do I need to sell beer and wine?

Since beer and wine are tangible personal property, a person selling beer and wine at retail must have a retail license. In addition, the person must also obtain a beer and wine permit from the Department and may need to obtain permits or licenses from other state agencies and local governments.

13. I have a business that is 95% service. Why do I need to purchase a retail license for the small amount of product that I do sell? Is it not legal to just pay the sales tax on those items when purchased from the vendor and be done with it?

If a business is engaged in selling tangible personal property at retail, even if it is a small part of the overall business, the business must obtain a retail license and remit the sales tax on those sales. For example, if 95% of a hair salon's business is the result of the non-taxable service of cutting and styling hair and only 5% is from the sale of hair care products, the salon must still obtain a retail license and remit the sales tax on its sale of the hair care products.

14. I'm a contractor, how can I qualify to get a retail license?

A contractor provides a service and is considered the user or consumer of the building material the contractor buys to provide this construction service. Therefore, a contractor is not entitled to obtain a retail license unless the contractor has a "second" business of regularly selling tangible personal property at retail.

For example, a plumbing business that only contracts to provide the plumbing improvements to a general contractor of residential homes is not entitled to a retail license. However, if this plumbing business also operates a retail plumbing supply store, then it will need a retail license for the store.

15. If I am a landscaper, do I need a retail license?

A landscaper is a contractor that provides a service and is considered the user or consumer of the plants and other supplies the landscaper buys to provide this service. Therefore, a landscaper is not entitled to obtain a retail license unless the landscaper has a "second" business of regularly selling tangible personal property (plants, grass sod, etc.) at retail.

For example, a landscaper that only contracts to provide landscaping improvements to a general contractor of residential homes is not entitled to a retail license.

Carolina customer, do I need a South Carolina license to purchase items to resell — I do not have a business in South Carolina?

If your business has no physical presence in South Carolina, then you are not required to obtain a retail license. However, your South Carolina customer is liable for the use tax on any purchase at retail.

If your business has a physical presence in South Carolina, then you are required to obtain a retail license. Physical presence includes, but is not limited to:

1. Out-of-state seller maintains, either directly or by subsidiary, an office, distribution house, warehouse, other place of business, or property in South Carolina.
 2. Out-of-state seller has an agent, salesman, representative, independent contractor, or employee operating in South Carolina, either permanently or temporarily.
 3. Out-of-state seller installs the property it sells in South Carolina.
 4. Out-of-state seller regularly engages in any activity in connection with the lease or rental or servicing of property located in South Carolina.
 5. Out-of-state seller delivers product to South Carolina customers in company vehicles.
- 17. If I publish a booklet to be given away free (similar to the one used to sell houses and cars) to advertise different businesses and their products, do I need a retail license to collect and pay sales tax?**

No. Since you are not selling the booklet, you do not need a retail license (provided you are not selling any other tangible personal property).

- 18. If I do not make retail sales, but I need to remit the use tax on my out-of-state purchases, do I need a retail license?**

No. You would only need to register to remit the use tax. There is no charge for a use tax registration.

- 19. Do I need a retail license if I provide a service?**

If the service you are providing is not one of the specifically taxed services under the sales and use tax, then you would not need a retail license.

1. When are sales and use tax returns due?

Sales and use tax returns are due by the 20th of the month following the end of the month, calendar quarter or year, depending on the sellers filing period.

For **monthly filers** (who constitute the vast majority of filers), the return is due on the 20th of the month following the month in which the sales occurred. For example, for sales that occur in March, the March return must be filed by April 20th.

For **calendar quarter filers**, the return is due on the 20th of the month following the end of the calendar quarter in which the sales occurred. For example, for sales that occur in the July through September calendar quarter, the quarterly return must be filed by October 20th.

For **calendar year filers**, the return is due on the 20th of the month following the end of the calendar year in which the sales occurred. For example, for sales that occur in the 2008 calendar year, the calendar year return must be filed by January 20, 2009.

2. Can I file quarterly or annually instead of monthly?

Yes, provided certain requirements are met and filing on a quarterly or annual basis has been approved by the Department.

3. How do I determine if I can file a use tax return monthly, quarterly, or yearly?

To determine if you are eligible to file quarterly or annually, please contact to the Department's Licenses and Registration Section or one of the Department's Taxpayer Service Centers. Generally, if the total tax due (state and local) on any return does not exceed \$100.00 for any month, a quarterly return may be filed provided it has been approved by the Department.

4. Do I need to file a return if I don't make any sales for a particular filing period (e.g., month, quarter)?

Yes.

5. Can I file my return online?

Yes. To file online, visit the Departments website at www.dor.sc.gov for information about filing a sales and use tax return online.

A sale is complete, or has occurred, when the seller has delivered the tangible personal property to the customer and the customer has paid or has a binding obligation to pay.

For example, if a customer pays the retailer for a product on October 30th, but the product will not be delivered to the customer by the retailer until November 4th, the sales has occurred in November and should be reported on the retailer's November sales and use tax return.

7. What form or forms do I use to file my sales and use tax return?

Most taxpayers who are liable for the state and local taxes that are administered and collected by the Department must file Form ST-3. However, the type of form used depends on the taxpayer's business. The following forms are used depending on the taxpayer's business:

<u>Type</u>	<u>Form Number</u>	<u>Local Form Number</u>
Retail	ST-3	ST-389
Accommodations	ST-388	ST-389, ST-3T
Aviation Gasoline	ST-403	ST-389
Maximum Tax	ST-455	ST-389
Individual Use Tax	UT-3/UT-3W	No local form required
Casual Excise/Use Tax	ST-236	No local form required

Note: With respect to local sales and use tax that is administered and collected by the Department, retailers who are located in a county that does not impose a local sales and use tax and do not make deliveries into other counties that do impose a local sales and use tax, do not need to file the ST-389 with the state form.

Retailers that are either located in a county that does impose a local sales and use tax or that make deliveries into counties that do impose a local sales and use tax for which they are responsible for remitting to the Department, must file the ST-389 with the state form. See Chapter 14 and SC Revenue Ruling #09-9 for information on a retailer's responsibilities for remitting local sales and use taxes.

8. If I am required to file the local tax form (ST -389, do I have to send all 3 pages of the local tax form, the ST-389?

Yes.

The local sales and use tax form, the ST-389, has admittedly become complicated as a result of the various new local taxes that have been authorized over the years. In addition, while these local taxes are similar, they do not necessarily have the same tax base. This further complicates the form.

However, the Department is always looking to improve its forms. If you have any suggestions for improving sales and use tax return forms, please send your suggestions to Suggestions4forms@dor.sc.gov.

10. Does South Carolina allow a discount for a timely filed return? How is the timely filed discount calculated?

South Carolina will allow a discount for timely filing a sales and use tax return, provided the taxes due on the return are paid in full and by the due date. The discount is calculated based on the total taxes (state and local) due with the return.

For returns showing a total tax due (state and local) of less than \$100.00, the discount is 3% of the total tax due. For example, if a return shows a total tax due (state and local) of \$80.00, the discount allowed for that return is \$2.40 ($\$80.00 \times 3\%$) and the retailer would remit a total payment of \$77.60 ($\$80.00 - \$2.40$) with that return.

For returns showing a total tax due (state and local) of \$100.00 or more, the discount is 2% of the total tax due. For example, if a return shows a total tax due (state and local) of \$200.00, the discount allowed for that return is \$4.00 ($\$200.00 \times 2\%$) and the retailer would remit a total payment of \$196.00 ($\$200.00 - \$4.00$) with that return.

However, in no event may a taxpayer (regardless of the number of retail locations the taxpayer has in the state), receive a discount in excess of \$3,000 during any one state fiscal year (returns filed from July 1st through the following June 30th). This would be the June return filed in July through the May return filed in the following June. For taxpayers who file electronically, the discount maximum for a state fiscal year is \$3,100.00 instead of \$3,000.00. For out-of-state taxpayers who cannot be required to file a sales and use tax return due to a lack of nexus with South Carolina, but who do so voluntarily, the discount maximum for a state fiscal year is \$10,000.00 instead of \$3,000.00.

Common Errors: Over the years, the Department has encountered two common errors taxpayers make when calculating the timely filed/paid discount on a return. When calculating the discount, remember the following:

Do not calculate the discount based on your total sales. The discount is calculated based on the total taxes (state and local) due.

and deducted it again. The discount is determined as follows: (1) Calculate the tax on the state tax due; (2) Calculate the discount for each entry on the local tax form; (3) Total all local tax discounts on the appropriate line of the local tax form; and (4) Add the state tax discount and the total of the local tax discounts and place this total state and local tax discount on the appropriate line of the first page of the tax return.

11. What are the deductions that I can take on the worksheet on the return?

Deductions are the exclusions and the exemptions authorized under the sales and use tax law.

Exclusions: While there are several exclusions authorized in the law, the primary exclusions are “sales for resale” – which are also referred to as “wholesale sales.” “Sales for resale” are items sold by a wholesaler or retailer that are not sold to the ultimate user or consumer under the sales and use tax law, but are sold to another wholesaler or retailer who will in turn sell it. The presentation of a resale certificate (Form ST-8A) by a purchaser will relieve the seller of liability for the sales tax and switch the liability to the purchaser, provided (a) the resale certificate presented to the seller by the purchaser contains all the information required by the Department and has been fully and properly completed; (b) the seller did not fraudulently fail to collect or remit the tax, or both; and (c) the seller did not solicit a purchaser to participate in an unlawful claim that a sale was for resale.

For example, if Seller A, a new car dealer, sells a used car that he accepted as a trade-in to Seller B, a used car dealer, the sale of the used car from Seller A to Seller B is a sale for resale by Seller A. Seller A would report the sale on his tax return as part of his total sales and then take a deduction for it as a sale for resale. By taking a deduction, Seller A would not pay tax on the sale since it was not a retail sale but a wholesale sale (sale for resale). Seller B would remit the tax on the used car if and when he sells it to the ultimate consumer.

Exemptions: Exemptions are retail sale that have been specifically exempted from the tax by the General Assembly. Most of the exemptions from the sales and use tax can be found in South Carolina Code §12-36-2120. Examples of sales exempt from the sales and use tax under this section include but are not limited to:

- Sales to the federal government
- Sales of textbooks for use in a course of study in K through 12 as well as colleges
- Sales of livestock
- Sales of unprepared foods

- Sales of certain manufacturing machines
- Sales of gasoline and diesel fuel subject to the state motor fuel tax
- Sales of prescription medicine sold by prescriptions
- Sales exempt during the Sales Tax Holiday in August

For example, if Seller X sold office supplies to the federal government, then Seller X would report the sale on his tax return as part of his total sales and then take a deduction for it as an exempt retail sale to the federal government. By taking a deduction, Seller A would not pay tax on the sale since it was is an exempt retail sale.

A sale must fall squarely within the requirements of an exemption in order for the exemption to apply. Therefore, please review the wording of the exemptions in South Carolina Code §12-36-2120 carefully.

12. Can I merely report my taxable sales or must I report all sales and then report and deduct the applicable exclusions and exemption using the worksheet on page 2 of the return?

You must report all sales on the worksheet, report and deduct the applicable exclusions and exemptions on the worksheet, calculate the “net taxable sales” (all sales + all withdrawals for use + all out-of-state purchases subject to the use tax - applicable deductions) and remit the tax based upon your net taxable sales

13. What is a sale for resale?

A “sale for resale” is a non-taxable wholesale sale. When a wholesaler or retailer makes a “sale for resale” the wholesaler or retailer is selling the item to another wholesaler or retailer who will in turn sell the item to another person – either another seller or to the ultimate consumer.

The presentation of a resale certificate (Form ST-8A) by a purchaser will relieve the seller of liability for the sales tax and switch the liability to the purchaser, provided (a) the resale certificate presented to the seller by the purchaser contains all the information required by the Department and has been fully and properly completed; (b) the seller did not fraudulently fail to collect or remit the tax, or both; and (c) the seller did not solicit a purchaser to participate in an unlawful claim that a sale was for resale.

First of all, it is important that you file your return on time and remit the tax due with the return. However, if you are unable to remit the tax due with the return, it is important that you file your return on time. Separate penalties are imposed for failure to file a return on time and failure to remit taxes on time. By filing your return on time, you can avoid the failure to file penalties. The Department will then assess you for the tax due, plus penalties and interest. However, the sooner you remit the tax due the less penalties and interest you will owe.

15. If a car dealer sells a car and it is returned the next month, is the dealer entitled to a refund for the taxes paid?

If the retailer refunds the buyer the full sales price, no tax is due on the original sale so the dealer is entitled to a refund.

If the retailer does not refund the buyer the full sales price (keeping any portion as a restocking fee or as a rental fee), the original sale is still valid and the dealer is not entitled to a refund.

16. Are "additional guest charges" at hotels and other places that furnish accommodations subject to the tax?

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

Charges for rooms, lodgings and accommodations are taxed at 7%, while other charges for room service, laundering and dry cleaning services, in-room movies, telephone services, and the rental of meeting rooms provided at the hotel, when over and above the services customarily provided with the room, are taxed at 6% as an "additional guest charge

It should therefore be noted that the determination as to what services, if any, are over and above the services customarily provided with the room must be based on all of the facts and circumstances.

For more detailed information on "additional guest charges," see SC Revenue Ruling #14-5.

can the Department eliminate the several pages of the local tax form (ST-389) that would not apply to such retailers?

Since the Department does not know when a retailer will deliver items into other counties, the Department cannot specifically identify such retailers and issue them a streamlined sales tax form that eliminates or reduces the local tax form.

18. How do you fill out the sales tax return?

Since there are several different sales tax returns, depending on the retailer's business, and local sales and use taxes, it is not possible to provide a step-by-step discussion on how to complete a sales and use tax return. However, two sources provided by the Department should assist retailers in completing a return.

First, the instructions for the sales and use tax returns provided detailed information concerning the completion of a return.

Second, and maybe more helpful, the Department conducts free workshops throughout the year that explain how to complete a sales and use tax return. These workshops provide retailers the opportunity to ask questions they may have concerning the return. The information as to these free workshops can be found on the Department's website at www.dor.sc.gov under "Tax Workshops."

However, retailers should remember the following when completing a sales and use tax return:

- (1) Report all sales (taxable and non-taxable) on the worksheet on page 2 of the return, report and deduct the applicable exclusions and exemptions on the worksheet, calculate the "net taxable sales" (all sales + all withdrawals for use + all out-of-state purchases subject to the use tax - applicable deductions) and remit the tax based upon your net taxable sales.
- (2) Always make sure you are using the correct pre-printed return for the tax period. For example, make sure you use the May pre-printed return for May sales.
- (3) Do not calculate the discount for timely filing and pay based on your total sales. The discount is calculated based on the total taxes (state and local) due.

(ST-389) and deducted it again. The discount is determined as follows: (1) Calculate the tax on the state tax due; (2) Calculate the discount for each entry on the local tax form; (3) Total all local tax discounts on the appropriate line of the local tax form; and (4) Add the state tax discount and the total of the local tax discounts and list this total state and local tax discount on the appropriate line of the first page of the tax return.

- (5) If you are a new retailer and plan to seek help from one of our employees in completing your sales and use tax, always bring the pre-printed forms to the meeting.
- (6) Keep complete and accurate records. This is always helpful in completing your return.
- (7) Always make sure you place enough postage on the envelope when mailing your return.

19. When do I have to collect local sales and use taxes?

Examples of when a retailer delivering into another county must remit that county's sales and use tax include, but are not limited to:

Retailers Using Their Own Vehicles: A retailer is required to remit a county's tax if the retailer is shipping property into the county using his own vehicles (whether owned or leased).

Retailers Using a Contract Carrier: A retailer is required to remit a county's tax if the retailer is shipping property into the county using a contract carrier (an independent or related company working specifically for or otherwise representing the retailer with respect to the delivery.)

Retailers Using a Common Carrier: A retailer is required to remit a county's tax if the retailer is shipping property into the county using a common carrier (e.g. UPS, the mail), and the retailer is subject to the county of delivery's jurisdiction

Examples of when a retailer is subject to the county of delivery's jurisdiction include, but are not limited to, the following:

- (a) The retailer maintains, temporarily or permanently, directly or by subsidiary, an office, warehouse, distribution house, sales house, other place of business, or property of any kind in the county of delivery.

acting on behalf of the retailer), salesman, or employee operating within the county of delivery.

- (c) The retailer advertises via advertising media located in the county of delivery (e.g. newspapers, television, cable systems, and radio).
- (d) The retailer advertises via advertising media located outside the county but which has coverage within the county of delivery (e.g. newspapers, television, cable systems, and radio).

Please note that these statements are only examples and that there are other circumstances in which a retailer must remit a county's tax with respect to deliveries into that county. If upon being audited, it is found a retailer has a sufficient connection with a particular county so as to require remittance of that county's tax, but the retailer has failed to do so, the Department will assess the retailer for that county's tax.

20. What form do you use to amend a return for sales tax?

A retailer can use the tax return forms (e.g., ST-3, ST-389) the retailer normally uses to file and remit sales and use taxes and write "AMENDED" across the top of the form.

21. Can you take a credit for overpayment of tax on the next month's return?

No. In order to recover the overpayment, the retailer will need to file a refund claim.

22. How does a retailer apply for a refund if the retailer overpaid tax on a previous sales tax return (e.g., ST-3)?

For sales tax, the taxpayer is the retailer and only the retailer may apply for and receive the refund. However, a purchaser who has paid sales tax to a retailer for a specific transaction may claim a refund if the retailer who paid the sales tax to the Department has assigned, in writing, the right to a refund of that sales tax to the purchaser. For use tax, the taxpayer is the purchaser and only the purchaser may apply for and receive the refund. However, a retailer who collects the use tax from the purchaser and remits the use tax to the Department may claim a refund of the use tax collected, but only if the retailer establishes that he has paid the use tax in question to the Department and either (1) repaid the use tax to the purchaser from whom he collected it or (2) obtained the written consent of the purchaser from whom he collected the use tax to the allowance of the refund.

filed within three years.

The refund claim must specify:

- (1) the name, address, and telephone number of the taxpayer;
- (2) the appropriate taxpayer identification number or numbers;
- (3) the tax period or date for which the tax was paid;
- (4) the nature and kind of tax paid;
- (5) the amount which the taxpayer claims was erroneously paid;
- (6) a statement of facts supporting the taxpayer's position;
- (7) a statement outlining the reasons for the claim, including law or other authority upon which the taxpayer relies; and
- (8) other relevant information that the department may reasonably require.

23. Do I have to report these sales on my income tax return?

All income is reported on your income tax return; however, as a business you are entitled to certain deductions for expenses. It is recommended that you discuss this matter with a tax professional to make sure you are properly and accurately completing your income tax returns.

C. Sales and Use Tax Rates

1. What is the state sales and use tax rate?

South Carolina imposes the following state tax rates under the sales and use tax law:

General Sales and Use Tax Rate:	6%
Accommodations Tax Rate:	7%
900 and 976 Tax Rate:	11%

In addition, the sales tax due on the sale in South Carolina to a nonresident of a motor vehicle, trailer, semitrailer, or pole trailer that is to be registered and licensed in the nonresident purchaser's state of residence is the lesser of (a) the sales tax which would be imposed on the sale in the purchaser's state of residence or (b) the tax that would be imposed under South Carolina law. No sales tax is due in South Carolina if a nonresident purchaser cannot receive a credit in his resident state for sales tax paid to South Carolina.

2. What are the local sales and use tax rates?

South Carolina allows the imposition of various types of local sales and use taxes. A county may impose one or several local sales and use taxes. For a list of counties imposing these local sales and use taxes, visit the Department's website (www.dor.sc.gov).

D. What is Subject to the Sales and Use Tax?

1. What sales or transactions are subject to the sales and use tax?

The sales tax is imposed on the sales at retail of tangible personal property and certain services. The use tax is imposed on the storage, use or consumption of tangible personal property and certain services when purchased at retail from outside the state for storage, use or consumption in South Carolina. There are also special imposition sections that tax the fair market value of tangible personal property when used, stored or consumed by its manufacturer and a special imposition section that taxes transient construction property brought into South Carolina.

¹If the manufactured home meets certain energy efficient standards, the 5% tax is capped at \$300 under the maximum tax provisions of South Carolina Code §12-36-2110 and the 2% tax on amounts over \$6,000 does not apply. However, if a manufactured home that is sold anytime from July 1, 2009 to July 1, 2019 meets or exceeds certain other energy saving efficiency requirements, or ENERGY STAR requirements, of the United States Environmental Protection Agency and the United States Department of Energy, then the sale of the manufactured home is exempt.

²The maximum tax applies to aircraft (including unassembled aircraft which is to be assembled by the purchaser), motor vehicles, motorcycles, boats, trailers and semitrailers that can only be pulled by a truck tractor, horse trailers, fire safety education trailers, recreational vehicles (including tent campers, travel trailers, park models, park trailers, motor homes, and fifth wheels), self-propelled light constructions equipment limited to a maximum 160 net engine horsepower, manufactured homes, and certain musical

- Furnishing of Accommodations (the state rate for this service is 7%)
- Dry Cleaning and Laundering Services
- Electricity
- Communication Services including, but not limited to:
 - * Telephone services (not specifically exempted under South Carolina Code §12-36-2120(11)), including telephone services provided via the traditional circuit-committed protocols of the public switched telephone network (PSTN), a wireless transmission system, a voice over Internet protocol ("VoIP"), or any of other method
 - * Teleconferencing Services
 - * Paging Services
 - * Cable Television Services
 - * Satellite Programming Services and Other Programming Transmission Services (includes, but is not limited to, emergency communication services and television, radio, music or other programming services)
 - * Fax Transmission Services
 - * E-Mail Services
 - * Electronic Filing of Tax Returns when the return is electronically filed by a person who did not prepare the tax return
 - * Database Access Transmission Services (On-Line Information Services), such as legal research services, credit reporting/research services, charges to access an individual website (including Application Service Providers), etc. (not including computer database information services provided by a cooperative service when the database information has been assembled by and for the exclusive use of the members of the cooperative services)
 - * Prepaid Wireless Calling Arrangements (sale or recharge at retail) as defined in South Carolina Code §12-36-910(B)(5) (For information on prepaid telephone calling cards that do not come within the definition of prepaid wireless calling arrangements, see Revenue Ruling #04-4.)

Yes. Any rental or lease of tangible personal property, or a taxable service, at retail is subject to the tax.

The sales and use tax law defines the term "sale" to include rentals, leases, licenses to use, or any other agreement.

4. Are consignment sales subject to the tax and who is responsible for consignment sales taxes?

Consignment sales are subject to the sales and use tax. The retailer selling the items on consignment is the person responsible for remitting the tax on the consignment sale. For example, if Mr. Smith creates wooden toys and under an agreement with the ABC Crafts Store places his wooden toys in the craft store for sale by the ABC Crafts Store, then ABC Crafts Store is the retailer and responsible for remitting the tax on these sales even though ABC Crafts Stores does not own the wooden toys.

5. Are delivery charges by whatever name (e.g., freight, shipping, transportation, shipping and handling, etc.) subject to the sales and use tax? Who is responsible for delivery charges?

When a retailer sells tangible personal property at retail and charges the customer a delivery charge for delivery via the retailer's own trucks, then the delivery charge is considered part of the tax base upon which the tax is calculated and subject to the sales and use tax.

When a retailer sells tangible personal property at retail and charges the customer a delivery charge for delivery via a common carrier and the delivery terms are F.O.B. Destination, then the delivery charge is considered part of the tax base upon which the tax is calculated and subject to the sales and use tax.

When a retailer sells tangible personal property at retail and charges the customer a delivery charge for delivery via a common carrier and the delivery terms are F.O.B. Shipping Point, then the delivery charge is not considered part of the tax base upon which the tax is calculated and is not subject to the sales and use tax.

When a retailer sells tangible personal property at retail and charges the customer a delivery charge for delivery via a common carrier and the delivery terms are not specified, then the delivery charge is considered part of the tax base upon which the tax is calculated and subject to the sales and use tax.

However, in no event may a seller deduct costs of bringing property to his place of business or costs of delivering property from factory to his customer when such factory-to-customer transportation is paid by the seller either to a transportation company, the manufacturer, or by way of credit to his customer for transportation costs paid by the customer and deducted from seller's invoice.

(including any delivery charges associated with the exempt sale) is exempt.

6. Are late fees subject to the sales and use tax?

When a retailer sells tangible personal property or a taxable service at retail and the customer is charged for a late fee associated with the sale, then the charge is considered part of the tax base upon which the tax is calculated and subject to the sales and use tax, unless the late fee is one charged a customer with respect to a late payment of a bill for electricity or natural gas, or both.

In the case of a late fee charged a customer with respect to a late payment of a bill for electricity or natural gas, or both, the charge for the electricity or natural gas, or both is subject to the tax but the late fee is not subject to the tax.

Note: If the retailer sells tangible personal property or a taxable service at retail and the sale qualifies for an exemption, then the entire tax base upon which the tax is calculated (including any late fee charges associated with the exempt sale) is exempt.

7. Are installation charges subject to the sales and use tax?

When a retailer sells tangible personal property at retail and the customer is charged an installation fee associated with the sale, the installation charge is not subject to the sales and use tax provided it is separately stated on the bill to the customer and the installation charge is reasonable based on the books and records of the retailer.

If the installation charge is not separately stated on the bill to the customer or the installation charge is not reasonable based on the books and records of the retailer, then the installation charge is considered part of the tax base upon which the tax is calculated and subject to the sales and use tax.

Note: If the retailer sells tangible personal property at retail and the sale qualifies for an exemption, then the entire tax base upon which the tax is calculated (including any installation charge associated with the exempt sale) is exempt.

8. Are set up charges (e.g., screen printers, personalized items, etc.) subject to the sales and use tax?

When the "true object" of a transaction is the retail sale of tangible personal property or a taxable service and the customer is charged a set-up fee (e.g., screen printers, personalized items, etc.) associated with the sale, then the charge is considered part of the tax base upon which the tax is calculated and subject to the sales and use tax.

calculated (including any set up fee associated with the exempt sale) is exempt.

9. Is the sale of food subject to the sales and use tax?

Yes. The sale of food is subject to the sales and use tax; however, the sales and use tax law provides exemptions for the sale of certain foods, including but not limited to:

- (a) meals provided to elderly or disabled persons at home by nonprofit organizations.
- (b) food sold to nonprofit organizations or food sold or donated by the nonprofit organization to another nonprofit organization.
- (c) meals or foodstuffs prepared or packaged that are sold to public or nonprofit organizations for congregate or in-home service to the homeless or needy or disabled adults over 18 or individuals over 60. This exemption only applies to meals and foodstuffs eligible for purchase under the USDA food stamp program.
- (d) unprepared food that lawfully may be purchased with United States Department of Agriculture food coupons. This exemption does not apply to local taxes unless the local tax specifically exempts the sale of such food. Important: See SC Regulation 117-337 for details about what sales do or do not qualify for this exemption.

10. Are charges for warranty contracts subject to the sales and use tax?

Warranty Contracts sold in conjunction with the sale of the tangible personal property are subject to the sales and use tax unless the sale of the tangible personal property is exempt from the tax.

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

11. Is canned software subject to the sales and use tax?

Canned software sold and delivered by tangible means (e.g., tape, disk) is subject to the sales and use tax.

Canned software sold and delivered by electronic means via a modem and telephone from a remote location is not subject to the sales and use tax, provided no part of the software, including back-up diskettes and tapes, is delivered by tangible means.

Custom software sold and delivered by tangible means (e.g., tape, disk) is subject to the sales and use tax.

Custom software sold and delivered by electronic means via a modem and telephone from a remote location is not subject to the sales and use tax, provided no part of the software, including back-up diskettes and tapes, is delivered by tangible means.

13. Is software sold via an Application Service Provider (ASP) model subject to sales and use tax?

Software delivered via an Application Service Provider, where by the seller maintains the software on a website and the purchaser pays to access the software on that website, is subject to the sales and use tax.

For more information, see S.C. Revenue Ruling #03-5 as well as Section D, Question #2, of this Chapter.

14. I'm located in Ohio and purchase products from a manufacturer not located in South Carolina. They are registered with South Carolina to collect sales tax. They are charging me South Carolina sales tax. Do I have to pay them South Carolina sales tax?

If the manufacturer is delivering the product to you in Ohio, then the South Carolina sales and use tax would not apply. If the product is being delivered to a location in South Carolina, then the South Carolina sales and use tax would apply.

15. Are valet laundry services at a hotel subject to the sales and use tax?

Sales of laundry and drycleaning valet services by a hotel to its guest are subject to the sales tax and are taxed at the rate of 6%, plus any applicable local sales and use taxes.

16. If a customer comes to my store, purchases an item and has me ship the item by mail, common carrier or by a company truck to another person out-of-state, is that sale subject to the sales tax?

No.

17. If a customer purchases an item at my store and the customer intends to personally ship the item to another person out-of-state by mail or common carrier, is that sale subject to the sales tax?

Yes.

1. Are sales to the federal government subject to the sales and use tax?

Sales to the federal government of tangible personal property or taxable services are not subject to the sales and use tax,

Sales to the State, counties, municipalities, and other local political subdivisions (e.g. schools, sheriff offices, municipal housing authorities, welfare agencies) of tangible personal property or taxable services are subject to the sales and use tax, unless such sales are otherwise exempt.

2. Are sales by the federal government subject to the sales and use tax?

Sales by the federal government of tangible personal property or taxable services are not subject to the sales and use tax,

Sales by the State, counties, municipalities and other political subdivisions of the State (e.g. schools, sheriff offices, municipal housing authorities, and welfare agencies) of tangible personal property or taxable services are subject to the sales tax, unless such are otherwise exempt.

3. Are sales by a state agency to another state agency, a county, a municipality or another political subdivision subject to the sales and use tax?

Sales by a state agency to another state agency, a county, a municipality or another political subdivision are subject to the sales and use tax, unless (1) the consideration for the transfer only reimburses the transferring agency for its cost and expenses in conveying the property and the transferring agency has paid tax on the initial purchase of the tangible personal property or (2) the sale is exempt under the sales and use tax law (e.g., textbooks).

4. I have a contract with the federal government to supply and install equipment. I know sales to the federal government are exempt. What must I do to prevent charging them South Carolina sales tax or my paying South Carolina tax?

To exempt the sales to the federal government, report all sales (including the exempt sales to the federal government) on the worksheet on your return, report and deduct the applicable exclusions and exemptions on the worksheet (including the sales to the federal government), calculate the "net taxable sales" (all sales + all withdrawals for use + all out-of-state purchases subject to the use tax - applicable deductions which will include the exempt sales) and remit the tax based upon your net taxable sales.

Note: Your records should document that the sale was to the federal government. In addition, while not required, you may want to ask the federal government to complete and provide you a Form ST-8 Exemption Certificate, which can be found

1. **Are sales of tangible personal property (e.g., computers, office equipment, tables, chairs, religious publications) and taxable services (e.g., electricity, drycleaning) to a church or other nonprofit organization for their own use or consumption subject to the sales and use tax?**

Yes. Sales to churches and other nonprofit organization are subject to the sales and use tax unless specifically exempt under the sales and use tax law.

2. **Are sales of tangible personal property (e.g., clothing) to a church or other nonprofit organization for the purpose of providing the tangible personal property free of charge to individuals in need subject to the sales and use tax?**

Yes. Sales of tangible personal property (e.g., clothing) to a church or other nonprofit organization for the purpose of providing the tangible personal property free of charge to individuals in need are subject to the sales and use tax.

3. **May churches and other nonprofit organization purchase building materials and furnishings tax free?**

No. Sales to churches and other nonprofit organization of building materials and furnishings are subject to the sales and use tax unless specifically exempt under the sales and use tax law.

For example, if a church or a nonprofit organization purchases new tables and chairs for use in its assembly or fellowship hall, or purchases a new door for its main entrance, these purchases are subject to the sales and use tax. Also, if a church or nonprofit organization purchases building material to repair or build a home for a person in need, these purchases by the church or nonprofit organization are subject to the sales and use tax.

4. **Our church has a 501(c)(3) exemption from the Internal Revenue Service. Doesn't this exempt our church from the sales and use tax?**

No. The 501(c)(3) exemption from the Internal Revenue Service relates to incomes taxes only. In order for a sale to or a sale by a church to be exempt, the exemption must be specifically provided for in the sales and use tax law.

5. **Are sales of accommodations to a church or other nonprofit organization subject to the sales and use tax?**

Yes, unless the purchase of accommodations by the nonprofit organization falls within one of the exemptions in the sales and use tax law.

No.

7. **If a nonprofit organization other than a church operates a camp facility and rents cabins to individuals and groups when the camp facility is not used for summer camps or retreats, is the charge for renting the accommodations subject to the sales tax on accommodations?**

Yes, if the nonprofit organization does not qualify for the exemption for sales by certain nonprofit organization and the rentals are for less than 90 consecutive days.

No, if the nonprofit organization does qualify for the exemption for sales by certain nonprofit organization or the rentals are for 90 or more consecutive days.

8. **Are sales of tangible personal property (including accommodations) by a church or other nonprofit organization subject to the sales and use tax?**

Sales of tangible personal property by a church are exempt from the sales and use tax. The church may purchase tax free any tangible personal property it intends to resell and may sell tax free any such tangible personal property.

Sales of tangible personal property by certain other nonprofit organizations that are exempt from property taxes are exempt from the sales and use tax. The following nonprofit organizations exempt from property taxes (the property tax exemption is listed next to the type of nonprofit organization) come within the sales and use tax exemption for "sales by" the nonprofit organization:

- (1) public libraries and churches (South Carolina Code §12-37-220(A)(3));
- (2) charitable trusts and foundations used exclusively for charitable and public purposes (South Carolina Code §12-37-220(A)(4));
- (3) The American Legion, the Veterans of Foreign Wars, the Disabled American Veterans, Fleet Reserve Association, the Marine Corps League or any similar Veterans Organization chartered by the Congress of the United States (South Carolina Code §12-37-220(B)(5));
- (4) The Young Women's Christian Association, Young Men's Christian Association and the Salvation Army (South Carolina Code §12-37220(B)(6));
- (5) The Boy Scouts of America and the Girl Scouts of America (South Carolina Code §12-37-220(B)(7));

- (8) Any religious, charitable, eleemosynary, educational, or literary society, corporation, or other association (South Carolina Code §12-37-220(B)(16));
- (9) Volunteer Fire Departments and Rescue Squads (South Carolina Code §12-37-220(B)(19));
- (10) All community owned recreation facilities opened to the general public and operated on a nonprofit basis (South Carolina Code §12-37-220(B)(22)); and,
- (11) nonprofit or eleemosynary community theatre companies, symphony orchestras, county and community arts councils and commissions and other such companies, which is used exclusively for the promotion of the arts (South Carolina Code §12-37-220(B)(24)).

An organization whose sales or purchases are exempt as a result of this exemption is also exempt from the retail license tax.

This exemption only applies to sales by organizations which meet three requirements:

- (1) The organization must be eligible for exemption from the property tax under one of the enumerated property tax code sections.
- (2) The net proceeds from the organization's sales must be used for exempt purposes.
- (3) No benefit from the sales may inure to any individual.

9. How can a nonprofit organization determine if the "sales by" the nonprofit organization are exempt from the sales and use tax?

To simplify the administration of the sales tax exemption for "sales by" certain nonprofit organizations and to assist nonprofit organizations in determining if they qualify for the sales tax exemption for "sales by" the nonprofit organizations, the nonprofit organization should complete and file Form ST-387- Application for Sales Tax Exemption under South Carolina Code §12-36-2120(41), "Exempt Organizations."

The law does not require an organization to obtain an exemption certificate in order to purchase items exempt under this exemption. However, the Department recommends that organizations apply for the exemption certificate. If an organization is issued a certificate, this will simplify for the organization the purchase from suppliers of items tax-free for resale. Otherwise, suppliers may be reluctant to sell items tax-free (for resale) to an organization that does not have a

I. An organization is considered to be "automatically" qualified for an exemption certificate if it is:

- A. Selling tangible personal property;
- B. Exempt from property tax under one of the property tax code sections listed in South Carolina Code §12-36-2120(41); and,
- C. Exempt from Federal income tax under Internal Revenue Code Section 501(c)(3) or (19). The statute does not require that an organization be exempt from Federal income tax under Internal Revenue Code Section 501(c)(3) or (19); however, the purpose of this provision is to meet the requirement that the organization's net proceeds must be used for an exempt purpose and to insure that no benefit inures to any individual.

NOTE: To be considered as "automatically" qualified, an organization must meet all of the above requirements and file Form ST-387. **However, it should be noted that this "automatic" qualification has been established to simplify the issuance of a certificate. If it is determined that an organization does not meet the requirements of the statute or is not otherwise operating in an exempt manner, then the certificate will not be issued or will be revoked if previously issued.**

II. An organization is not qualified for an exemption certificate if it is:

- A. Only purchasing tangible personal property for its own use or consumption, and not for resale; or,
- B. Exempt from property tax, but under a code section not listed in South Carolina Code §12-36-2120(41).

Note: South Carolina Code §12-37-220 provides specific property tax exemptions for the State of South Carolina, its counties, municipalities, school districts, and other political authorities or subdivisions; private schools, colleges and other institutions of learning; nonprofit hospitals and nonprofit institutions which care for the infirmed, the handicapped, the aged, children or indigent persons; and nonprofit museums. The property tax exemptions for these organizations are not specifically listed in South Carolina Code §12-36-2120(41).

However, some of these organizations may also qualify for a property tax exemption listed in South Carolina Code §12-36-2120(41). For example, a private school may qualify for the property tax exemption under South

- A. The organization must be selling, or will sell, tangible personal property;
- B. The organization must be a type referred to in South Carolina Code §12-36-2120 (41) [i.e., a church, veterans' organization, YMCA, Scouts, etc.]; and,
- C. Documents provided by the organization must conclusively demonstrate that the net proceeds of the organization are used, or will be used, exclusively for exempt purposes; and, that no benefit inures, or will inure, to any individual.

G. Internet Sales and Purchases

1. **Are sales by or purchases from, a retailer via the Internet subject to the sales and use tax?**

Sales by, and purchases from, a retailer via the Internet of tangible personal property or a taxable service are subject to the sales and use tax.

2. **Are charges by an Internet Service Provider to access the Internet subject to the sales and use tax?**

No. As a result of federal legislation, charges to access the Internet are not subject to the sales and use tax.

3. **Are charges by the operator of a website of the Internet to access that individual website subject to the sales and use tax?**

Yes. For example, if a sports website charges a South Carolina resident \$10 per month to access the sports website or to access a "premium" section of the sports website, then the \$10 per month is subject to the sales and use tax.

4. **If I am located in South Carolina and sell products from my home via the Internet, do I need a retail license? I don't have a store front and customers do not come to my home to purchase the products. I receive the orders via the Internet (customer makes order, calculates tax based upon the state the product is shipped to.) and I forward my orders to my suppliers and request that they deliver the products to my customers. My suppliers will bill me for the products after they are delivered.**

Yes. You are engaged in the business of selling tangible personal property at retail in South Carolina and must obtain and retail license and remit the sales tax on all orders shipped to a South Carolina address.

1. What is the use tax?

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

2. What is the rate for the use tax?

The tax rate for the use tax is the same as the sales tax. This rate is determined by where the tangible personal property will be used, stored or consumed, regardless of where the sale actually takes place. Therefore, the tax rate for the use tax will be the 6% state rate plus the applicable local use tax rate for the location where the tangible personal property will be used, stored or consumed.

Note: Information concerning local sales and use tax rates can be found on the Department's website (www.dor.sc.gov).

3. What is the difference between the sales tax and the use tax?

The sales tax is imposed on all retailers within South Carolina and applies to all retail sales of tangible personal property within the state. Retailers making sales of tangible personal property in South Carolina are required to remit the sales tax to the Department of Revenue.

The use tax is imposed upon the consumer of tangible personal property that is purchased at retail for use, storage, or consumption in South Carolina. The use tax applies to purchases from out-of-state retailers. The use tax has been around since 1951 – the same year the sales tax law was adopted in South Carolina.

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

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

4. Why would an out-of-state retailer charge a purchaser the South Carolina sales tax or use tax?

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

property of any kind in the state or having (temporarily or permanently) an agent, representative (including delivery personnel and independent contractors acting on behalf of the retailer), salesman, or employee operating within the state.

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

5. **If an out-of-state retailer who has obtained a retail license charges the purchaser for the South Carolina sales or use tax on tangible personal property delivered into South Carolina, is the purchaser still liable for the use tax?**

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

6. **If a South Carolina purchaser buys merchandise via an Internet or mail-order catalog retailer that has not obtained a South Carolina retail license and therefore does not charge the purchaser for the South Carolina sales or use tax on tangible personal property delivered into South Carolina, is the purchaser liable for the use tax?**

Yes.

7. **If a South Carolina purchaser travels to another state and purchases tangible personal property from a retailer in the other state for use, storage or consumption in South Carolina, does the South Carolina purchaser still owe the South Carolina use tax on the purchase if the other state's sales tax was paid to the retailer at the time of purchase?**

The South Carolina purchaser would only owe the use tax on the difference between the sales tax paid in the other state and the use tax due in South Carolina. In other words, if the state and local sales or use tax due and paid in another state is equal to or greater than the state and local use tax due in South Carolina, then no use tax is due in South Carolina.

Example #1: If a South Carolina purchaser paid \$15.00 sales tax in the other state and the total state and local use tax due in South Carolina was \$18.00, then the South Carolina purchaser would be allowed a credit for the \$15.00 and would only owe a South Carolina use tax of \$3.00.

South Carolina purchaser would be allowed a credit for the \$21.00 and no use tax would be due in South Carolina since the \$21.00 paid exceeds the \$18.00 due in South Carolina. However, the purchaser is not entitled to a refund of the difference between the \$21.00 paid in the other state and the \$18.00 due in South Carolina.

Note: Each transaction must stand on its own. In other words, an "excess" paid to another state on one purchase transaction, as shown in Example #2, cannot be used to offset any South Carolina use tax that may be due on another purchase transaction.

8. If a sale by a South Carolina retailer is exempt from the South Carolina sales tax, is the purchase of the same product from an out-of-state retailer exempt from the South Carolina use tax?

Yes. For example, prescription medicine purchased from a South Carolina pharmacy upon presentation of the prescription written by the physician is exempt from the South Carolina sales tax. The same purchase from an out-of-state mail-order pharmacy is exempt from the South Carolina use tax.

9. How can a person report and pay the use tax to the SC Department of Revenue?

The South Carolina use tax is reported and remitted as follows:

If the purchaser is an individual, then this purchaser may:

- a) pay the use tax online through the SC Department of Revenue's Electronic Payment System at <https://www3.dor.sc.gov/DOREPAY/>. A username and password is required, but you can easily set up a new user account from the "Pay Online" screen.
- b) report and remit the use tax on the South Carolina Individual Income Tax Return (Form SC 1040 or Form SC 1040A).
- c) report and remit the use tax on a Form UT-3 use tax return. This return can be filed after the purchase or may be filed for a specific period (month, calendar quarter, etc.)

Revenue or (2) at the time a vehicle, airplane or boat is registered, titled or licensed with the Department of Motor Vehicles, the Department of Aeronautics or the Department of Natural Resources. (Note: Motor vehicles, motorcycles, boats, motors and airplanes purchased from a non-retailer are subject to a separate tax called the "casual excise tax" at the time registered, titled or licensed with one of these agencies. A taxpayer may also report and remit this tax by filing a Form ST-236 with the Department of Revenue.) For information on the "casual excise tax," see South Carolina Code §§12-36-1710 through 12-36-1740.

If the purchaser is a business or nonprofit organization that is purchasing the tangible personal property for its own use (and not for resale), then this purchaser may:

- a) pay the use tax online through the SC Department of Revenue's Electronic Payment System at <https://www3.dor.sc.gov/DOREPAY/>. A username and password is required, but you can easily set up a new user account from the "Pay Online" screen.
- b) report and remit the use tax on its sales and use tax return if the purchaser is a licensed South Carolina retailer. The use tax is reported on Line #2 ("Out-of-State Purchases Subject to Use Tax") of the Worksheet on the SC sales and use tax return (Forms ST-3, ST-388, and ST-403, plus local tax addendum ST-389).

Note: Certain nonprofit organizations that sell tangible personal property are not required to be licensed as retailers since their sales are exempt from the sales tax under South Carolina Code §12-36-2120(41). These nonprofit organizations should report the use tax as discussed below in item "c" through item "d."

- c) obtain a purchaser's certificate of registration and report and remit the use tax on its use tax return if the purchaser is not a licensed South Carolina retailer but is a business or nonprofit organization that regularly purchases tangible personal property for its use from an out-of-state retailer. The use tax is reported on Line #2 ("Out-of-State Purchases Subject to Use Tax") of the Worksheet on the SC sales and use tax return (Forms ST-3, ST-388, and ST-403, plus local tax addendum ST-389).

Note: Persons needing to obtain a purchaser's certificate of registration in order to file tax returns and remit the use tax on a periodic basis may do so by completing Form SCTC -111 or by contacting the Department's License and Registration Section at (803) 896-1350.

retailer and does not regularly purchases tangible personal property for its own use from an out-of-state retailer.

- e) report and remit the use tax on a vehicle, airplane or boat purchased from an out-of-state retailer (1) by filing a Form ST-236 with the Department of Revenue or (2) at the time a vehicle, airplane or boat is registered, titled or licensed with the Department of Motor Vehicles, the Department of Aeronautics or the Department of Natural Resources. (Note: Motor vehicles, motorcycles, boats, motors and airplanes purchased from a non-retailer are subject to a separate tax called the "casual excise tax" at the time registered, titled or licensed with one of these agencies. A taxpayer may also report and remit this tax by filing a Form ST-236 with the Department of Revenue.) For information on the "casual excise tax," see South Carolina Code §§12-36-1710 through 12-36-1740.

10. Do other states charge a use tax?

Yes. Every state that imposes a sales tax also imposes a use tax.

11. Why did the out-of-state seller tell me if I picked up the merchandise, rather than have it delivered, that I wouldn't have to pay the tax?

Most likely, the out-of state seller was indicating that if you picked up the merchandise in the other state that you would pay the other state's tax at that time. If so, you would not owe the South Carolina use tax as long as the state and local tax paid in the other state was equal to or greater than the use tax that would be due in South Carolina.

12. Why am I just now getting a notice from Department of Revenue when I purchased the items 3-5 years ago?

The Department receives information from various sources (other state tax departments, US Customs, etc.) concerning purchases by South Carolina residents. This information is not relayed to the Department at the time of purchase but usually several years later as a result of audits conducted of the seller by the other state or information forwarded to the Department by others. The Department does not control when it receives this information; however, the Department does make an effort to issue these notices as soon as possible after the information is received by the Department.

13. Who provides the Department with information about residents making purchases out of state?

This information is provided to the Department by other state tax departments, US Customs, regional and national tax associations, and others.

Assuming your friend does not pay the tax to the out-of-state seller, your friend is liable for the use tax and should remit that tax to the Department. While the Department receives information from sources that allows it to assess residents the use tax with respect to out-of-state purchases, this information does not include information on all out-of state purchases.

15. My accountant never told me about the use tax, so why should I have to pay penalty?

If your accountant also assists you with your individual income tax return, he should ask you about out-of-state purchases upon which the use tax may be due since the individual income tax return contains a line for remitting any use tax due.

However, if you fail to remit the use tax for any reason, the law imposes penalties and interest for failure to pay the use tax as well as all other taxes administered and collected by the Department.

16. Why am I charged a penalty when no one told me I had to pay the use tax when I purchased the merchandise? I thought the seller had to collect the use tax? Why do I have to pay penalty & interest when I didn't know I owed the tax?

If you fail to remit the use tax for any reason, the law imposes penalties and interest for failure to pay the use tax as well as all other taxes administered and collected by the Department. While some sellers are required to remit the use tax on behalf of their customers (the requirements depends on the sellers presence, if any, in South Carolina), the purchaser is ultimately responsible for remitting the use tax if the seller does not remit the use tax.

17. If a South Carolina retailer purchases items from out of state that the retailer does not intend to resell, does the South Carolina retailer owe the use tax on these purchases?

Yes. Since these item are being purchased for use by the retailer and not for resale, then these purchases are subject to the use tax and the South Carolina retailer should remit the use tax on the line provided on the sales and use tax return filed by the retailer for the month these items were purchased.

18. Who can a person contact for additional questions about the use tax?

Persons having questions about the use tax should call the Department at (803) 898-5788 or send an e-mail to usetax@dor.sc.gov.

1. What determines if I am a contractor or a retailer?

The determination is essentially based on whether a person is in the business of "making improvements to real property" or is the business of "selling tangible personal property at retail."

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

If you have questions as to whether you are a contractor or a retailer for purposes of the sales and use tax, it may be best to contact one of the Department's Taxpayer Service Centers for assistance in making this determination.

2. As a contractor, do I owe sales or use tax on materials for jobsites.

If a person is deemed to be a contractor, then the sales and use tax is due at the time all materials are purchased.

3. Are construction contractors allowed to have a retail license for items purchased to use in their construction business?

No. A person whose only business is that of a construction contractor may not obtain a retail license. Only a person engaged in the business of selling tangible personal property at retail is entitled to a retail license.

4. Are landscaping businesses contractors or retail businesses?

The determination is essentially based on whether a person is in the business of "making improvements to real property" or is the business of "selling tangible personal property at retail."

In South Carolina, the determination as to whether a person is a retailer making sales and installations or a contractor depends on the facts and circumstances. Factors used in making this determination include, but are not limited to: how the person advertises his business (as a retailer or contractor), are retail sales made in which installation is not performed by the seller or on behalf of the seller, does the

and installations or a contractor may require a review of the various agreements or contracts between the taxpayer and his customers.

If you have questions as to whether you are a contractor or a retailer for purposes of the sales and use tax, it may be best to contact one of the Department's Taxpayer Service Centers for assistance in making this determination.

J. Medicine and Other Medical Supplies

1. Why are some drugs purchased by a doctor tax exempt and others are not? Why should doctors pay use tax on drugs?

For sales and use tax purposes, a doctor is the user or consumer of prescription medicines and non-prescription medicines the doctor will administer to patients or the doctor will furnish (give) to patients as part of the services rendered. Therefore, the sale to, or purchases by, the doctor of prescription medicines and non-prescription medicines the doctor will administer to patients or the doctor will furnish (give) to patients as part of the services rendered are subject to the sales and use tax.

However, if the medicine is a prescription medicine used to prevent respiratory syncytial virus or used in the treatment of rheumatoid arthritis, cancer, lymphoma, leukemia, or related diseases or used to relieve the effects of the treatment of rheumatoid arthritis, cancer, lymphoma, leukemia, or related diseases and the doctor extends a properly executed single sale exemption certificate (Form ST-8) to the manufacturer, wholesaler or other supplier indicating the doctor will use the prescription medicine for such prevention or treatment, then such sales are exempt from the sales and use tax.

Note: Code Section 12-36-2120(80) was added in 2012 to phase-in an exemption for injectable medications and injectable biologics. The injectable medication or injectable biologic must be administered by or pursuant to the supervision of a physician in an office which is under the supervision of a physician, or in a Center for Medicare or Medicaid Services certified kidney dialysis facility. For purposes of this exemption, "biologics" means the products that are applicable to the prevention, treatment, or cure of a disease or condition of human beings and that are produced using living organisms, materials derived from living organisms, or cellular, subcellular, or molecular components of living organisms. On February 19, 2014, the Board of Economic Advisors notified the Department that the requirements have been met to implement this exemption. Accordingly, for July 1, 2014 - June 30, 2015, 50% of the gross proceeds of sales of qualifying sales or purchases are exempt from the State and local sales and use taxes. On or after July 1, 2015, qualifying sales or purchases are fully exempt from the State and local sales and use taxes.

durable medical equipment and I want to know what qualifies?

Effective January 1, 2013, Durable medical equipment and related supplies as defined under federal and state Medicaid and Medicare laws are not subject to sales and use tax. Such sales are also not subject to applicable local sales and use tax. In order for the purchase of the durable medical equipment and related supplies to qualify for this exemption, the following conditions must be met:

1. The purchase must be paid directly by funds of South Carolina or the United States under the Medicaid or Medicare programs.
2. State or federal law or regulation authorizing the payment must prohibit the payment of the sale or use tax.
3. The durable medical equipment and related supplies must be sold by a provider who holds a South Carolina retail sales license and whose principal place of business is located in South Carolina.

Sales of durable medical equipment meeting the requirements of this exemption that are made on or after January 1, 2013 are fully exempt. The rate of tax imposed on the gross proceeds of sales of qualifying durable medical equipment and related supplies from July 1, 2007 and thereafter is listed below.

Date of Sale	State Tax Rate	Local Tax Rate
July 1, 2007 to June 30, 2011	5.5%	Applies; rate varies by county
July 1, 2011 to June 30, 2012	3.5%	Applies; rate varies by county
July 1, 2012 to December 31, 2012	1.75%	Applies; rate varies by county
January 1, 2013 and thereafter	0%	0%

Note: For more detailed information as to what qualifies as durable medical equipment and related supplies, retailers should review the definitions of durable medical equipment and related supplies as defined under federal and state Medicaid and Medicare laws.

When a retailer sells any tangible personal property, including medical products, the sale is subject to the tax regardless of how the payment is made (Medicare, Medicaid, private insurance, or directly by the customer or another person on behalf of the customer), unless the sale is specifically exempted under the sales and use tax law.

Note: Sales paid for via Medicare or Medicaid are not sales to the federal government and are subject to the sales and use tax, unless the sale is specifically exempted under the sales and use tax law.

K. Farmers

1. Why do farmers have to pay sales tax?

Sales of tangible personal property or taxable services at retail to all persons, including farmers, are subject to the sales and use tax unless the sale is specifically exempted under the sales and use tax law.

2. Are sales of farm machinery to a farmer subject to the sales and use tax?

Sales of farm machinery meeting the requirements of the exemption in the sales and use tax law for farm machinery are exempt from the sales and use tax. If the sale of farm machinery does not meet the requirements of the exemption, the sale is taxable.

3. What farm equipment qualifies for exemption from the sales and use tax?

The sale of farm machinery that is used in planting, cultivating or harvesting farm crops for sale is exempt from the tax. The exemption also applies to replacement parts and attachments.

- Planting includes all necessary steps in the preparation of the soil prior to, and including, the planting and sowing of the seed.
- Cultivation includes the loosening of the soil around growing plants, control of moisture content in the soil, and weed and pest control.
- Harvesting begins with the gathering of the crop and ends when the crop is placed in a temporary or permanent storage area. However, it also includes the additional preparation for storage or sale of certain crops such as the curing of tobacco, grains and peanuts and the grading and packaging of peaches,

such as tomatoes, etc.

- machinery used in constructing terraces, drainage and irrigation ditches; dikes used to control the water level in cultivated fields; and land clearing prior to cultivation of the soil;
- machinery specially designed for irrigation purposes, including pumps, pipes, spigots, etc. when sold for use in the cultivation of farm crops;
- farm dairy tanks used in the production and preservation of milk on dairy farms;
- farm wagons used in planting, cultivating or harvesting farm crops; and
- pasteurizing machines, cooling machines, mechanical separators, homogenizing machines and bottling machines used by dairies in the production of milk for sale. Milking machines do not come within the exemption for farm machinery.

Various machines used in the production of poultry and poultry products are exempt from the tax. See SC Regulation 117-301.5 for more details.

The machinery exemption does not apply to:

- automobiles and trucks;
- machinery used in constructing fences and buildings and repairing machinery and equipment; and
- farm implements such as hoes, pitchforks and shovels.

4. Does the sale of a lawn mower to a farmer qualify for the exemption for farm machinery?

No, unless the lawn mower is used by a farmer in planting, cultivating or harvesting a farm crop for sale (*e.g.*, a farmer in the business of growing grass sod for sale and the mower is used for that purpose). A lawn mower used for the farmer's residential lawn would not qualify for the exemption.

5. Does this exemption apply to equipment for my personal garden where I grow vegetables for my family?

No.

purchasing. What should I do?

Sales to farmers are subject to the sales and use tax unless the sale falls within one of the exemptions established by the General Assembly for farmers.

The General Assembly has authorized the Department to create an exemption certificate specifically for farmers to use in purchasing items the General Assembly has exempted from the sales and use tax. The exemption certificate, Form ST-8F, can be found in the forms section of the Department's website (www.dor.sc.gov).

A farmer can provide you this form to purchase one of the listed items tax free. This shifts the liability for the tax to the farmer so that if the farmer uses an item for a non-exempt purpose, the farmer is liable for the tax plus any applicable penalties and interest.

L. Maximum Tax

1. Do golf carts qualify for the maximum tax?

No.

2. Do mopeds qualify for the maximum tax?

A moped that has pedals that allow for human propulsion does not qualify for the maximum tax.

A moped that does not have pedals and therefore does not allow for human propulsion qualifies for the maximum tax.

M. Administrative

1. What is the mailing address for the Department of Revenue?

Charleston Service Center: 2 Southpark Circle
Suite 100
Charleston, S.C. 29407
Fax: 843-556-1780

Columbia Main Office: 300A Outlet Pointe Boulevard
Columbia, S.C. 29210
P.O. Box 125
Columbia, S.C. 29214

Florence, S.C. 29501

Fax: 843-662-4876

Greenville Service Center: 545 North Pleasantburg Drive, Suite 300
Greenville, SC 29607
Fax: 864-232-5008

Myrtle Beach Service Center: 1330 Howard Parkway
P.O. Box 30427
Myrtle Beach, S.C. 29588
Fax: 843-839-2964

Rock Hill Service Center: 454 South Anderson Road
Business and Technology Center
Suite 202
P.O. Box 12099
Rock Hill, S.C. 29730
Fax: 803-324-8289

2. What kind of records do I need to keep if I have a retail license and for how long?

Since every business keeps records in its own manner, the Department does not issue a list of the types of records that must be maintained. However, the law requires all taxpayers to maintain "proper records" and imposes penalties for failure to maintain "proper records." Records must be retained for at least 4 years after the return was filed or due to be filed, whichever is later.

SC Regulation 117-200 provides addition information concerning recordkeeping and a link to this and other Department regulations can be found on the Department's website (www.dor.sc.gov).

3. What is the purpose of a resale certificate?

Items that a retailer will resell may be purchased tax free by the retailer. For example, a retailer may purchase computers tax free if the computers are being purchased for resale to customers.

Items that a retailer purchases for use by the retailer are subject to the tax, unless otherwise exempt under the sales and use tax law. For example, computers purchased by a retailer for use in maintaining the records of the retailer are subject to the tax.

seller of liability for the sales tax and switch the liability to the purchaser, provided all of the following conditions are met:

1. The resale certificate presented to the seller by the purchaser contains all the information required by the Department and has been fully and properly completed.
2. The seller did not fraudulently fail to collect or remit the tax, or both.
3. The seller did not solicit a purchaser to participate in an unlawful claim that a sale was for resale.

A copy of Form ST-8A, Resale Certificate, can be found at the Department's website (www.dor.sc.gov). It is not required that Form ST-8A be used, but the information requested on the form is required on any resale certificate accepted by the seller. Therefore, a letter from the purchaser to the seller or a resale certificate from another state is acceptable provided the letter or certificate contains the same information requested on Form ST-8A. In addition, the "Uniform Sales & Use Tax Certificate" published by the MultiState Tax Commission ("MTC") may be used by a purchaser (since it contains the same information requested on Form ST-8A) for the purpose of purchasing tangible personal property that will be resold, leased or rented in the normal course of the purchaser's retail business. The MTC certificate may also be used by a purchaser of services that are subject to the sales and use tax, such as communications, accommodations, laundry services, and electricity, that will be resold, leased or rented in the normal course of the purchaser's retail business.

If a purchaser uses a resale certificate to purchase tangible personal property tax free which the purchaser knows is not excluded or exempt from the tax, then the purchaser is liable for a penalty of 5% of the amount of the tax for each month, or fraction of a month, during which the failure to pay the tax continues, not exceeding 50% in the aggregate. This penalty is in addition to all other applicable penalties authorized under the law.

Note: It is not necessary that a resale certificate be obtained for each purchase. Only one resale certificate must be maintained on file per customer.

4. **My address has changed & I never received the bill (assessment) from the Department. How can I now get the lien off my business?**

To discuss a lien, please contact your local Taxpayer Service Center and ask to speak to the Collections Supervisor.

The best course of action is usually to discuss the matter with the manager at the store. If that does not work, you may contact the Department (by letter or telephone). The Department will investigate the matter. However, please understand that as a result of privacy laws the Department will not be able to provide you any information about the investigation or its results.

6. **I am a licensed retailer. If I do not charge my customers the sales tax, do I have to pay the sales tax to the Department?**

Yes. The sales and use tax is due whether or not the retailer collects the tax from the customer.

7. **I operate a motel and I received an exemption certificate from a church located in Florida. They provided me with a Florida tax exemption certificate. Should I accept this exemption certificate?**

No. An exemption certificate from another state is not valid in South Carolina. Each state has its own exemptions from the sales and use tax that are only valid with respect to that state's sales and use tax.

N. Refunds

1. **What information is required when filing a claim for refund? How far back can we file a claim? What is the statute?**

A taxpayer who is legally liable for the tax may seek a refund of a state tax by filing a written claim for refund with the department. A claim for refund is timely filed if filed within three years.

The refund claim must specify:

- (1) the name, address, and telephone number of the taxpayer;
- (2) the appropriate taxpayer identification number or numbers;
- (3) the tax period or date for which the tax was paid;
- (4) the nature and kind of tax paid;
- (5) the amount which the taxpayer claims was erroneously paid;
- (6) a statement of facts supporting the taxpayer's position;

(8) other relevant information that the department may reasonably require.

The statutory provisions concerning a refund claim are South Carolina Code §§12-54-85 and 12-60-470.

2. Who is the taxpayer that can apply for and receive a refund with respect to sales tax and use tax?

For sales tax, the taxpayer is the retailer and only the retailer may apply for and receive the refund. However, a purchaser who has paid sales tax to a retailer for a specific transaction may claim a refund if the retailer who paid the sales tax to the Department has assigned, in writing, the right to a refund of that sales tax to the purchaser.

For use tax, the taxpayer is the purchaser and only the purchaser may apply for and receive the refund. However, a retailer who collects the use tax from the purchaser and remits the use tax to the Department may claim a refund of the use tax collected, but only if the retailer establishes that he has paid the use tax in question to the Department and either (1) repaid the use tax to the purchaser from whom he collected it or (2) obtained the written consent of the purchaser from whom he collected the use tax to the allowance of the refund.

3. Does the Department issue a refund check or credit memo?

Refund checks.

4. Can a retailer apply an overpayment to a return?

No. The retailer must request a refund and if the Department approves the refund a check will be issued to the retailer.

5. What is the process of getting a refund from the Department if I paid the Department of Motor Vehicles the tax mistake on the purchase of a vehicle?

If you believe you have paid a tax in error to the Department of Motor Vehicles, file a refund claim with the Department of Revenue containing the following:

- (1) your name, address, and telephone number;
- (2) any appropriate taxpayer identification number or numbers;
- (3) the tax period or date for which the tax was paid;
- (4) the nature and kind of tax paid;

- (6) a statement of facts supporting your position;
- (7) a statement outlining the reasons for the claim, including law or other authority upon which you rely; and
- (8) other relevant information that the department may reasonably require such copies of the paperwork you completed and used to remit the tax at the Department of Motor Vehicle.

O. Penalties and Interest

1. What is your interest rate?

The interest rate is subject to change on a quarterly basis. It is based on the interest charged by the Internal Revenue Service. The rate is compounded daily except simple interest applies to the underpayment of declaration of estimated tax. Under a special proviso enacted by the General Assembly, the interest rate for refunds is presently 3% lower than the interest rate for assessments.

The Department issues an information letter each quarter updating the public as to the interest rate. This information letter can be found on the Department's website (www.dor.sc.gov) under "Dept. Advisory Opinions" (To find the information letter, go to the "Alphabetical Index of Advisory Opinions" and then to the "Administrative" index of opinions.)

2. How is penalty and interest calculated?

To calculate basic failure to file penalties, failure to pay penalties and interest, go to the Department's website (www.dor.sc.gov) and click on the "P&I Calculator."

P. Local Taxes

1. What counties have local option sales and use taxes, transportation sales and use taxes and other local sales and use taxes administered and collected by the Department? When did it start?

The first local sales and use taxes were imposed in 1991. For a list of the local sales and use taxes that are presently being imposed, visit the Department's website at www.dor.sc.gov.

The determination as to which local sales and use tax applies when a retailer delivers the product into another county is based on the point of delivery.

Delivery of tangible personal property is defined to occur when and where title or possession of tangible personal property transfers from the retailer to his customer. Following are guidelines to be used in determining when and where delivery occurs:

FOB Destination or Similar Terms: Delivery is considered to take place at the purchaser's location or wherever delivered to the purchaser (at the purchaser's direction).

FOB Shipping Point or Similar Terms: Delivery is considered to take place at the retailer's location. Retailers with multiple retail locations are to maintain their records so as to clearly show which sales are attributable to each location.

Shipping Terms Are Unspecified: Delivery is considered to take place at the purchaser's location or wherever delivered to the purchaser (at the purchaser's direction).

Retailer Uses Own Vehicle: If a retailer uses his own vehicle(s) for making deliveries, delivery is considered to take place at the purchaser's location or wherever delivered at the direction of the purchaser. This applies whether the vehicles are owned or leased by the retailer.

Situations Where Title Transfers, But Not Possession: Delivery is considered to take place at the retailer's location.

For example, a printer may produce business cards for a customer. The cards include all needed information except for the employee name. The printer keeps possession of, but not title to, the cards. At the direction of the customer, the printer will imprint the customer's cards with an employee's name and send the imprinted cards to the customer.

Retailers with multiple retail locations are to maintain their records so as to clearly show which sales are attributable to each location.

NOTE: Retailers reporting sales for purposes of the local option tax must report their sales by county and municipality where delivery occurs.

RETAILERS CANNOT RELY ON MAILING ADDRESSES IN REPORTING THE LOCAL OPTION TAX. A MAILING ADDRESS IS NOT AN ACCURATE INDICATION AS TO WHETHER OR NOT A LOCATION IS

The retailer must remit the local sales and use tax based on the county in which the retailer delivered the product or service. For example, if a retailer with a store in Richland County delivers a product on his own truck to a customer in Lexington County, the retailer must remit the local sales and use tax imposed in Lexington County.

4. **Why doesn't the Department implement any new local sales and use tax at the beginning of a calendar quarter (i.e., April 1st, July 1st, October 1st, or January 1st)? This would greatly reduce the impact on quarterly sales and use tax filers.**

The date a new local sales and use tax is implemented is not controlled by the Department. These implementation dates are established in the law by the General Assembly and, in accordance with the law, the date the local authorities notify the Department that the referendum approving the tax has been certified. In order to establish a uniform implementation date, such as the first day of a calendar quarter, the General Assembly would need to amend the various local sales and use tax laws.

Q. Food

1. **What qualifies a sale for the unprepared food exemption?**

Foods eligible for the unprepared food exemption (South Carolina Code §12-36-2120(75)) include:

- (1) Any food intended to be eaten at home by people, including snacks, beverages and seasonings;
- (2) Seeds and plants intended to grow food (not birdseed or seeds to grow flowers); and,
- (3) Cold items, which may include salads or sandwiches, intended to be eaten at home by people and that are not considered "prepared meals or food" as discussed below.

Food and other items which are not eligible for the unprepared food exemption (South Carolina Code §12-36-2120(75)) and are, therefore, subject to the full state sales and use tax rate (unless otherwise exempt) include:

- (1) Alcoholic beverages, such as beer, wine, or liquor;
- (2) Hot beverages ready-to-drink such as coffee.

- (5) Foods designed to be heated in the store;
- (6) Hot and cold food to be eaten at a lunch counter, in a dining area or anywhere else in the store or in a nearby area such as a mall food court;
- (7) Vitamins and medicines;
- (8) Pet food;
- (9) Any non-food items such as tissue, soap or other household goods;
- (10) Meals or food shipped or delivered to businesses or institutions (hospitals, prisons, jails, nursing homes, etc.); and,
- (11) Prepared meals or food (See definition in SC Regulation 117-337.2.)

For more information concerning this exemption, see Chapter 22 of this publication or SC Regulation 117-337.

2. What food items are exempt when sold by a convenience store?

Sales of foods eligible for the unprepared food exemption by a convenience store engaged in the retail sale of all sorts of canned foods and dry goods (e.g., tea, coffee, spices, sugar, and flour), and that may also be engaged in the retail sale of fresh fruits and vegetables and fresh and prepared meats, fish, and poultry, shall be deemed to be for home consumption and exempt from the state sales and use tax under the unprepared food exemption in South Carolina Code §12-36-2120(75).

However, if the store has an identifiable location which advertises, holds itself out to the public (e.g., offers hot food or the ability to heat food, provides seating, or provides utensils with the meal or food), or is perceived by the public as being engaged in the sale of ready-to-eat food or beverages to customers for their immediate consumption on or off the premises, then all sales of food from that identifiable location shall be deemed to be for immediate consumption and subject to the sales tax at the full state rate unless the sale falls within the exception noted in SC Regulation 117-337.2. For example, if a convenience store has an area where a customer can get a hot dog or sandwiches that are intended for immediate consumption (including ones intended to be heated in a microwave), then the sale of the hot dogs and sandwiches are for immediate consumption and subject to the full state rate. Any chips or drinks (whether fountain drinks or bottled drinks) sold with that hot dog or sandwich at the lunch counter are also for immediate consumption and subject to the full state rate.

The sale of milk and bread at a convenience store qualifies for the state exemption for unprepared food. This exemption does not apply to local sales and use taxes, unless the sales occurs in one of the counties with a local sales and use tax law that exempts sales of unprepared food.

Since the local sales and use taxes in Richland and Calhoun counties do not exempt sales of unprepared foods and the one in Lexington county does, you should be paying a 2% sales tax (0% state and 2% local) in Richland county, 1% sales tax (0% state and 1% local) in Calhoun county and you should not be paying any sales tax on unprepared food in Lexington county.

4. Why do some retailers charge a sales tax on sodas?

The determination as to whether a sale of unprepared food is exempt from the state sales and use tax is based on whether the food is of a type that is eligible to be purchased with USDA food stamps, the type of location selling the food, and whether the food is being sold for immediate consumption, business or institutional consumption, or home consumption.

In other words, a food must be of a type eligible to be purchased with USDA food stamps and must also be sold for home consumption (based on the type of food and the type of location selling the food) to qualify for the exemption from the state sales and use tax under South Carolina Code §12-36-2120(75). For example, bottled soft drinks are eligible to be purchased with USDA food stamps, but if bottled soft drinks are sold at a concession stand at a festival, then the bottled soft drinks are sold for immediate consumption and not home consumption and the sale at the festival would be subject to the full state sales tax rate.

For a more detailed explanation of the exemption for unprepared foods, see SC Regulation 117-337.

R. Resale and Exemption Certificates

1. What items may be purchased tax free by a retailer?

Items that a retailer will resell may be purchased tax free by the retailer. For example, a retailer may purchase computers tax free if the computers are being purchased for resale to customers.

Items that a retailer purchases for use by the retailer are subject to the tax, unless otherwise exempt under the sales and use tax law. For example, computers purchased by a retailer for use in maintaining the records of the retailer are subject

exemption available for a retailer is the purchase of containers used incident to the sale and delivery of tangible personal property. For example, the plastic and paper bags purchased by a grocery store into which the store places the food purchased by the customer are exempt as a container used incident to the sale and delivery of the food.

2. What does a retailer need to do when accepting a resale certificate?

The presentation of a resale certificate by a purchaser will relieve the seller of liability for the sales tax and switch the liability to the purchaser, provided all of the following conditions are met:

1. The resale certificate presented to the seller by the purchaser contains all the information required by the Department and has been fully and properly completed.
2. The seller did not fraudulently fail to collect or remit the tax, or both.
3. The seller did not solicit a purchaser to participate in an unlawful claim that a sale was for resale.

3. Does the retailer have to have a copy of a customer's resale certificate or can the retailer just write down their retail license number on the invoice and not charge them tax?

In order for the retailer to be relieved of liability for the sales tax and switch the liability to the purchaser, the retailer must have a properly completed resale certificate on file.

4. As a retailer what is my responsibility when issued an exemption certificate?

If a customer provides a retailer an exemption certificate issued by the Department (Form ST-9 – Exemption Certificate), or a properly executed exemption certificate authorized by the Department (Form ST-8 – Single Sale Exemption Certificate), the retailer should sell the items to the customer tax free provided the transaction is of a type exempted by the certificate. The retailer should maintain a copy of the certificate in order to document that the sale qualified for the exemption and to document that the liability for the tax has been shifted to the purchaser.

1. How does the sales tax apply to sales from vending machines?

By law, the operator of a vending machine is considered the user or consumer of all items the operator sells from the vending machine, except cigarettes and soft drinks in closed containers.

Therefore, when the vending machine operator purchases anything the operator will sell from the vending machine (other than cigarettes and soft drinks in closed containers); the purchase by the operator is subject to the tax. When the vending machine operator purchases cigarettes and soft drinks in closed container, the vending machine operator may purchase cigarettes and soft drinks in closed container tax-free, but is subject to the sales tax on the sale of cigarettes and soft drinks in closed container from the operator's vending machines.

2. What is exempt during the sales tax holiday?

The General Assembly has authorized one sales tax holiday. This three day sales tax holiday exempts sales taking place during a period beginning 12:01 a.m. on the first Friday in August and ending at twelve midnight the following Sunday of (i) clothing; (ii) clothing accessories including, but not limited to, hats, scarves, hosiery, and handbags; (iii) footwear; (iv) school supplies including, but not limited to, pens, pencils, paper, binders, notebooks, books, bookbags, lunchboxes, and calculators; (v) computers, printers and printer supplies, and computer software; (vi) bath wash clothes, blankets, bed spreads, bed linens, sheet sets, comforter sets, bath towels, shower curtains, bath rugs and mats, pillows, and pillow cases.

The exemption allowed by this item does not apply to (i) sales of jewelry, cosmetics, eyewear, wallets, watches; (ii) sales of furniture; (iii) a sale of an item placed on layaway or similar deferred payment and delivery plan however described; (iv) rental of clothing or footwear; (v) a sale or lease of an item for use in a trade or business.

3. Does the gross proceeds that a retailer must report on a sales tax return include the sales tax?

No. For example, if a retailer sells an item for \$100 and collects from the customer a 6% state sales tax of \$6 (no local tax due in this example), then the gross proceeds to be reported on the return is \$100, not \$106.

columns (A, B and C) across the front. Sales and purchases subject to tax in Columns A at the 6 rate include sales such as meals, gift items and additional guest services and purchases of hotel or motel supplies. However, charges or accommodations are excluded from Column A and the worksheet for this Column. The 7% sales tax imposed on sales of accommodations is reported under Column B (at 5%) and C (at 2%). Columns B and C are used to report the 7% sales tax on the gross proceeds derived from the rental or charges for any room or any place in which rooms, lodgings, or sleeping accommodations are furnished to transients for a consideration.

You must report all sales on the worksheet, report and deduct the applicable exclusions and exemptions from sales tax on the worksheet to calculate the "net taxable sales" (all sales + all withdrawals for use + all out-of-state purchases subject to the use tax – applicable deductions) and remit the tax based upon your net taxable sales and purchases.

- B. ST-3T (State Accommodations Report by County or Municipality). This form must be filed with the Form ST-388 at the time of filing even if you have only one rental unit in the county or municipality where your business is located. You must use this form to separately report the 2% portion of the total gross proceeds from business done in each county or municipality. This tax is reported and paid under Column B of the ST-388 form.
- C. ST-389 (Schedule of Local Sales and Use Taxes Administered by the Department). ST-389 is used to report the various local sales and use tax administered and collected by the Department on taxable sales and services. This form is not required to be filed with the state form ST-388 if the retailer is located in a county that does not impose local sales and use tax and does not make deliveries into other counties that do impose local sales and use tax.

5. When is the accommodations tax return due?

The accommodations tax return is due on or before the twentieth (20th) day of the month following the close of the period ended. To be considered timely filed, the return must be received or postmarked by the 20th of the month. If the 20th falls on a weekend or legal holiday, the return is due on the next business day.

JOINT EXHIBIT 64



Some Lowe's Stores Don't Charge Sales Tax

What items are sales tax-free in South Carolina? According to the Department of Revenue, nothing, except for during the annual Sales Tax Holiday. One News19 viewer says they didn't have to pay tax at a major retailer.

The person bought a dishwasher from Lowe's on Harbison Boulevard this weekend. She paid for the appliance, plus the cost of removing her old dishwasher and installing the new one. But the sales associate told her she got a break on paying sales tax, because certain items considered permanent home improvements were exempt.

"When you talk home improvement, no, there's nothing that gets an exemption. It's just not true."

State Revenue Department spokesman Danny Brazell says there's no loophole in the law. When it comes to what's taxable, everything is.

"There's nothing wrong with telling a customer they don't have to pay a tax, but if a sales tax is due, the retailer would have to pay the tax."

Lowe's corporate told us it's not a company policy not to charge sales tax. It looks like some customers just got lucky.

"They got a deal, more power to them."

The Revenue Department now says it will investigate the sales tax issue with Lowe's.

"If they go back, we do an audit and find out they have a sales tax liability, we would expect the retailer to settle up, if they don't do that then it gets a little more serious."

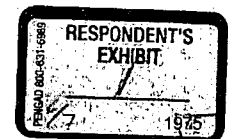
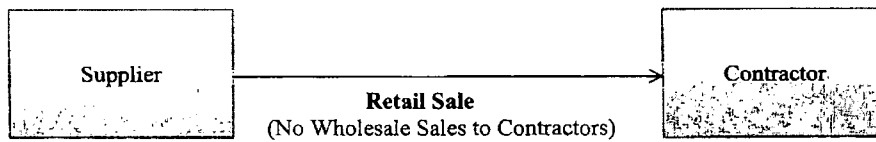
We checked with every Lowe's store in the Midlands, including all locations in Columbia, West Columbia, Irmo, Lexington, Sumter, Orangeburg, and Camden. Three stores told us they did not charge sales tax on some installed items...like flooring, doors, and certain appliances considered permanent home improvements. Those stores were the Lowe's on Harbison, the one on Garners Ferry Road in Southeast Columbia, and the Lowe's of Newberry.

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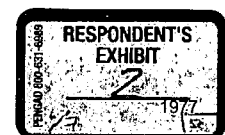
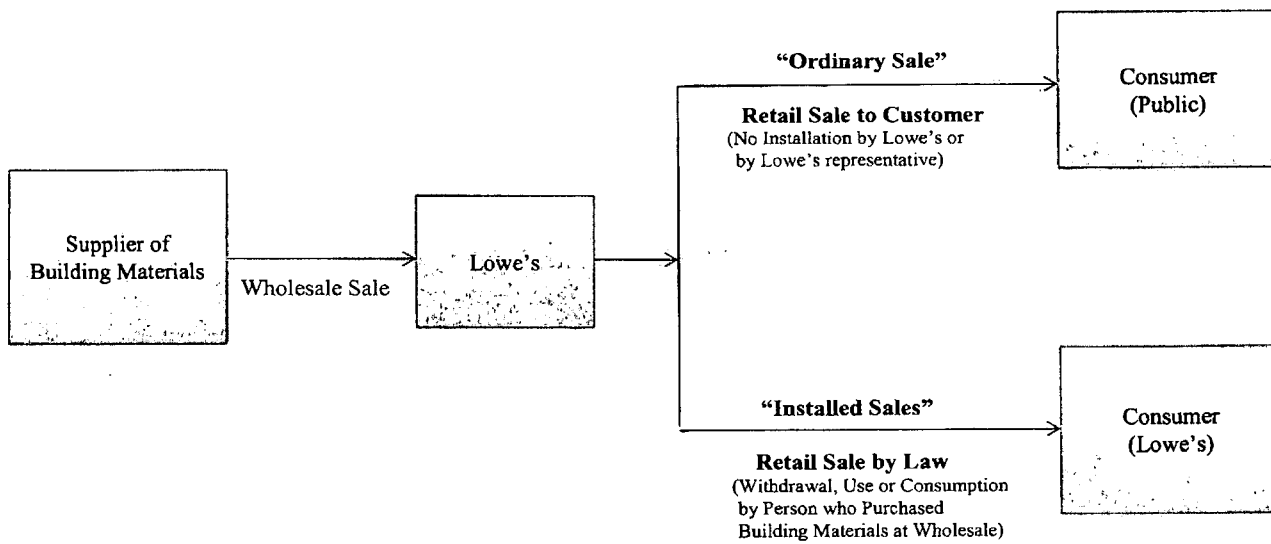
RESPONDENT'S EXHIBIT 1

BUILDING MATERIALS



RESPONDENT'S EXHIBIT 2

BUILDING MATERIALS



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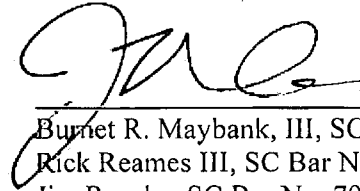
JUN 30 2021

CERTIFICATE OF COUNSEL

SC Court of Appeals

The undersigned hereby certifies that the Record on Appeal contains all material proposed to be included by any of the parties and not any other material.

Dated: June 10, 2021



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