

## Chapter 6

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

Gross proceeds of sales<sup>1</sup> (or any similar term, such as gross proceeds) is the measure or basis for the sales tax and sales price is the measure or basis for the use tax. Essentially, they are the total amount for which tangible personal property is sold or purchased.

#### A. Gross Proceeds<sup>2</sup> and Sales Price<sup>3</sup> – What is Includable?

Gross proceeds is the basis or measure of the sales tax<sup>4</sup> and is the value proceeding or accruing from the sale, lease or rental of tangible personal property. It includes:

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

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

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

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

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

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<sup>1</sup> South Carolina Code §12-36-90.

<sup>2</sup> South Carolina Code §12-36-90(1).

<sup>3</sup> South Carolina Code §12-36-130.

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

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

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

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

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

A similar conclusion was reached in *Regency Towers Association, Inc. v. South Carolina Tax Commission*, 88-CP-26-1109 (1989), where the Horry County Court of Common Pleas held charges for maid service were not deductible from gross proceeds derived from charges for accommodations. In Commission Decision #92-37, the South Carolina Tax Commission<sup>5</sup> held that charges for maid services, which were optional, were a part of the accommodations furnished to transients and therefore subject to the accommodations tax.<sup>6</sup>

Finally, a rebate paid by a third party (*i.e.*, the manufacturer) to the retail customer does not affect “gross proceeds” (the basis for the sales tax) or “sales price” (the basis for the use tax). For example, if Store A sells a product for \$1,000 and the customer pays the \$1,000 for the product, the tax is still due on the \$1,000 even though the manufacturer of the product may at a later date rebate \$100 of the sales price to the customer.<sup>7</sup>

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

Examples of charges included in “gross proceeds” or “sales price” and therefore subject to the sales tax or use tax are:<sup>8</sup>

<sup>5</sup> The South Carolina Tax Commission is now the South Carolina Department of Revenue.

<sup>6</sup> The law has since changed whereby charges for optional maid service at a place furnishing accommodations are subject to the sales tax as an “additional guest charge” under Code Section 12-36-920(B). Charges for mandatory maid service at a place furnishing accommodations are subject to the sales tax on accommodations under Code Section 12-36-920(A). See SC Regulation 117-307.1.

<sup>7</sup> Attorney General Opinion #82-30 (5/5/1982).

<sup>8</sup> Please note that because of the nature of a transaction an example may only apply to “gross proceeds” and the sales tax since the transaction could only occur in South Carolina. Therefore, some examples may not to the “sales price” and the use tax.

Fuel surcharges - an additional fee charged by retailers due to the rising costs of gasoline and diesel fuel when making a delivery via their own vehicle.<sup>9</sup>

Charges by an automobile rental company,<sup>10</sup> such as:

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

Lease cancellation fees.<sup>11</sup>

Late fees charged when a customer does not pay his bill on time (except for late fees charged with respect to charges for electricity, natural gas, or both).<sup>12</sup>

Late fees charged by a video rental "club."<sup>13</sup>

Membership fees paid to a video rental "club" if the payment of such fee entitles the purchaser to "free" or discount movie rentals.<sup>14</sup> However, if such fee is in lieu of a security deposit or constitutes only a nominal processing fee and does not include "free" or discount movie rentals, the fee is not subject to the tax.

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

For example, one type of member pays only the posted wholesale price, while another type of temporary membership pays the posted wholesale price plus a 5% surcharge.<sup>15</sup>

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<sup>9</sup> SC Revenue Ruling #05-1.

<sup>10</sup> SC Revenue Ruling #93-1.

<sup>11</sup> SC Private Letter Ruling #88-5.

<sup>12</sup> SC Revenue Ruling #98-4; however, the law was changed subsequent to the issuance of this advisory opinion to exclude from "gross proceeds" late fee charges with respect to charges for electricity, natural gas or both.

<sup>13</sup> SC Revenue Ruling #90-6.

<sup>14</sup> SC Revenue Ruling #90-6.

<sup>15</sup> SC Private Letter Ruling #92-11.

Local hospitality taxes authorized under Code Section 6-1-700 *et. seq.* and local accommodations fees imposed by ordinance prior to March 15, 1997 and authorized under Section 10 of Act 138 of 1997, **if the fee or tax is imposed upon the retailer.**<sup>16</sup> (See examples below of charges not includable in gross proceeds for other local taxes and fees.)

City or county franchise fees imposed upon a cable television system and calculated as a percentage of the cable television system's gross receipts, regardless of whether it is passed on to customers as a separately stated item on the bill or is included in the overall charge for cable services.<sup>17</sup>

Delivery or transportation charges if the sale is made F.O.B. point of destination or place of business of the buyer.<sup>18</sup>

Delivery or transportation charges where the seller, by use of his own means of transportation, effects such delivery.<sup>19</sup>

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

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

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

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

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<sup>16</sup> SC Revenue Ruling #97-20.

<sup>17</sup> SC Revenue Ruling #97-10.

<sup>18</sup> SC Regulation 117-310, SC Private Letter Ruling #90-9, and Commission Decision S-D-152.

<sup>19</sup> SC Regulation 117-310, SC Technical Advice Memorandum #89-9, Commission Decision S-D-145 and Commission Decision #92-46.

<sup>20</sup> SC Regulation 117-313.1.

<sup>21</sup> SC Regulation 117-313.3.

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

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

Lay-away Fees.<sup>24</sup>

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

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

Property Damage Waiver Fee billed by rental company.<sup>27</sup>

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

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

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

Charges billed by a caterer for the preparation and delivery of the meal sold to the customer and other service charges related to the sale or rental by the caterer of other tangible personal property.

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

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<sup>24</sup> *Meyers Arnold, Inc., v. South Carolina Tax Commission*, 285 SC 303, 328 S.E.2d 920 (1985).

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

<sup>26</sup> SC Private Letter Ruling #06-2.

<sup>27</sup> Commission Decision S-D-174.

<sup>28</sup> Commission Decisions #92-28, #92-9, # 92-64 and #90-38.

<sup>29</sup> Commission Decision S-D-175.

<sup>30</sup> SC Revenue Ruling #99-9 and Attorney General Opinion dated 4/6/1998.

<sup>31</sup> SC Regulation 117-318.8.

### C. Gross Proceeds and Sales Price – What is Not Includable?<sup>32</sup>

In calculating gross proceeds or sales price, the retailer may deduct the following:<sup>33</sup>

- a cash discount allowed and taken on sales;<sup>34</sup>
- the sales price of property returned by customers when the full sales price is refunded in cash or by credit;<sup>35</sup>
- the value allowed for secondhand property transferred to the vendor as a trade-in;<sup>36</sup>
- the amount of any tax imposed by the United States with respect to retail sales, whether imposed upon the retailer or the consumer, except for manufacturers or importers excise taxes;<sup>37</sup>
- a motor vehicle operated with a dealer, transporter, or manufacturer, or education license plate and used in accordance with the provisions of Section 56-3-2320 or 56-3-2330;<sup>38</sup>
- that portion of a charge taxed under Section 12-36-910(B)(3) or 12-36-1310(B)(3) attributable to the cost set by statute for a governmental license or permit;<sup>39</sup>
- fees imposed on the sale of motor oil, new tires, lead-acid batteries, and white goods pursuant to Article 1, Chapter 96 of Title 44, including the refundable deposit when a lead-acid battery core is not returned to a retailer;<sup>40</sup>
- the sales price, not including sales tax, of property on sales which are actually charged off as bad debts or uncollectible accounts for state income tax purposes. A taxpayer who pays the tax on the unpaid balance of an account which has been found to be worthless and is actually charged off for state income tax purposes may take a deduction for the sales price charged off as a bad debt or uncollectible account on a return filed pursuant to this chapter, except that if an amount charged off is later paid in whole or in part to the taxpayer, the amount paid must be included in the first return filed after the collection and the tax

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<sup>32</sup> South Carolina Code §12-36-90(2).

<sup>33</sup> Please note that because of the nature of a transaction an example may only apply to “gross proceeds” and the sales tax since the transaction could only occur in South Carolina. Therefore, some examples may not to the “sales price” and the use tax.

<sup>34</sup> South Carolina Code §12-36-90(2)(a).

<sup>35</sup> South Carolina Code §12-36-90(2)(b) and SC Regulation 117-318.8.

<sup>36</sup> South Carolina Code §12-36-90(2)(c).

<sup>37</sup> South Carolina Code §12-36-90(2)(d).

<sup>38</sup> South Carolina Code §12-36-90(2)(e).

<sup>39</sup> South Carolina Code §12-36-90(2)(f).

<sup>40</sup> South Carolina Code §12-36-90(2)(g).

paid. The deduction allowed by this provision must be taken within one year of the month the amount was determined to be a bad debt or uncollectible account;<sup>41</sup>

- interest, fees, or charges however described, imposed on a customer for late payment of a bill for electricity or natural gas, or both, whether or not sales tax is required to be paid on the underlying electricity or natural gas bill;<sup>42</sup>
- the environmental surcharge imposed pursuant to Section 44-56-430;<sup>43</sup>
- the alcoholic liquor by the drink excise tax imposed by Section 12-33-245;<sup>44</sup>
- tangible personal property purchased by a person engaged in the business of servicing a warranty, maintenance, or similar service contract for use in replacing a defective part under the contract if tax was paid on the sale or the renewal of the contract and the customer is not charged for labor or material when the part is replaced;<sup>45</sup> and
- rental surcharges imposed on the rental of private passenger automobiles, rental vehicles, and heavy equipment under Code Sections 56-31-50 and 12-37-717.<sup>46</sup>

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

Examples of charges not included in “gross proceeds” or “sales price” and therefore not subject to the sales tax or use tax are;<sup>47</sup>

Late fees charged when a customer does not pay his bill on time with respect to charges for electricity, natural gas, or both;<sup>48</sup>

Membership fees paid to a video rental "club" if such fee is in lieu of a security deposit or constitutes only a nominal processing fee and does not include "free" or discount movie rentals;<sup>49</sup>

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<sup>41</sup> South Carolina Code §12-36-90(2)(h). See also SC Revenue Advisory Bulletin #02-1.

<sup>42</sup> South Carolina Code §12-36-90(2)(i).

<sup>43</sup> South Carolina Code §12-36-90(2)(j).

<sup>44</sup> South Carolina Code §12-36-90(2)(k).

<sup>45</sup> South Carolina Code §12-36-90(2)(l).

<sup>46</sup> See South Carolina Code §56-31-20 for the definitions of a “private passenger vehicle” and “rental vehicle.” See South Carolina Code §12-37-717 for the definition of “heavy equipment.”

<sup>47</sup> Please note that because of the nature of a transaction an example may only apply to “gross proceeds” and the sales tax since the transaction could only occur in South Carolina. Therefore, some examples may not to the “sales price” and the use tax.

<sup>48</sup> South Carolina Code §12-36-90(2)(i).

<sup>49</sup> SC Revenue Ruling #90-6.

Membership fees charged by a membership-only warehouse offering a selection of brand-name merchandise to business owners and others where all membership types receive the same benefits;<sup>50</sup>

Local hospitality taxes authorized under code section 6-1-700 *et. seq.* and local accommodations fees imposed by ordinance prior to March 15, 1997 and authorized under Section 10 of Act 138 of 1997 **if the fee or tax is imposed upon the customer and the retailer is merely a collection agent for the city or county;**<sup>51</sup>

Local accommodations taxes authorized under Code Section 6-1-500 *et. seq.*; local option sales taxes authorized under Code Section 4-10-10 *et. seq.*; local capital projects sales taxes authorized under Code Section 4-10-300 *et. seq.*; and, local transportation projects sales taxes authorized under Code Section 4-37-30 *et. seq.*<sup>52</sup>

Delivery or transportation charges if the sale is made F.O.B. point of origin;<sup>53</sup>

Installation labor incident to the sale of tangible personal property when such charges are separately stated from the sales price of the property on billing to customers and the seller's books and records of account show the reasonableness of such labor in relation to the sales price of the property;<sup>54</sup>

Gratuities when given directly to the employee in cash or added by the customer to his bill and charged by the retailer to the customer's account; provided that in the latter instance, the full amount of such tip is turned over to the employee by the retailer;<sup>55</sup>

Finance and Carrying Charges when the seller has an established cash price and when selling on an extended payment basis adds a separate charge for financing;<sup>56</sup>

Container Deposits required by retailers to insure the return of reusable containers;<sup>57</sup>

Self-Redeeming Coupon - For example, if an item normally sells for \$5.00 and the customer pays \$4.00 and presents the store's self-redeeming coupon valued at 1.00,

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<sup>50</sup> A membership fee would be includable in gross proceeds and subject to the tax if the membership fee is the sales price for the tangible personal property. For example, if a direct mail movie rental company charged an annual or month fee to receive movies for short term use of movies and no other charges are paid by the customers to receive the movies, then the annual or monthly fee is the sales price of the tangible personal property and subject to the tax.

<sup>51</sup> SC Revenue Ruling #97-20.

<sup>52</sup> SC Revenue Ruling #97-20.

<sup>53</sup> SC Regulation 117-310.

<sup>54</sup> SC Regulation 117-313.3.

<sup>55</sup> SC Regulation 117-318.6.

<sup>56</sup> SC Regulation 117-318.2.

<sup>57</sup> SC Regulation 117-318.7.

then the sales tax is based on \$4.00 (“gross proceeds”) since the retailer only receives the \$4.00 from the customer;<sup>58</sup>

911 Surcharges billed by telephone companies to their customers;<sup>59</sup> and

Sales Price of Returned Merchandise if the retailer refunds the purchaser the full sales price in cash or by credit.<sup>60</sup>

## **E. Gross Proceeds – Withdrawals for Use**

Gross proceeds also includes the fair market value<sup>61</sup> of tangible personal property previously purchased at wholesale which is withdrawn from the business or stock and used or consumed in connection with the business or used or consumed by any person withdrawing it.

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

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<sup>58</sup> SC Revenue Ruling #99-9. As noted above in “Examples of Charges included in Gross Proceeds,” payments received as a result coupons from third parties, such as manufacturers, (where the retailer will receive a payment from a third party in addition to the payment from the customer) are includable in gross proceeds and subject to the tax.

<sup>59</sup> South Carolina Code §23-47-50(F) & (G)(1).

<sup>60</sup> SC Regulation 117-318.8.

<sup>61</sup> SC Regulation 117-309.17, concerning withdrawals from stock by merchants, states:

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

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

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

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

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

- (i) withdrawal of tangible personal property previously withdrawn and taxed by such business or person;
- (ii) tangible personal property which becomes an ingredient or component part of tangible personal property manufactured or compounded for sale;
- (iii) tangible personal property replacing defective parts under written warranty contracts if:
  - (A) the warranty, maintenance, service, or similar contract is given without charge, at the time of original purchase of the defective property, or the tax was paid on the sale or renewal of [the] warranty, maintenance, or similar service contract for tangible personal property of which the defective part was a component, whether or not such contract was purchased in conjunction with the sale of tangible personal property,
  - (B) in the case of a warranty, maintenance, service, or similar contract that is given without charge at the time of original purchase of the defective property, the tax was paid on the sale of the defective part or on the sale of the property of which the defective part was a component, and
  - (C) the warrantee is not charged for any labor or materials,
- (iv) an automobile furnished without charge to a high school for use solely in student driver training programs;
- (v) a new motor vehicle used by a dealer as a demonstrator.

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

For example:<sup>62</sup>

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

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<sup>62</sup> See SC Revenue Ruling #08-11.

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

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

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

The following charts are intended to provide examples for most taxpayers who withdraw, use or consume tangible personal property from inventory in connection with their business or who withdraw, use or consume tangible personal property from inventory for their personal use.<sup>63</sup>

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

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

<sup>63</sup> These charts are also included in SC Revenue Ruling #08-11.

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

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

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

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

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

Event in South Carolina	Event Outside of South Carolina	Taxability of Situation #4
The tangible personal property is withdrawn from inventory in South Carolina and shipped to an employee in South Carolina as a sample to show or display to customers located either inside or outside of South Carolina. The sample is not available for sale while being shown or displayed by the employee.	None	The taxable event is the <u>withdrawal from inventory in South Carolina</u> and the sales tax is due based upon the fair market value of tangible personal property. <sup>64</sup>
The tangible personal property is withdrawn from inventory in South Carolina and shipped to an employee outside of South Carolina as a sample to show or display to customers located either inside or outside of South Carolina.	The employee receives the tangible personal property outside of South Carolina and shows or displays the sample to customers located either inside or outside of South Carolina. The sample is not available for sale while being shown or displayed by the employee.	The taxable event is the <u>withdrawal from inventory in South Carolina</u> and the sales tax is due based upon the fair market value of tangible personal property. <sup>65</sup>
The employee receives the tangible personal property from an inventory located outside of South Carolina and shows or displays the sample to customers located either inside or outside of South Carolina. The sample is not available for sale while being shown or displayed by the employee.	The tangible personal property is withdrawn from inventory outside of South Carolina and shipped to an employee in South Carolina as a sample to show or display to customers located either inside or outside of South Carolina.	The taxable event is the <u>use, consumption or storage of the tangible personal property in South Carolina</u> and the use tax is due based upon the fair market value of tangible personal property. A credit under Code Section 12-36-1310(C) will be allowed against the SC use tax for any tax legally due and paid in the other state on the withdrawal, use or consumption in that state. <sup>66</sup>

<sup>64</sup> The sales tax is a transactional tax. The withdrawal from inventory is a transaction subject to the sales tax. If the sample is returned to the distribution facility, warehouse, or retail facility for sale, this sale is a second, separate and distinct transaction that is subject to the sales tax based on the discounted price provided the sale is a retail sale occurring in South Carolina.

<sup>65</sup> See footnote #64.

<sup>66</sup> The sales tax and the use tax are transactional taxes. The use, storage or consumption of the tangible personal property is a transaction subject to the use tax. If the sample is returned to the distribution facility, warehouse, or retail facility for sale, this sale is a second, separate and distinct transaction that is subject to the sales tax based on the discounted price provided the sale is a retail sale occurring in South Carolina.

**Situation #5 – Sent to Employee to Show or Display as a Sample:** Tangible personal property has been purchased at wholesale by a wholesaler or retailer for resale to retailers or consumers. The tangible personal property will be stored in inventory at a distribution facility, warehouse, or retail facility. Some items in inventory will not be sold, but withdrawn from the inventory and sent to employees as a sample to show or display to customers; however, the sample will be available for sale while being shown or displayed by the employee.<sup>67</sup> Examples include, but are not limited to, clothing, sporting equipment, or household items.

Event in South Carolina	Event Outside of South Carolina	Taxability of Situation #5
<p>The tangible personal property is shipped from the distribution facility, warehouse or retail facility in South Carolina to an employee in South Carolina as a sample to show or display to customers located either inside or outside of South Carolina. The sample is available for sale while being shown or displayed by the employee.</p>	<p>None</p>	<p>Since the sample is available for sale, it is not subject to the tax unless otherwise used or consumed by the employee or business in South Carolina or until sold at retail in South Carolina. If used or consumed in South Carolina, <u>the taxable event is the use or consumption in South Carolina</u> and the sales tax is due based upon the fair market value of tangible personal property. If <u>sold at retail in South Carolina</u>, the sales tax is due on the “gross proceeds” of the sale.<sup>68</sup></p>
<p>The tangible personal property is shipped from the distribution facility, warehouse or retail facility in South Carolina to an employee outside of South Carolina as a sample to show or display to customers located either inside or outside of South Carolina.</p>	<p>The employee receives the tangible personal property outside of South Carolina and shows or displays the sample to customers located either inside or outside of South Carolina. The sample is available for sale while being shown or displayed by the employee.</p>	<p>Since the sample is available for sale, it is not subject to the tax unless otherwise used or consumed by the employee or business in South Carolina or until sold at retail in South Carolina. If used or consumed in South Carolina, <u>the taxable event is the use or consumption in South Carolina</u> and the sales tax is due based upon the fair market value of tangible personal property. If <u>sold at retail in South Carolina</u>, the sales tax is due on the “gross proceeds” of the sale.<sup>69</sup></p>

<sup>67</sup> The determination that tangible personal property is available for sale while being shown or displayed by an employee will be based on the facts and circumstance as supported by the taxpayer’s records. Factors to consider in making this determination include but are limited to, the taxpayer’s operational requirements or restrictions, whether the product is subsequently discounted when sold due to use (see “Note” below), the employees’ history of selling or not selling the samples. etc. If the facts and circumstances and the taxpayer’s records do not support that the tangible personal property is available for sale, the Department will apply the tax as set forth in Scenario #4.

<sup>68</sup> See footnote #67.

<sup>69</sup> See footnote #67.

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

Event in South Carolina	Event Outside of South Carolina	Taxability of Situation #5
<p>The employee receives the tangible personal property from outside of South Carolina and shows or displays the sample to customers located either inside or outside of South Carolina. The sample is available for sale while being shown or displayed by the employee.</p>	<p>The tangible personal property is shipped from the distribution facility, warehouse or retail facility outside of South Carolina to an employee in South Carolina as a sample to show or display to customers located either inside or outside of South Carolina.</p>	<p>Since the sample is available for sale, it is not subject to the tax unless otherwise used or consumed by the employee or business in South Carolina or until sold at retail in South Carolina.</p> <p>If used or consumed in South Carolina, <u>the taxable event is the use or consumption in South Carolina</u> and the use tax is due based upon the fair market value of tangible personal property. A credit under Code Section 12-36-1310(C) will be allowed against the SC use tax for any tax legally due and paid in the other state on the withdrawal, use or consumption in that state.</p> <p>If <u>sold at retail in South Carolina</u>, the sales tax is due on the “gross proceeds” of the sale.<sup>70</sup></p>

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

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<sup>70</sup> See footnote #67.