

Chapter 2

Sales Tax Impositions

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

A. General Sales Tax Imposition

“In general, the sales tax is an imposition upon the privilege of the business of selling at retail and measured by the amount of business done, which is a clear case of an excise tax to which the constitutional provisions relating to property taxes are irrelevant.”¹ It is a “transaction tax” imposed with respect to the transaction of a “retail sale” of tangible personal property.

South Carolina imposes a “general” sales tax, equal to 6% of the gross proceeds of sales, upon every person engaged or continuing within this State in the business of selling tangible personal property at retail.²

The tax will therefore be applicable if:

- a person is engaged or continuing in the business of selling,³
- the person is selling tangible personal property in South Carolina, and
- the sales of tangible personal property in South Carolina are at retail.⁴

The tax, if the above conditions are met, will be based upon the “gross proceeds of sales.”⁵

With respect to goods shipped into South Carolina, the sales tax will apply (as opposed to the use tax) when:⁶

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

¹ *State ex. rel. Roddey v. Byrnes*, 219 S.C. 485, 66 S.E.2d 33 (1951).

² South Carolina Code §§12-36-910 and 12-36-1110.

³ SC Regulation 117-322 states that “[c]asual or isolated sales by persons not engaged in the business of selling tangible personal property at retail are not subject to the sales or use tax.” (Emphasis added.) The regulation defines the term “casual” to mean “occurring, encountered, acting or performed without regularity or at random” and defines the term “occasional” and the term “isolated” to mean “occurring alone or once, an incident not likely to recur, sporadic.”

⁴ *International Harvester Co. v. Wasson*, 281 S.C. 458 316 S.E.2d 378,(1984).

⁵ South Carolina Code §12-36-90.

⁶ SC Regulation 117-334.

- the seller is engaged or continuing within this State in the business of selling tangible personal property at retail;
- delivery is made in this State;⁷ and
- the order for the future delivery of tangible personal property is sent by the purchaser to, or the subsequent delivery of the property is made by, any local branch, office, outlet or other place of business of the retailer in this State, or agent or representative operating out of or having any connection with, such local branch, office, outlet or other place of business.

The seller may pass the sales tax on to the purchaser when billing the purchaser, but while many sellers collect the sales tax from the purchaser, this is not a requirement. However, the seller's inability, refusal or failure to collect the sales tax from the customer does not relieve the seller from remitting the sale tax to the State.⁸ In fact, the seller may advertise that the seller will absorb the sales tax and not collect it from the purchaser.⁹

B. Definitions

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

Person¹⁰ includes any individual, firm, partnership, limited liability company, association, corporation, receiver, trustee¹¹ or group or combination acting as a unit. It also includes the state, state agencies, and any instrumentality, authority, political subdivision or municipality.¹²

Tangible personal property¹³ 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 purchase¹⁴ is a transfer of title or possession of tangible personal property for a consideration. It includes rentals, leases and licenses to use.

⁷ SC Regulation 117-334.1(A) states that “[d]elivery is held to have taken place in this State (1) when physical possession of the tangible personal property is actually transferred to the purchaser or the purchaser's designee within this State, or (2) when the tangible personal property is placed in the mails at a point outside this State and directed to the purchaser or the purchaser's designee in this State or (3) when the tangible personal property is placed on board a carrier at a point outside this State (regardless of shipping terms) and directed to the purchaser or the purchaser's designee in this State.”

⁸ South Carolina Code §12-36-940.

⁹ Attorney General Opinion 1228 (11/18/1961).

¹⁰ South Carolina Code §12-36-30.

¹¹ An Attorney General Opinion dated 11/29/1983 concluded that, “[e]xcept for Chapter 7 liquidation sales, sales made by bankruptcy trustees, Chapter 11 debtors in possession or their agents are subject to sales taxes even when conducted pursuant to judicial order.”

¹² See also SC Regulation 117-304 and SC Regulation 117-304.1.

¹³ South Carolina Code §12-36-60.

¹⁴ South Carolina Code §12-36-100. By definition, “tangible personal property” (personal property that may be seen, weighed, measured, felt, touched, or is in any manner perceptible to the senses) also includes

Sale at retail¹⁵ 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.

Gross proceeds of sales¹⁶ is the total amount proceeding or accruing from the retail sales of a business and is the measure or basis for the sales tax.

C. Summary of the General Sales Tax Imposition

Based on the general imposition and the above definitions, the sales tax, which is 6% of the total amount proceeding or accruing from the retail sales of a business, is imposed on:

- any individual, firm, partnership, limited liability company, association, corporation, receiver, trustee, state agency, instrumentality, authority, political subdivision, county, municipality, or any group or combination acting as a unit
- engaged in the business of selling, leasing, renting or otherwise providing for a consideration
- personal property that may be seen, weighed, measured, felt, touched, or is in any manner perceptible to the senses¹⁷
- to an end-user or consumer.

D. Special Sales Tax Impositions

South Carolina also imposes its sales tax on specific services and intangibles. By definition, these specifically taxed services and intangibles are “tangible personal property.”¹⁸ 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 Services¹⁹

The sales tax, equal to 6% of the gross proceeds of sales, also applies to every person in the business of providing or furnishing at retail any of the following:

- laundering services,

certain services and intangibles that are specifically subject to the sales tax. See discussion entitled “Special Sales Tax Impositions.”

¹⁵ South Carolina Code §12-36-110.

¹⁶ South Carolina Code §12-36-90

¹⁷ 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 Sales Tax Impositions.”

¹⁸ South Carolina Code §12-36-60.

¹⁹ South Carolina Code §12-36-910(B)(1).

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

The tax applies to all charges from these businesses related to items laundered, drycleaned, dyed or pressed, including but not limited to, charges for:²⁰

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

Charges derived from coin-operated laundromats and drycleaning machines²¹ are not subject to the tax.²² However, charges at coin-operated laundromats for laundering services, such as a “wash and fold” service, are subject to the tax.²³

Electricity²⁴

The sales tax, equal to 6% of the gross proceeds of sales, also applies to every person in the business of selling at retail electricity.

Communications Services²⁵

The sales tax, equal to 6% of the gross proceeds of sales, also applies to every person in the business of selling at retail “the ways or means for the transmission of the voice or messages.”

²⁰ SC Regulation 117-303.

²¹ 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.

²² South Carolina Code §12-36-910(B)(1).

²³ SC Revenue Ruling #88-7.

²⁴ South Carolina Code §12-36-910(B)(2).

²⁵ South Carolina Code §12-36-910(B)(3). By definition, “tangible personal property” does not include the transmission of computer database information by a cooperative service when the database information has been assembled by and for the exclusive use of the members of the cooperative service. Therefore, such transmissions are not subject to the sales tax.

The tax applies to charges for:²⁶

- Telephone services,²⁷ 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
- 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 sales tax as it applies to communication services, see Chapter 17 of this manual.

Manufactured Property Used by the Manufacturer²⁸

The sales tax, equal to 6%, also applies to every manufacturer when that manufacturer manufactures within South Carolina tangible personal property for sale, but instead of selling the tangible personal property the manufacturer uses or consumes it within South Carolina. The tax applies to the fair market value of the tangible personal property used or consumed by the manufacturer.

²⁶ SC Regulation 117-329 (effective June 27, 2008) and SC Revenue Ruling #06-8.

²⁷ See South Carolina Code §12-36-2120(11) for exemptions specifically related to telephone services.

²⁸ South Carolina Code §12-36-910(B)(4).

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

Prepaid Wireless Calling Arrangements²⁹

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

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

For example, if a retailer sells a prepaid phone card that can only be used in making wireless telephone calls, then the sale or recharge of that card is subject to the sales tax, provided the card meets the remaining requirements of a prepaid wireless calling arrangement as defined above.

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

Warranty, Maintenance and Similar Service Contracts³⁰

The sales tax, equal to 6%, also applies to charges for the sale 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 sale 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.)

²⁹ South Carolina Code §12-36-910(B)(5).

³⁰ South Carolina Code §12-36-910(B)(6) and SC Revenue Ruling #06-9.

- (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 sales tax does not apply to the sale or renewal of motor vehicle extended service contracts and motor vehicle extended warranty contracts³¹ 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 sales tax.³²

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 gross proceeds of sales of such tangible personal property.

900 and 976 Numbers³³

The sales tax, equal to 11%, also applies to the gross proceeds accruing or proceeding from the business of providing a 900 telephone service, a 976 telephone service, or both.

Accommodations and “Additional Guest Charges”³⁴

The sales tax is also imposed upon charges for accommodations and “additional guest charges.” The term “additional guest charge” means an amount which is added to the guest's room charge for a specific amenity or service for the guest.

Charges for rooms, lodgings and accommodations are taxed at 7%, while other charges for other services provided at the hotel, when over and above the services customarily provided with the room, are taxed at 6% as an “additional guest charge.” However, if an “additional guest charge” would be taxed under other provisions of the sales and use tax law (Chapter 36 of Title 12), then such charges are not taxed as an “additional guest charge.”

The sales tax upon charges for rooms, lodgings and accommodations applies to the gross proceeds from the rental or charges for any rooms, lodgings or accommodations furnished to transients by any hotel, inn, tourists court, motel, residence, or any place in which rooms, lodgings or accommodations are furnished to transients for a consideration,

³¹ South Carolina Code § 12-36-2120(53).

³² South Carolina Code § 12-36-2120(69).

³³ South Carolina Code §§ 12-36-2645 and 12-36-1110.

³⁴ South Carolina Code §12-36-920 and SC Regulation 117-307.1.

except where such facilities consist of less than six sleeping rooms, contained on the same premises, which is used as the place of abode of the owner or operator of such facilities.

The gross proceeds derived from the lease or rental of accommodations supplied to the same person for a period of 90 continuous days are not considered proceeds from a transient; and therefore, are not subject to the sales tax on accommodations.

The sales tax upon “additional guest charges”³⁵ applies to:

- room service,
- amenities,
- entertainment,
- special items in promotional tourist packages,
- laundering and dry cleaning services,
- in-room movies,
- telephone charges,
- rentals of meeting rooms and
- other guest services.

For a more detailed discussion on the sales tax as it applies to accommodations and “additional guest charges,” see Chapter 11 of this manual.

Motor Vehicles Sold to Nonresidents³⁶

The sales tax applies to sales to nonresidents of motor vehicles, trailers, semitrailers or pole trailers that are to be registered and licensed in the nonresident purchaser’s state of residence. This tax is the lesser of:

- a) the sales tax that would be imposed on the sale in the purchaser’s state of residence
- or
- b) the tax that would be imposed under Chapter 36 of the South Carolina Code of Laws³⁷.

³⁵ South Carolina Code §12-36-920(B).

³⁶ South Carolina Code §12-36-930.

³⁷ For information on vehicles that qualify for the \$300 maximum tax, see Chapter 10 of this manual.

However, no sales tax is due in South Carolina if a nonresident purchaser cannot receive a credit in his state of residence for sales tax paid to South Carolina.

Since the amount of tax imposed on a nonresident purchaser of a motor vehicle depends, in part, on the tax rate and type of tax imposed in the nonresident's home state, information concerning the sales tax imposed on sales of motor vehicles by other states is needed to calculate the tax due, if any.

For example, the tax information, as of the date of the publication of this manual, for certain neighboring states³⁸ is:

Alabama	a 2% state rate imposed on sales price less trade in allowance
Florida	a 6% state rate imposed on sales price less trade in allowance
Georgia	a 4% state rate imposed on sales price less trade in allowance
Kentucky	no sales tax is due since Kentucky does not impose a sales tax on the sale of a motor vehicle, but imposes a motor vehicle usage tax upon registration.
North Carolina	no sales tax is due since North Carolina does not impose a sales tax on the sale of a motor vehicle, but imposes a highway use tax upon registration.
Tennessee	a 7% state rate imposed on sales price less trade in allowance
Virginia	no sales tax is due since Virginia does not allow a credit for taxes paid in another state if the state of purchase (<i>e.g.</i> , South Carolina) exempts sales of motor vehicles to residents of states that do not give such credit.
West Virginia	no sales tax is due since West Virginia does not impose a sales tax on the sale of a motor vehicle, but imposes a motor vehicle privilege tax upon registration.

³⁸ SC Information Letter #05-13.

E. Sales to Individuals 85 Years of Age and Older³⁹

An individual⁴⁰ who is 85 years of age or older is entitled to a lower state sales tax rate, sometimes referred to as the “1% exclusion,” for items that individual purchases for his or her own personal use.⁴¹ In other words, a person who is 85 years of age or older would pay a state sales tax of 5% instead of 6% (any local sales and use taxes would still apply) on:

- (1) purchases of tangible personal property (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.

An individual who is 85 years of age or older would pay a state sales tax of 6% instead of 7% (any local sales and use taxes would still apply) on purchases of accommodations services (the rental charge for a hotel room or condominium) and would pay a state sales tax of 5% instead of 6% on any additional guest charges (charges for maid service, in-room movies, and other amenities) charged by the place providing the accommodations.

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.

Finally, purchases by an individual who is 85 years of age or older are not entitled to the lower state sales and use tax rate if the purchase is not for the personal use of the individual purchaser who is 85 years of age or older. For example, purchases for a business use or as a gift for another individual are not entitled to the lower state sales and use tax rate.

³⁹ South Carolina Code §§12-36-2620 and 12-36-2630. See also SC Revenue Ruling #08-5.

⁴⁰ 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.

⁴¹ South Carolina Code §§12-36-2620 and 12-36-2630.