

Chapter 3

Use Tax Impositions

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

A. General Use Tax Imposition¹

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

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

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

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

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

¹ South Carolina Code §12-36-1310(A).

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

³ South Carolina Code §12-36-1310(A).

⁴ *McJunkin Corporation v. City of Orangeburg*, 238 F.2d 528 (1956); South Carolina Code §12-36-2130(1); and South Carolina Code §12-36-1330(B).

⁵ SC Regulation 117-334.2.

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

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

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

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

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

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

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

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

⁶ SC Regulation 117-334.2(C).

⁷ South Carolina Code §12-36-1310(C).

⁸ South Carolina Code §12-36-1310(C).

⁹ South Carolina Code §12-36-60.

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

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

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

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

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

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

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

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

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

Where property purchased in another state and used outside the state of South Carolina, is later brought into the state for use, storage or consumption in South Carolina, the use tax will apply unless the following conditions are conclusively established: (1) That the property when purchased was intended for a bona fide use outside the state of South

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

Carolina; (2) That the first actual use of the property was outside the state of South Carolina; and (3) That the first actual use of the property was substantial and constituted the primary use for which the property was purchased.¹²

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

Unlike the sales tax, a retailer must collect the use tax from the purchaser¹³. The retailer may not advertise or state, in any manner, that the use tax, or any part of it, will be assumed or absorbed by the retailer, will not be added to the selling price, or will be refunded.¹⁴

B. Definitions

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

Person¹⁵ includes any individual, firm, partnership, limited liability company, association, corporation, receiver, trustee or group or combination acting as a unit. It also includes the state, state agencies, and any instrumentality, authority, political subdivision or municipality.

Tangible personal property¹⁶ is personal property that may be seen, weighed, measured, felt, touched, or in any manner perceptible to the senses. It does **not** include stocks, notes, bonds, mortgages or other evidences of debt.

Sale or purchase¹⁷ is a transfer of title or possession of tangible personal property for a consideration. Includes rentals, leases and license to use.

Sale at retail¹⁸ means a sale of tangible personal property to an end-user or consumer of the property. Included within the term are leases and rentals of tangible personal property. If a sale is not a retail sale, then it is a wholesale sale.

Purchase (sale) at retail¹⁹ means a purchase of tangible personal property by the end-user or consumer of the property. Included within the term are leases and rentals of tangible personal property. If a purchase is not a retail transaction, then it is a wholesale transaction.

¹² SC Regulation 117-320.1.

¹³ South Carolina Code §12-36-1350(A).

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

¹⁵ South Carolina Code §12-36-30.

¹⁶ South Carolina Code §12-36-60.

¹⁷ South Carolina Code §12-36-100.

¹⁸ South Carolina Code §12-36-110.

¹⁹ South Carolina Code §12-36-110.

Gross proceeds of sales²⁰ is the total amount proceeding or accruing from the retail sales of a business and is the measure or basis for the sales tax.

Sale price²¹ - the measure of the use tax - is the total amount for which tangible personal property is sold. It includes the cost of any materials, labor, interest, services or transportation that are part of the sale.

Sales price does not include:

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

Storage²² is the keeping or retaining of tangible personal property in South Carolina that has been purchased at retail.

Use²³ is exercising any right or power over tangible personal property, incident to the ownership of the property, or by any transaction in which possession is given.

The terms storage and use do not include²⁴ the keeping, retaining or exercising of any right or power over tangible personal property in South Carolina:

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

C. Summary of the General Use Tax Imposition

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

- the use, storage or consumption of

²⁰ South Carolina Code §12-36-90

²¹ South Carolina Code §12-36-130.

²² South Carolina Code §12-36-140(A).

²³ South Carolina Code §12-36-140(B).

²⁴ South Carolina Code §12-36-140(C).

- personal property that may be seen, weighed, measured, felt, touched, or is in any manner perceptible to the senses,²⁵
- that was purchased, leased, rented or otherwise obtained for a consideration at retail,
- for use, storage or consumption in South Carolina.

D. Special Use Tax Impositions

South Carolina also imposes its use tax on specific services and intangibles. By definition, these specifically taxed services and intangibles are “tangible personal property.”²⁶ As “tangible personal property,” various other provisions of the sales and use tax law apply to these services and intangibles (*e.g.*, exemptions, wholesale sales, etc).

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

Laundry and Drycleaning Services²⁷

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

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

The tax applies to all charges related to items laundered, drycleaned, dyed or pressed, including but not limited to, charges for:²⁸

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

²⁵ By definition, “tangible personal property” (personal property that may be seen, weighed, measured, felt, touched, or is in any manner perceptible to the senses) includes certain services and intangibles that are specifically subject to the sales tax. See discussion entitled “Special Use Tax Impositions.”

²⁶ South Carolina Code §12-36-60.

²⁷ South Carolina Code §12-36-1310(B)(1).

²⁸ SC Regulation 117-303.

However, charges derived from coin-operated laundromats and drycleaning machines²⁹ are not subject to the tax. However, charges at coin-operated laundromats for laundering services, such as a “wash and fold” service, are subject to the tax.³⁰

Electricity³¹

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

Communications Services³²

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

The tax applies to charges for:³³

- Telephone services,³⁴ 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
- Answering 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
- Voice mail messaging services
- E-mail services

²⁹ A coin-operated laundromat machine includes any laundromat machine operated by a slot in which is deposited or placed a coin, token, debit card, or other thing of value so as to begin operation of the machine for the purposes of laundering, cleaning, or drying clothing and other textiles.

³⁰ SC Revenue Ruling #88-7.

³¹ South Carolina Code §12-36-1310(B)(2).

³² South Carolina Code §12-36-1310(B)(3).

³³ SC Regulation 117-329 and SC Revenue Ruling #06-8.

³⁴ See South Carolina Code §12-36-2120(11) for exemptions specifically related to telephone services.

- Electronic filing of tax returns when the return is electronically filed by a person who did not prepare the tax return
- Database access transmission services (online information services), such as legal research services, credit reporting/research services, charges to access an individual website (including Application Service Providers), etc.

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

Manufactured Property Used by the Manufacturer³⁵

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

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

Prepaid Wireless Calling Arrangements³⁶

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

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

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

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

³⁵ South Carolina Code §12-36-1310(B)(4).

³⁶ South Carolina Code §12-36-1310(B)(5).

Warranty, Maintenance and Similar Service Contracts³⁷

The use tax, equal to 6%, also applies to charges for the purchase or renewal of a warranty, maintenance or similar service contract for tangible personal property, whether or not such contract was purchased in conjunction with the purchase of the tangible personal property.

The following are examples of a warranty, maintenance or similar service contract subject to the tax:

- (1) the sale of an extended warranty contract, or the renewal of an extended warranty contract, for a computer or other electronic device (*e.g.*, television, radio, satellite equipment, game system, MP3 players, cell phones)
- (2) the sale of a maintenance contract, or the renewal of a maintenance contract, for a refrigerator or other appliance (*e.g.*, microwave, dishwasher, clothes washer, dryer)
- (3) the sale of a maintenance contract, or the renewal of a maintenance contract, for computer software that was sold in a tangible form (*e.g.*, tape, disk)

The use tax does not apply to the sale or renewal of motor vehicle extended service contracts and motor vehicle extended warranty contracts³⁸ or to 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 use tax.³⁹

The provisions of this imposition apply to optional warranty, maintenance or similar service contracts; however, it is important to note that charges for mandatory warranty, maintenance or similar service provided in conjunction with the sale of tangible personal property are subject to the sales tax as a part of the sales price of such tangible personal property.

900 and 976 Numbers⁴⁰

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

Transient Construction Property⁴¹

Transient construction property purchased and previously used in another state is subject to the South Carolina use tax (prorated to reflect the equipment's duration of use in South

³⁷ South Carolina Code §12-36-1310(B)(6).

³⁸ South Carolina Code § 12-36-2120(53).

³⁹ South Carolina Code § 12-36-2120(69).

⁴⁰ South Carolina Code §§ 12-36-2645 and 12-36-1110.

⁴¹ South Carolina Code §12-36-1320.

Carolina, if the other state's statute has similar provisions for proration of the tax or depreciation of the tax base) when imported or brought into this State for use, storage or consumption in this State.

Transient construction property⁴² is defined to mean:

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

The use tax is computed as follows:

- (1) divide the length of time the property will be used in this State by the total useful life of the property;
- (2) multiply the result from (1) above by the sales price of the property;
- (3) multiply the amount in (2) above by six percent.⁴³ The result of the computation is the tax due.

The useful life of transient construction property must be determined by the department in accordance with the experience and practices of the building and construction trade. In the absence of satisfactory evidence as to the period of use intended in this State, it is presumed that the property will remain in this State for the remainder of its useful life.

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

The prorated tax credit is computed as follows:

- (1) divide the length of time the property was used in the other state by the total useful life of the property;
- (2) multiply the result from (1) above by the state sales tax legally due and paid the other state;

⁴² South Carolina Code §12-36-150.

⁴³ Generally, the state tax rate on “transient construction property” is 6%. However, if the “transient construction property” is subject to the maximum tax provisions of South Carolina Code §12-36-2110 (e.g., a motor vehicle), then the state tax rate in this calculation is 5%. See South Carolina Code §12-36-1110.

- (3) the lesser of the result from (2) above or the tax computed in the above paragraph is the prorated credit amount.

However, construction machinery, tools, equipment, and other construction property falling within the definition of transient construction property that is purchased for first use in South Carolina is subject to the full amount of use tax; however, such purchases qualify for a full credit⁴⁴ for any sales or use tax due and paid in the other state.⁴⁵

E. Sales to, or Purchases by, Individuals 85 Years of Age and Older⁴⁶

An individual⁴⁷ who is 85 years of age or older is entitled to a lower state use tax rate, sometimes referred to as the “1% exclusion,” for items that individual purchases for his or her own personal use⁴⁸. In other words, a person who is 85 years of age or older would pay a state use tax of 5% instead of 6% (any local use taxes would still apply) on:

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

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

⁴⁴ Since the tangible personal property is purchased for first use in South Carolina, neither the use tax due nor the credit for taxes paid in the other state are prorated.

⁴⁵ South Carolina Code §12-36-1310(C).

⁴⁶ South Carolina Code §§12-36-2620 and 12-36-2630. See also SC Revenue Ruling #08-5.

⁴⁷ In Commission Decision S-D-173, it was held that the lower rate allowed for persons 85 years of age and older only applied to sales to individuals, and did not apply to sales to partnerships, corporations and other legal entities.

⁴⁸ South Carolina Code §§12-36-2620 and 12-36-2630.