

# Chapter 10

## Maximum Tax Items

### A. General Information

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

Maximum Tax Applies To:

- (A) A maximum tax of \$300.00 is established for each sale<sup>2</sup> or lease<sup>3</sup> of each:<sup>4</sup>
- motor vehicle;<sup>5</sup>
  - motorcycle<sup>6</sup> (on-road or off-road);
  - recreational vehicles, including tent campers, travel trailers, park trailers, motor homes and fifth wheels;
  - boat<sup>7</sup> (The sale of personal watercraft, such as a jet ski,<sup>8</sup> and a barge<sup>9</sup> are each the transfer of a “boat” subject to the \$300 maximum tax.);
  - aircraft;
  - trailer or semitrailer capable of being pulled only by a truck tractor;<sup>10</sup>

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

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

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

<sup>4</sup> South Carolina Code §12-36-2110(A).

<sup>5</sup> See the end of this “General Information” section for a definition of the term “motor vehicle.”

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

<sup>7</sup> See SC Revenue Ruling #08-7 and the discussion later in this chapter on boats for a complete explanation.

<sup>8</sup> SC Revenue Ruling #04-10.

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

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

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

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

- (B) A maximum tax of \$300.00 is established for the sale of each musical instrument, or each piece of office equipment,<sup>12</sup> purchased by a religious organization exempt under Internal Revenue Code Section 501(c)(3), provided the musical instrument or office equipment must be located on church property and used exclusively for the organization's exempt purpose. The religious organization must furnish to the seller an affidavit on forms prescribed by the department. The affidavit must be retained by the seller.
- (C) A maximum tax is established for the sale of a manufactured home<sup>13</sup> as defined in South Carolina Code §40-29-20. The maximum tax applicable to the sale of a manufactured home depends on whether or not the manufactured home meets certain energy efficient requirements. See the section in this chapter on manufactured homes for details.

#### Maximum Tax Does Not Apply To:

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

- trailers or semitrailers capable of being pulled by vehicles other than a truck tractor;
- pole trailers;
- boat trailers;<sup>14</sup>

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

<sup>12</sup> South Carolina Code § 12-36-2110(C).

<sup>13</sup> South Carolina Code § 12-36-2110(B).

<sup>14</sup> See SC Revenue Ruling #08-7 and the discussion on boats for a complete explanation.

- self-propelled light construction equipment with compatible attachments with a net engine horsepower that exceeds 160; and,
- all terrain vehicles, legend race cars<sup>15</sup> and other items not meeting the definition of a motor vehicle.

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

### Definitions

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

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

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

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

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

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

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

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

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<sup>15</sup> SC Revenue Advisory Bulletin #00-03.

## B. Specific Motor Vehicle Examples

The following outlines some specific examples of the application of the maximum tax to motor vehicles. A motor vehicle is a self-propelled device which is authorized for use on the highways of South Carolina.<sup>16</sup>

### (A) Motor Vehicle and Specialized Attached Equipment

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

One Transaction: If a truck and a garbage compactor are sold in one transaction as a single unit at the time of the sale (i.e., delivery), the tax due is the lesser of 5% of the gross proceeds of sale or \$300.<sup>17</sup> Local sales and use taxes are not applicable to this maximum tax transaction.

Multiple Transactions: If the truck and garbage compactor are sold in two separate transactions (i.e., two separate sales transactions or a sales transaction in which the compactor is not connected to the truck at the time of the delivery), then the tax due on the truck is the lesser of 5% of the gross proceeds of sale or \$300 (local sales and use taxes are not applicable to this maximum tax transaction) and the tax due on the garbage compactor is 6% of the gross proceeds of sale, plus any applicable local sales and use taxes., since the garbage compactor in this transaction is not a part of a motor vehicle.<sup>18</sup>

### (B) Motor Vehicle Lease with an Option to Buy

Lease: If a motor vehicle lease contract that exceeds 90 continuous days<sup>19</sup> allows the lessee the option to purchase the motor vehicle at the end of the lease, the purchase of the motor vehicle is a separate transaction from the lease. Therefore, the lease is a transaction subject to the sales and use tax based on the lesser of 5% of the total lease payments plus other charges or \$300.00. If the purchase option is exercised by the lessee, the purchase is a separate transaction subject to the sales and use tax based on the lesser of 5% of the purchase price or \$300.00.<sup>20</sup>

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

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<sup>16</sup> SC Revenue Advisory Bulletin #00-03. See also the definitions of “vehicle” and “motor vehicle” in the “General Information” section of this chapter.

<sup>17</sup> SC Technical Advice Memorandum #87-13.

<sup>18</sup> See also *Anonymous Company v. South Carolina Department of Revenue*, 03-ALJ-17-0435-CC (2004).

<sup>19</sup> To qualify for the maximum tax, the lease must be in writing and state a term of, and remain in force for, a period in excess of 90 continuous days.

<sup>20</sup> Attorney General Opinion dated 2/6/1998.

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

If a motor vehicle lease contract that exceeds 90 continuous days<sup>21</sup> allows the lessee the option to extend the lease at the end of the original lease term, the extension of the lease of the motor vehicle, if exercised, is a separate transaction.

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

(D) Motor Vehicles Sold to Nonresidents<sup>22</sup>

The sales tax due on a sale to a nonresident<sup>23</sup> of a motor vehicle that is to be registered and licensed in the nonresident purchaser's state of residence, is as follows:

1. The lesser of:
  - (a) the sales tax which would be imposed on the sale in the purchaser's state of residence or
  - (b) the tax that would be imposed under Chapter 36 of the South Carolina Code of Laws (the lesser of 5% of the gross proceeds of sale or \$300).

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

<sup>22</sup> South Carolina Code §12-36-930 and SC Information Letter #05-13. Note: The provisions of this section also apply to trailers, semitrailers, or pole trailers; however, the application of the provisions of South Carolina Code §12-36-930 with respect to trailers, semitrailers, or pole trailers is not discussed in the section since not all trailers, semitrailers, or pole trailers are subject to the maximum tax. For details as to vehicle that are or are not subject to the maximum tax, see the "General Information" section of this chapter.

<sup>23</sup> South Carolina Code §12-36-2120(25) exempts sales of a motor vehicles (excluding trucks) or motorcycles, which are required to be licensed to be used on the highways, sold to a resident of another state, but who is located in South Carolina by reason of orders of the United States Armed Forces. This exemption is allowed only if within ten days of the sale the vendor is furnished a statement from a commissioned officer of the Armed Forces of a higher rank than the purchaser certifying that the buyer is a member of the Armed Forces on active duty and a resident of another state or if the buyer furnishes a leave and earnings statement from the appropriate department of the armed services which designates the state of residence of the buyer;

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

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

At the time of the sale, the seller must obtain from the purchaser a notarized statement of the purchaser's intent to license the vehicle in the purchaser's state of residence within 10 days<sup>24</sup>. South Carolina Form ST-385, "Affidavit for Intent to License Motor Vehicle, Trailer, Semitrailer, or Pole Trailer Purchased in South Carolina in Purchaser's State of Residence" may be used. The seller should retain a completed and notarized copy of Form ST-385. The purchaser should give a copy to the appropriate agency (e.g., revenue department, department of motor vehicles) of the purchaser's state of residence.

#### (E) Truck and Firefighting Equipment

Fire trucks are motor vehicles that qualify for the \$300 maximum tax. In addition, a specific provision of the law allows equipment provided, supplied, or installed on a firefighting vehicle to be included with the vehicle for purposes of calculating the maximum tax due.<sup>25</sup> This does not include individual firefighter's protective clothing.<sup>26</sup>

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

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

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<sup>24</sup> If the purchaser does not plan to license the vehicle in his state of residence or does not complete the notarized statement, then the provisions of South Carolina Code §12-36-930 are not applicable and the sale is taxed as if the purchaser were a resident of South Carolina.

<sup>25</sup> South Carolina Code §12-36-2120(E). See also SC Revenue Ruling #08-10 and the "General Information" section of this chapter for a definition of the term "motor vehicle."

<sup>26</sup> See SC Revenue Ruling #08-10.

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

The sale of protective clothing, whether or not installed, provided, or supplied with the vehicle and included in the purchase price at the time of the sale of the vehicle, is subject to the tax at the rate of 6%<sup>27</sup>, plus any applicable local sales and use tax administered and collected by the Department of Revenue on behalf of a local jurisdiction.

If the equipment is not installed, provided, or supplied with the vehicle and included in the purchase price at the time of the sale of the vehicle, the sale of the truck and fire fighting equipment are separate and distinct transactions. The tax due on the sale of the truck is 5% of the sales price of the truck or \$300, whichever is less. The tax due on the sale of the firefighting equipment (including protective clothing) is 6%<sup>28</sup> of the sales price of the equipment, plus any applicable local sales and use tax administered and collected by the Department of Revenue on behalf of a local jurisdiction.

### **C. Boats, Boat Trailers and Boat Motors**

The following guidelines concern the tax rates applicable to the sale of boats, motors, or boat trailers:<sup>29</sup>

1. A boat sold alone is subject to the state sales and use tax at the lesser of 5% of the gross proceeds from the sale or \$300.
2. A motor sold alone is subject to the state sales and use tax at the rate of 6% of the gross proceeds from the sale.
3. A boat trailer sold alone is subject to the state sales and use tax at the rate of 6% of the gross proceeds from the sale.
4. A boat sold with a motor permanently attached to it is subject to the state sales and use tax at the lesser of 5% of the gross proceeds from the sale of the boat and motor or \$300.<sup>30</sup>

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<sup>27</sup>The 6% state tax due on the sale of the firefighting equipment and protective clothing became effective June 1, 2007. Prior to June 1, 2007, the state tax due on the sale of the firefighting equipment and protective clothing was 5%.

<sup>28</sup>For purposes of this discussion, boat trailers do not include trailers which must be pulled by truck tractors or boat trailers which are used by manufacturers to transport boats to dealerships.

<sup>29</sup>SC Revenue Ruling #08-7.

<sup>30</sup>A boat motor is considered permanently attached to a boat if it is (1) an inboard motor or (2) an outboard motor sold mounted to the boat, connected to a permanent steering mechanism, and included in the price of the boat.

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

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

#### **D. Manufactured Homes**

Calculation of the Tax: The maximum tax on the sale of a manufactured home,<sup>31</sup> as defined in Section 40-29-20, the tax is calculated as follows:

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

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

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<sup>31</sup> South Carolina Code § 12-36-2110(B).

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

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

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

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

Furniture and Appliances Sold with the Home: Furniture and appliances are not considered a part of a manufactured or modular home, unless they are built-ins as noted below. For example, televisions, counter appliances, sofas, chairs and tables, even though sold with a home, are not a part of the home. Because these items are not a part of the home, they are taxed separately from the home at 6%, plus any applicable local sales and use tax, of their sales price less any trade-in allowed. The amount upon which the tax is calculated on furniture and appliances that are not built ins is the amount listed in the sales contract for these items or the retail fair market value of these items if the amounts for these items are not listed in the contract or if the amounts listed in the contract do not reasonably represent the retail fair market value of these items.<sup>32</sup>

Items such as disposals, built-in dishwashers, and built-in stoves are considered a part of the home and are not taxed separately from the home if installed at the time of the retail sale of the home.<sup>33</sup>

Heat Pumps, Air Conditioning Systems, Etc.: Heat pumps, air conditioning systems, skirting, steps, decks, septic tanks, wells, and driveways built or installed after the home is delivered to the construction site are not considered a part of the delivered home and are taxed separately from the home. The sale of these items to, or the purchase of these items by, the person who will build or supply and install them is subject to the tax at a rate of 6%, plus any applicable local sales and use tax.<sup>34</sup>

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<sup>32</sup> SC Regulation 117-335.4.

<sup>33</sup> SC Regulation 117-335.4.

<sup>34</sup> SC Regulation 117-335.5.

## **E. Musical Instruments and Office Equipment Sold to Religious Organizations**

The sale of each musical instrument, or each piece of office equipment,<sup>35</sup> purchased by a religious organization exempt under Internal Revenue Code Section 501(c)(3) is subject to a maximum tax of \$300, provided the musical instrument or office equipment is located on church property and used exclusively for the organization's exempt purpose. The religious organization must furnish to the seller an affidavit on forms prescribed by the department (Form ST-382). The affidavit must be retained by the seller.

## **F. Maximum Tax Items and Warranty, Maintenance and Similar Service Contracts**

The sale or renewal of a warranty, maintenance or similar service contract for tangible personal property that is subject to the maximum tax provisions is subject to the sales and use tax, unless otherwise exempt under the law. In addition, the maximum tax provisions do not apply to sales and renewals of warranty, maintenance or similar service contracts. Code Section 12-36-2120 exempts from the sales and use tax the sale or renewal of "motor vehicle extended service contracts and motor vehicle extended warranty contracts" and the sale or renewal of a "warranty, maintenance, or similar service contract for tangible personal property if the sale or purchase of the tangible personal property covered by the contract is exempt or excluded from the [sales and use] tax."

Each of the following is an example of a sale or renewal of a warranty, maintenance, or similar service contract for tangible personal property that is subject to the maximum tax provisions under Code Section 12-36-2110:

- (1) The sale of a boat for \$20,000.00 is subject to the tax; however, the tax due is limited to \$300.00 under the maximum tax provisions under South Carolina Code §12-36-2110. If the retailer sold the purchaser an extended warranty contract for the boat for an additional \$1,000.00, the sales price (\$1,000.00) of the extended service contract is subject to the tax at the rate of 6%, plus any additional local sales and use tax. Based on a 6% state tax rate in a non-local tax county, the total tax due on the boat and the extended service contract would be \$360.00 (\$300.00 tax on the boat and \$60.00 on the extended service contract).

Note: See SC Revenue Ruling #08-7 for information as to the calculation of the tax when a boat is sold in conjunction with a motor and/or a trailer.

- (2) The sale of an airplane for \$2,000,000.00 is subject to the tax; however, the tax due is limited to \$300.00 under the maximum tax provisions under South Carolina Code §12-36-2110. If the retailer sold the purchaser an extended warranty contract for the airplane for an additional \$10,000.00, the sales price (\$10,000.00) of the extended service contract is subject to the tax at the rate of

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<sup>35</sup> South Carolina Code § 12-36-2110(C).

6%, plus any additional local sales and use tax. Based on a 6% state tax rate in a non-local tax county, the total tax due on the airplane and the extended service contract would be \$900.00 (\$300.00 tax on the airplane and \$600.00 on the extended service contract).

- (3) The sale of a motor vehicle for \$20,000.00 is subject to the tax; however, the tax due is limited to \$300.00 under the maximum tax provisions under South Carolina Code §12-36-2110. If the retailer sold the purchaser an extended warranty contract for the motor vehicle for an additional \$1,000.00, the sales price (\$1,000.00) of the extended service contract is exempt from the tax under South Carolina Code §12-36-2120(53). The total tax due on the motor vehicle and the extended service contract would therefore be \$300.00 (\$300.00 tax on the motor vehicle and \$0.00 on the extended service contract since it is exempt under South Carolina Code §12-36-2120(53)).