

## Chapter 17

### Communications

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

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

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

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

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

“Prepaid wireless calling arrangements” means communication services that

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

All charges for prepaid wireless calling arrangements must be sourced to the (i) location in this State where the over-the-counter sale took place; (ii) shipping address if the sale did not take place at the seller’s location and an item is shipped; or (iii) either the billing

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

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

## **A. Exemptions and Exclusions**

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

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

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

South Carolina Code §12-36-60, the definition of “tangible personal property” which by statute includes communications,<sup>2</sup> states in part:

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

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

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

<sup>2</sup> Also, since communications services are by statute “tangible personal property,” there can be “wholesale sales” of communications services. See *PalmettoNet, Inc. v. South Carolina Tax Commission*, 318 S.C. 102, 456 S.E.2d 385 (1995).

South Carolina Code §12-36-2120(3) exempts from the tax:

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

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

## **B. Taxable Communication Services<sup>3</sup>**

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

- Telephone services,<sup>4</sup> 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<sup>5</sup>
- Answering services<sup>6</sup>
- Cable television services<sup>7</sup>
- 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<sup>8</sup>

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<sup>3</sup> SC Regulation 117-329 and SC Revenue Ruling #06-8.

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

<sup>5</sup> See SC Information Letter #89-28.

<sup>6</sup> See SC Information Letter #89-28.

<sup>7</sup> Attorney General Opinion #82-41 (6/9/1982).

<sup>8</sup> See SC Revenue Ruling #89-14.

- Voice mail messaging services<sup>9</sup>
- E-mail services<sup>10</sup>
- Electronic filing of tax returns when the return is electronically filed by a person who did not prepare the tax return<sup>11</sup>
- Database access transmission services (online information services), such as legal research services, credit reporting/research services, charges to access an individual website<sup>12</sup> (including Application Service Providers), etc. (not including computer database information services provided by a cooperative service when the database information has been assembled by and for the exclusive use of the members of the cooperative services)<sup>13</sup>

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

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<sup>9</sup> See SC Revenue Ruling #89-14.

<sup>10</sup> See SC Revenue Ruling #89-14.

<sup>11</sup> See SC Revenue Ruling #91-20.

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

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

Congress has extended the moratorium on several occasions and the moratorium is currently extended through November 1, 2014. However, charges by a third party to access or use that third party’s individual website will continue to be subject to the sales and use tax (e.g. monthly charges to access a sports website).

<sup>13</sup> See SC Revenue Ruling #89-14 and SC Private Letter Ruling #89-21.

Charges for the following communication services are subject to the sales and use tax pursuant to South Carolina Code §§12-36-910(B)(5) or Code Section 12-36-2645

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

### **C. Non-Taxable Communication Services<sup>14</sup>**

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

- Telephone services specifically exempted from the tax, such as toll charges between telephone exchanges and carrier access charges and customers access line charges established by the Federal Communications Commission or the South Carolina Public Service Commission<sup>15</sup>
- Telegraph messages<sup>16</sup>
- Communication services involving automatic teller machines<sup>17</sup>
- Data processing services<sup>18</sup>
- Computer database information services provided by a cooperative service when the database information has been assembled by and for the exclusive use of the members of the cooperative services<sup>19</sup>
- Electronic filing of tax returns when the return is electronically filed by a person who prepared the tax return<sup>20</sup>

The Department has also determined that charges for electronically monitoring a customer's home or business for the purpose of burglary and fire protection were not subject to the sales and use taxes since such charges were not charges for access to, or use of, a communication system (ways or means for the transmission of the voice or messages). The sale or lease of equipment to the customer, or the use of the equipment by the monitoring company, was held subject to the tax based on the specific facts and circumstances.<sup>21</sup>

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<sup>14</sup> SC Regulation 117-329 and SC Revenue Ruling #06-8.

<sup>15</sup> South Carolina Code §12-36-2120(11).

<sup>16</sup> South Carolina Code §12-36-2120(11).

<sup>17</sup> South Carolina Code §12-36-2120(11).

<sup>18</sup> For the definition of "data processing services," see South Carolina Code §12-36-910(C).

<sup>19</sup> South Carolina Code §12-36-60.

<sup>20</sup> See SC Revenue Ruling #91-20.

<sup>21</sup> See SC Private Letter Ruling #97-4 and SC Technical Advice Memorandum #95-1

## **D. “Bundled Transactions”**

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

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

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