

Chapter 9

Exemptions

A. Exemptions Authorized under the Sales and Use Tax Law (Chapter 36 of Title 12)

The South Carolina sales and use tax law contain numerous exemptions¹. As a general rule, tax exemption statutes are strictly construed against the taxpayer.² This rule of strict construction simply means that constitutional and statutory language will not be strained or liberally construed in the taxpayer's favor.³

The following briefly describes South Carolina's sales and use tax exemptions⁴. For purposes of this discussion, South Carolina's exemptions are divided into the following categories:

- Government Related Exemptions
- Business Related Exemptions
- Agricultural Exemptions
- Educational Exemptions
- General Public Good Exemptions
- Alternative Energy Exemptions

The following provides a list of the exemptions in each of the above categories and a list of relevant statutes, court cases, regulations, and advisory opinions for each exemption (if any). The list of statutes, court cases, regulations, and advisory opinions is not all-inclusive.

¹ South Carolina Code §§12-36-2120 and 12-36-2130.

² *Owen Industrial Products, Inc. v. Sharpe*, 274 S.C. 193, 262 S.E.2d 33 (1980); *Hollingsworth on Wheels, Inc. v. Greenville County Treasurer et al*, 276 S.C. 314, 278 S.E.2d 340 (1981).

³ *York County Fair Association v. South Carolina Tax Commission*, 249 S.C. 337, 154 S.E.2d 361 (1967).

⁴ All sales and purchases exempt from the state sales and use tax under South Carolina Code §§12-36-2120 and 12-36-2130 are exempt from local sales and use tax administered and collected by the Department on behalf of local jurisdictions, except for sales of unprepared food under South Carolina Code §12-36-2120(75). South Carolina Code §12-36-2120(75) specifically states that the exemption for unprepared food only applies to the state sales and use tax. Therefore, such sales are subject to local sales and use taxes unless the local sales and use tax specifically exempts sales of unprepared food. See SC Regulation 117-337 and SC Information Letter #09-2.

Caution: The exemptions below are briefly described. See the statute cited for the specific exemption details. If a transaction does not squarely fall within the requirements of an exemption statute and applicable regulations, the exemption does not apply.

Government Related Exemptions

12-36-2120(1) Transactions that are prohibited from being taxed by U.S. or State Constitutional provisions or federal or state law⁵

SC Information Letter 89-8 (American Red Cross); South Carolina Code §58-25-80 (Regional Transportation Authorities); South Carolina Code §56-19-480 (Insurance Companies and Motor Vehicles); South Carolina Code §44-7-2120 (Regional Health Services Districts⁶); South Carolina Code §38-29-150 (South Carolina Life and Accident and Health Insurance Guaranty Association); South Carolina Code §38-31-130 (South Carolina Property and Casualty Insurance Guaranty Association); South Carolina Code §12-11-30 (Banks); South Carolina Code §12-13-50 (Building and Loan Associations); South Carolina Code §13-17-90 (South Carolina Research Authority); South Carolina Code §§12-63-20 and 12-63-30 (Motion Picture Production Companies⁷); and SC Revenue Ruling #06-8⁸ (Federal Moratorium on the taxation of Internet Access charges)

12-36-2120(2) Sales to the federal government

SC Regulation 117-307.6; Attorney General Opinion dated 8/9/1984⁹

⁵ There are several provisions in the South Carolina Code of Laws that are not codified in Chapter 36 of Title 12 that provide an exemption from the sales tax, the use tax or both. Some of these provisions exempt a specific transaction and some exempt a specific entity. In the case of an exemption provision involving a specific entity, each statutory provision must be reviewed to determine if sales to the entity are exempt, sales by the entity are exempt, or if both sales to and sales by the entity are exempt. In addition, there are several provisions of federal law that provide an exemption from state and local taxes to certain specific entities. Each of these federal statutory provisions must also be reviewed to determine if sales to the entity are exempt, sales by the entity are exempt, or if both sales to and sales by the entity are exempt. **Please note that the list (in italics) of transactions that are prohibited from being taxed by U.S. or State Constitutional provisions or federal or state law is not all-inclusive.**

⁶ See also Administrative Law Court Decision 06-ALJ-17-0619-CC (2008).

⁷ See also Chapter 19 of this publication and SC Revenue Ruling #08-12.

⁸ SC Revenue Ruling #06-8 concerns the taxation of communications services and addresses the federal moratorium on the taxation of Internet Access charges as part of the discussion on taxable and non-taxable communication services.

⁹ This Attorney General Opinion concluded that sales to the federal government upon requisition or order of the South Carolina National Guard, payment for which is from the Federal Treasury upon order of Federal officers, are exempt from the sales and use tax. However, others sales of tangible personal property to the Guard are taxable.

- 12-36-2120(22) Material necessary to assemble missiles
- 12-36-2120(25) Sales of cars and motorcycles to nonresident military personnel
SC Private Letter Ruling #90-12; SC Private Letter Ruling #90-11; SC Private Letter Ruling #89-9
- 12-36-2120(29) Federal government contracts – property that passes to the government
SC Revenue Ruling #04-9
- 12-36-2120(30) Supplies purchased by State General Services Division for resale to State agencies
- 12-36-2120(46) War memorials and monuments
- 12-36-2120(48) Solid waste disposal collection bags required under a solid waste disposal plan of a county or other political subdivision
- 12-36-2120(60) Lottery tickets sold pursuant to Chapter 150 of Title 59 (South Carolina Education Lottery Act)
- 12-36-2120(61) Copies of, or access to, legislation or other informational documents provided to the general public or any other person by a legislative agency when a charge for these copies is made reflecting the agency’s cost of the copies
- 12-36-2120(68) Any property sold to the public through a sheriff’s sale as provided by law

Business Related Exemptions

- 12-36-2120(9) Coal, coke, or other fuel for manufacturers, transportation companies, electric power companies, and processors
SC Regulation 117-302.3; SC Private Letter Ruling #88-10
- 12-36-2120(11) Toll charges between telephone exchanges, certain access charges, charges for telegraph messages, and automatic teller machine transactions
- 12-36-2120(13) Fuel and other supplies for consumption on ships on the high seas
SC Regulation 117-321.1

- 12-36-2120(14) Wrapping paper, containers, etc., used incident to the sale and delivery of tangible personal property
- SC Regulation 117-302.2; SC Regulation 117-312*
- 12-36-2120(15) Motor fuel taxed under the motor fuel user fee law
- 12-36-2120(17) Machines used in manufacturing, processing, recycling, compounding, mining, or quarrying tangible personal property for sale. This includes certain machines used to prevent or abate air, water, or noise pollution caused by machines used in manufacturing, processing, recycling, compounding, mining, or quarrying tangible personal property for sale
- SC Regulation 117-302.5; SC Regulation 117-302.6; SC Regulation 117-306.1; SC Regulation 309.3; SC Regulation 117-309.9; SC Regulation 117-314.10; SC Regulation 117-315.3; SC Regulation 117-328; Hercules Contractors and Engineers, Inc. v. South Carolina Tax Commission, 313 S.E. 2d 300 (1984); Springs Industries, Inc., v. South Carolina Department of Revenue, South Carolina Court of Appeals, No. 2003-UP-029, January 8, 2003 (unpublished), certiorari denied, October 8, 2003; Anonymous Corporation v. South Carolina Department of Revenue (02-ALJ-17-0350-CC); Southeastern-Kusan, Inc. v. South Carolina Tax Commission 280 S.E. 2d 57 (1981); SC Revenue Ruling #04-7; SC Revenue Ruling #89-7; SC Revenue Ruling #91-8; SC Revenue Ruling #98-19; SC Private Letter Ruling #92-9; SC Private Letter Ruling #91-1; SC Private Letter Ruling #87-3; SC Private Letter Ruling #90-3; SC Private Letter Ruling #89-15; SC Private Letter Ruling #95-8; SC Private Letter Ruling #99-3; SC Revenue Procedure #05-1¹⁰*
- 12-36-2120(19) Electricity used to manufacture, process, mine, or quarry tangible personal property for sale or used by cotton gins to manufacture tangible personal property for sale
- SC Regulation 117-302.4*
- 12-36-2120(20) Railcars and locomotives

¹⁰ The controlling authorities with respect to the machine exemption are SC Regulation 117-302.5; Hercules Contractors and Engineers, Inc. v. South Carolina Tax Commission, 313 S.E. 2d 300 (1984); Springs Industries, Inc., v. South Carolina Department of Revenue, South Carolina Court of Appeals, No. 2003-UP-029, January 8, 2003 (unpublished), certiorari denied, October 8, 2003; and Anonymous Corporation v. South Carolina Department of Revenue (02-ALJ-17-0350-CC). The advisory opinions listed are provided for additional reference.

- 12-36-2120(21) Certain vessels and barges (more than 50 tons burden)
SC Regulation 117-312; SC Regulation 117-321.1
- 12-36-2120(24) Laundry supplies and machinery used by a laundry or drycleaning business. This exemption does not apply to coin operated laundromats.
SC Regulation 117-303
- 12-36-2120(31) Vacation time sharing plans and exchange of accommodations in which the accommodation to be exchanged is the primary consideration
The Department held in SC Revenue Ruling #98-5 that accommodations provided under exchange agreements are subject to the sales tax on accommodations. However, the General Assembly subsequently enacted the above exemption for “any ... exchange of accommodations in which the accommodations to be exchanged are the primary consideration.

Therefore, the furnishing of accommodations via an exchange of accommodation is not subject to the sales tax on accommodations if the accommodations to be exchanged is the primary consideration. If the accommodations to be exchanged is not the primary consideration, the furnishing of the accommodations is subject to the sales tax on accommodations, unless otherwise exempt.
- 12-36-2120(34) 50% of the gross proceeds of a modular home regulated under Chapter 43 of Title 23
SC Regulation 117-335.2
- 12-36-2120(35) Movies sold or rented to movie theatres
- 12-36-2120(36) Tangible personal property delivered out of state by South Carolina retailers
- 12-36-2120(37) Petroleum asphalt products transported and used outside South Carolina
- 12-36-2120(40) Shipping containers used by international shipping lines under contract with the State Ports Authority
- 12-36-2120(42) Depreciable assets as part of a sale of an entire business
SC Revenue Advisory Bulletin #01-1

- 12-36-2120(43) Supplies, equipment, machinery, and electricity for use in filming/producing motion pictures
- 12-36-2120(49) Postage purchased by a person engaged in the business of selling advertising services for clients consisting of mailing advertising material through the United States mail
- 12-36-2120(50) The following items when used by a qualified recycling facility: recycling property, electricity, natural gas, fuels, gasses, fluids and lubricants, ingredients or component parts of manufactured products, property used for the handling or transfer of postconsumer waste or manufactured products or in or for the manufacturing process, and machinery and equipment foundations
- 12-36-2120(51) Material handling systems and material handling equipment used in the operation of a distribution facility or a manufacturing facility of a taxpayer that invests at least \$35 million in South Carolina
- SC Revenue Ruling #97-6*
- 12-36-2120(52) Parts and supplies used by persons engaged in the business of repairing or reconditioning aircraft owned by or leased to the federal government or commercial air carriers. This exemption does not extend to tools and other equipment not attached to or that do not become a part of the aircraft.
- 12-36-2120(53) Motor vehicle extended service and warranty contracts
- 12-36-2120(54) Clothing and other attire required for working in a class 100 or better clean room environment (as defined in Federal Standard 209E)
- 12-36-2120(55) Audiovisual masters made or used by a production company
- 12-36-2120(56) Machines used in research and development
- SC Revenue Ruling #08-3*
- 12-36-2120(58) Cooperative direct mail promotional advertising materials and promotional maps, brochures, pamphlets, or discount coupons for use by nonprofit chambers of commerce or nonprofit convention and visitor bureaus
- 12-36-2120(59) Facilities transmitting electricity that are transferred, sold or exchanged by an electrical utility, municipality, electric cooperative, or political subdivision to a limited liability company subject to regulation under the Federal Power Act and formed to operate or to take functional control of electric transmission assets

- 12-36-2120(62) 70% of the gross proceeds of the rental or lease of portable toilets
*SC Revenue Advisory Bulletin #01-5*¹¹
- 12-36-2120(64) Sweetgrass baskets made by artists of South Carolina using locally grown sweetgrass
- 12-36-2120(65) and 12-36-2120(66) Computer equipment used in connection with, and electricity and certain fuel used by, a technology intensive facility (defined in South Carolina Code §12-6-3360(M)(14)(b))¹² that invests \$300 million over 5 years, creates at least 100 new jobs during the 5 years with an average cash compensation of 150% of the per capita income of the State, and spends at least 60% of the \$300 million investment on computer equipment
- 12-36-2120(67) Construction material used in the construction of a single manufacturing or distribution facility, or one that serves both, that invests at least \$100 million at a single site in South Carolina over an 18 month period.¹³
- 12-36-2120(69) 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 or use tax
- 12-36-2120(70) Gold, silver or platinum bullion or any combination; coins that are or have been legal tender; and currency.
- 12-36-2120(73) Amusement park rides; parts, machinery and equipment used to assemble, operate and make up amusement park rides; and performance venue facilities and any related or required machinery, equipment and fixtures. A \$250 million investment and creation of 250 full-time jobs and 500 part-time or seasonal jobs over a 5 year period is required.
- 12-62-30 Tangible personal property purchased by a certified motion picture production company for use in connection with the filming or production of motion pictures in South Carolina for a company

¹¹ This exemption for 70% of the gross proceeds of the rental or lease of portable toilets was enacted after the issuance of SC Revenue Advisory Bulletin #01-5.

¹² South Carolina Code §12-6-3360(M)(14)(b) defines a “technology intensive facility” for purposes of this exemption as “a facility primarily used for one or more activities listed under the 2002 version of the NAICS Codes 51811 (Internet Service Providers and Web Search Portals).”

¹³ An uncodified provision of the legislation enacting this exemption (Act No. 110 of 2007, Section 42) provides that this exemption will continue to be phased in over several years beginning July 1, 2007, and the sale of qualifying construction material will not be fully exempt until July 1, 2011. The exemption will be phased in by reducing the tax rate as follows: (a) 4% for sales from July 1, 2007, through June 30, 2008, (b) 3% for sales from July 1, 2008, through June 30, 2009, (c) 2% for sales from July 1, 2009, through June 30, 2010, and (d) 1% for sales from July 1, 2010, through June 30, 2011.

planning to spend at least \$250,000 in connection with the filming or production of one or more motion pictures in South Carolina within a consecutive 12 month period. This provision does not apply to: (a) local sales tax levied and collected directly by a local governmental subdivision or (b) the production of television coverage of new and athletic events.

SC Revenue Ruling #08-12

Agricultural Exemptions¹⁴

12-36-2120(4) Livestock

SC Regulation 117-301.1

12-36-2120(5) Feed used to produce and maintain livestock

SC Regulation 117-301.2; SC Private Letter Ruling #99-1

12-36-2120(6) Insecticides, chemicals, fertilizers, soil conditioners, seeds, or seedlings, or nursery stock used in the production of farm products

SC Regulation 117-301.3

12-36-2120(7) Containers and labels used in preparing agriculture products for sale or preparing turpentine gum, gum resin, and gum spirits of turpentine for sale

SC Regulation 117-301.4

12-36-2120(16) Farm machinery

SC Regulation 117-301.5; SC Revenue Ruling #99-3; SC Private Letter Ruling #89-16

12-36-2120(18) Fuel used to cure agriculture products

SC Technical Advice Memorandum #88-6

¹⁴ In reviewing the exemption statutes for the agriculture industry, it should be noted that South Carolina Code §46-1-10 states:

1. The terms "agriculture, agricultural purposes, agricultural uses, farm crops, cultivated crops" or words of similar import shall include horticulture, floriculture, and aquaculture. Words of similar import applicable to agriculture are likewise applicable to horticulture, floriculture, aquaculture.
2. The term "aquaculture" means the cultivation, production, or marketing of domesticated aquatic organisms.
3. The term "domesticated aquatic organism" means any fish, aquatic invertebrate, or aquatic plant that is spawned, produced, or marketed as a cultivated crop in the waters of this State.

- 12-36-2120(23) Farm products sold in their original state of production when sold by the producer
SC Regulation 117-301.9; SC Technical Advice Memorandum #88-4; SC Private Letter Ruling #93-4
- 12-36-2120(32) Electricity and gas used in the production of livestock and milk
SC Regulation 117-301.7
- 12-36-2120(44) Electricity used to irrigate crops
SC Regulation 117-301.7
- 12-36-2120(45) Building materials, supplies, fixtures, and equipment used to construct commercial housing for poultry or livestock
SC Regulation 117-301.8; SC Revenue Ruling #95-11; SC Information Letter #95-1

Educational Exemptions

- 12-36-2120(3) Textbooks, books, magazines, periodicals, newspapers, and access to on line information used in a course of study or for use in a school or public library. These items may be in printed form or in alternative forms such as microfilm or CD ROM. Communication services and equipment subject to tax under South Carolina Code §§12-36-910(B)(3) and 12-36-1310(B)(3) are not exempt.
SC Regulation 117-316; SC Revenue Ruling #94-11; SC Private Revenue Opinion #02-3; SC Technical Advice Memorandum #90-6; SC Private Letter Ruling #90-5
- 12-36-2120(8) Newspapers, newsprint paper, and the SC Department of Agriculture Market Bulletin¹⁵
SC Regulation 117-315.1; SC Regulation 117-315.2; SC Private Letter Ruling #98-1; SC Private Letter Ruling #93-1 Attorney General Opinion dated 9/26/1983¹⁶

¹⁵ This exemption also states that sales of religious publications (e.g., The Bible, hymnals) are exempt; however, the South Carolina Supreme Court held in *Thayer v. South Carolina Tax Commission*, 307 SC 6, 413 S.E.2d. 810 (1992) that the exemption for religious publications was unconstitutional. Therefore, sales of religious publications are subject to the sales and use tax, unless otherwise exempt under the law. For more information, see SC Information Letter #92-8.

¹⁶ This Attorney General Opinion concluded that “preprints” were an integral part of a newspaper; therefore, the sale or purchase of preprints for incorporation into a newspaper were exempt.

- 12-36-2120(10)(a) Meals or food used in furnishing meals to K-12 students in schools (not for profit)
SC Regulation 117-305.5
- 12-36-2120(26) Television, radio, and cable TV supplies, equipment, machinery, and electricity
SC Regulation 117-328
- 12-36-2120(27) Zoo plants and animals
- 12-36-2130(2) Exhibition rentals for museums (charitable, eleemosynary, or governmental museums)¹⁷
- Temporary Proviso 89.50, (Act No. 310 of 2008) Purchases of tangible personal property during the State fiscal year 2008-2009 for use in private primary and secondary schools, including kindergarten and early childhood education programs, are exempt from the use tax if the school is exempt from income taxes under Internal Revenue Code §501(c)(3).¹⁸

General Public Good Exemptions

- 12-36-2120(10)(b) Meals provided to elderly or disabled persons at home by nonprofit organizations
- 12-36-2120(10)(c) Food sold to nonprofit organizations or food sold or donated by the nonprofit organization to another nonprofit organization
- 12-36-2120(10)(d) Meals or foodstuffs prepared or packaged that are sold to public or nonprofit organizations for congregate or in-home service to the homeless or needy or disabled adults over 18 or individuals over 60. This exemption only applies to meals and foodstuffs eligible for purchase under the USDA food stamp program.
- 12-36-2120(12) Water sold by public utilities and certain non-profit corporations
- 12-36-2120(28) Medicine and prosthetic devices sold by prescription; certain diabetic supplies sold to diabetics under the written authorization and direction of a physician; certain free samples of medicine and certain medicine donated to hospitals; prescription medicine and radiopharmaceuticals used in treating cancer or rheumatoid arthritis, including prescription medicines to relieve the effects of

¹⁷ This exemption only applies to the use tax. If the transaction in question is a sales tax transaction, this exemption does not apply.

¹⁸ This exemption only applies to the use tax. If the transaction in question is a sales tax transaction, this exemption does not apply.

treatment; prescription medicines used to prevent respiratory syncytial virus; disposable medical supplies, such as bags, tubing, needles, and syringes, dispensed by a pharmacist by prescription of a licensed health care provider for the intravenous administration of a prescription drug (only for treatment outside of a hospital, skilled nursing facility, or ambulatory surgical treatment center); and prescription medicine dispensed to Medicare Part A patients in a nursing home.

SC Regulation 117-332; SC Revenue Ruling #03-2; SC Revenue Ruling #91-19; SC Revenue Ruling #90-1; SC Revenue Ruling #98-9; SC Private Letter Ruling #95-6; SC Private Revenue Opinion #01-4; SC Private Letter Ruling #92-4; SC Private Letter Ruling #05-1; SC Private Letter Ruling #93-5; SC Private Letter Ruling #04-5; SC Private Letter Ruling #05-3; SC Private Letter Ruling #03-3; SC Private Letter Ruling #88-22; SC Private Letter Ruling #92-4; SC Private Letter Ruling #92-8; SC Private Revenue Opinion #02-5

12-36-2120(33) Residential electricity and fuel

SC Regulation 117-323; SC Revenue Ruling #89-5; SC Revenue Ruling #92-4; SC Technical Advice Memorandum #87-5; SC Private Letter Ruling #98-4; SC Private Letter Ruling #89-12

12-36-2120(38) Hearing aids¹⁹

12-36-2120(39) Concession sales by nonprofit organizations at festivals

12-36-2120(41) Sales by nonprofit organizations

SC Revenue Ruling #04-8; SC Revenue Procedure #03-6; SC Private Revenue Opinion #01-5

12-36-2120(47) Goods sold to nonprofit hospitals that primarily treat children at no cost to the patient

12-36-2120(57) Annual sales tax holiday on the first Friday, Saturday, and Sunday in August for personal use clothing, clothing accessories, footwear, computers, printers, printer supplies, computer software, bath wash cloths, blankets, bed spreads, bed linens, sheet sets, comforter sets, bath towels, shower curtains, bath rugs, pillows, pillow cases, and school supplies

SC Revenue Ruling #05-9; SC Revenue Ruling #05-10

¹⁹ Hearing aids are defined in South Carolina Code §40-25-20(5) as “an acceptable wearable instrument or device designated or offered to aid or compensate for impaired human hearing and parts, attachments, or accessories, including earmold, but excluding batteries and cords.” Therefore, separate sales of batteries or cords do not fall within this exemption and are subject to the tax.

- 12-36-2120(63) Medicine and medical supplies, including diabetic supplies and diabetic diagnostic and testing equipment, sold to a health care clinic providing free medical and dental care to all patients
- 12-36-2120(74) Durable medical equipment and related supplies as defined under federal and state Medicare and Medicaid laws if (a) paid directly by funds of South Carolina or the United States under the Medicare and Medicaid programs, (b) state and federal law prohibits the payment of the sales and use tax, and (c) the sale is by a provider with a South Carolina retail license whose principal place of business is in South Carolina.²⁰
- 12-36-2120(75) Unprepared food that lawfully may be purchased with United States Department of Agriculture food coupons. This exemption does not apply to local taxes unless the local tax specifically exempts the sale of such food
- SC Regulation 117-337; SC Revenue Ruling #07-4*
- 12-36-2120(76) Annual sales tax holiday on the Friday and Saturday after Thanksgiving for handguns (as defined in Code Section 16-23-10(1)), rifles and shotguns²¹
- 12-36-2120(77) Annual sales tax holiday during the month of October (beginning in 2009 and ending 2018) for certain energy efficient products, provided certain revenue growth forecasts are met²²

²⁰ An uncodified provision of the legislation that enacted this exemption provides that the exemption will be phased in by reducing the rate of tax. For sales made on or after July 1, 2007, the tax rate is 5.5%. Subsequent tax rate reductions are dependent on a forecast by the Board of Economic Advisors (“BEA”) that the annual general fund growth for the next fiscal year (July 1 through June 30) equals at least 5%. This determination will be made each February 15th and if a 5% or more annual general fund growth is forecast, then the tax rate will be reduced further as follows: (a) 4% for sales made on or after July 1st of next State fiscal year (July 1 through June 30) following the next February 15th forecast by the BEA meeting the 5% growth requirement, (b) 3% for sales made on or after July 1st of next State fiscal year (July 1 through June 30) following the next February 15th forecast by the BEA meeting the 5% growth requirement, (c) 2% for sales made on or after July 1st of next State fiscal year (July 1 through June 30) following the next February 15th forecast by the BEA meeting the 5% growth requirement, and (d) 1% for sales made on or after July 1st of next State fiscal year (July 1 through June 30) following the next February 15th forecast by the BEA meeting the 5% growth requirement. Sales on or after July 1st of the next State fiscal year following the next February 15th forecast by the BEA meeting the 5% growth requirement will be fully exempt without regard to subsequent BEA forecasts.

²¹ On June 26, 2008, the Supreme Court of South Carolina accepted original jurisdiction in *The American Petroleum Institute and BP Products North America Inc v. South Carolina Department of Revenue, et al.* The Petitioners are seeking a declaratory judgment that Senate Bill 1143, Section 3 (Act No. 338), dealing with motor fuel products offered by a terminal, violates the one subject rule of the South Carolina Constitution, Article III, Section 17 and is unconstitutional. The Court has issued a temporary injunction enjoining the Respondents from implementing Section 3. The Department will issue additional information if the Court’s decision affects Senate Bill 1143, Section 2, concerning the Sales Tax Holiday – Handguns, Rifles, and Shotguns.

²² On June 26, 2008, the Supreme Court of South Carolina accepted original jurisdiction in *The American Petroleum Institute and BP Products North America Inc v. South Carolina Department of Revenue, et al.*

Temporary Viscosupplementation therapies (for State fiscal year 2008 –
Proviso 89.92 2009)
(Act No. 310 of 2008)

Alternative Energy Exemptions

- 12-36-2120(71) Any device, equipment, or machinery that is (a) operated by hydrogen or fuel cells, (b) used to generate, produce, or distribute hydrogen and designated specifically for hydrogen applications or for fuel cell applications, and (c) used predominantly for the manufacturing of, or research and development involving hydrogen or fuel cell technologies.
- 12-36-2120(72) Building material used to construct a new or renovated building in a research district and machinery or equipment located in a research district. The sales tax that would have been assessed must be invested by the taxpayer in hydrogen or fuel cell machinery or equipment located in the same research district within 24 months of the exempt purchase.

B. Other Sales and Use Tax Exemptions Authorized by the General Assembly

In addition to the sales and use tax exemptions authorized by the General Assembly in the sales and use tax law,²³ the General Assembly has authorized sales and use tax exemptions in other provisions of the South Carolina Code of Laws. While the code sections authorizing these exemptions are listed above under the exemption for “Transactions that are prohibited from being taxed by U.S. or State Constitutional provisions or federal or state law,” the following will provide additional details about these exemptions.

Some of these exemption provisions exempt a specific transaction and some exempt a specific entity. In the case of an exemption provision involving a specific entity, each statutory provision must be reviewed to determine if sales to the entity are exempt, sales by the entity are exempt, or if both sales to and sales by the entity are exempt. **Please note that the list of transactions that are prohibited from being taxed by state law is not all-inclusive.**

The Petitioners are seeking a declaratory judgment that Senate Bill 1143, Section 3 (Act No. 338), dealing with motor fuel products offered by a terminal, violates the one subject rule of the South Carolina Constitution, Article III, Section 17 and is unconstitutional. The Court has issued a temporary injunction enjoining the Respondents from implementing Section 3. The Department will issue additional information if the Court’s decision affects Senate Bill 1143, Section 1, concerning the Sales Tax Holiday – Energy Efficient Products.

²³ Chapter 36 of Title 12 of the South Carolina Code of Laws.

Caution: The exemptions below are briefly described. See the statute cited for the specific exemption details. If a transaction does not squarely fall within the requirements of an exemption statute and applicable regulations, the exemption does not apply.

South Carolina Code §58-25-80 (Regional Transportation Authorities)

This exemption provides that a regional transportation authority shall not pay any sales tax or use tax. In addition, it provides that a regional transportation authority shall not pay any state or local ad valorem tax, income tax, fuel tax, excise tax or any other use taxes or taxes from which municipalities and counties are exempt.²⁴

South Carolina Code §56-19-480 (Insurance Companies and Motor Vehicles)

This exemption provides that vehicles that have been declared a total loss and are transferred to or from an insurance company in settlement of a claim are exempt from casual excise tax and sales and use taxes.²⁵

South Carolina Code §44-7-2120 (Regional Health Services Districts)

This exemption provides that the gross proceeds of the sale of any property owned by a regional health services district and used in the construction and equipment of any health care facilities for a district is exempt from the sales taxes and all similar excise taxes. In addition, the exemption provision states that it is the intent of the General Assembly that a regional health services district incur no tax liability to the State or any of its political subdivisions except to the extent that sales and use taxes may be payable on the purchases of goods or equipment by the regional health services district.²⁶

This provision also provides exemptions for other taxes. See the code section for details.

South Carolina Code §38-29-150 (South Carolina Life and Accident and Health Insurance Guaranty Association)

This provision exempts the South Carolina Life and Accident and Health Insurance Guaranty Association from payment of all fees and all state, county, and municipal taxes.

²⁴ See 1985 Op. Atty. Gen. No. 85-120, p. 329.

²⁵ See SC Revenue Ruling #93-13 and SC Revenue Ruling #08-8.

²⁶ See also Administrative Law Court Decision 06-ALJ-17-0619-CC (2008).

South Carolina Code §38-31-130 (South Carolina Property and Casualty Insurance Guaranty Association)

This provision exempts the South Carolina Property and Casualty Insurance Guaranty Association from payment of all taxes levied by this State or any of its political subdivisions, except taxes levied on real or personal property.

South Carolina Code §12-11-30 (Banks)

This provision provides that the income tax paid by banks²⁷ is in lieu of all other taxes on banks, except the use tax, the deed recording fee, and taxes on real property. The real property of a bank is taxed in the place where it is located.

South Carolina Code §12-13-50 (Building and Loan Associations)

This provision provides that the income tax paid by building and loan associations²⁸ shall be in lieu of any and all other taxes on such associations, except use taxes, deed recording fees, and taxes on real property. The real property of any such association shall be taxed in the place where it may be located, the same as the real property of individuals.

South Carolina Code §13-17-90 (South Carolina Research Authority)

This provision states that the South Carolina Research Authority shall pay no taxes or assessments including, but not limited to, income tax, sales and use tax, and property tax upon any of the property acquired by it or upon any of its activities; except that the South Carolina Research Authority is entitled to the above-referenced sales and use tax exemption only in (1) transactions to obtain tangible personal property for the authority's own use or consumption, (2) transactions related to authority contracts with governmental entities and nonprofit entities, and (3) transactions related to authority contracts with private, for-profit entities doing business in South Carolina, where these contracts do not place these entities in competition with other private, for-profit entities doing business in South Carolina.

South Carolina Code §§12-63-20 and 12-63-30 (Motion Picture Production Companies²⁹)

This provision provides a sales and use tax exemption for all qualifying tangible personal property used in connection with the South Carolina filming by a “motion picture production company” that is approved by the South Carolina Film Commission at the South Carolina Department of Parks, Recreation and Tourism.

For more details on this exemption, see Chapter 19 of this publication.

²⁷ Chapter 11 of Title 12 of the South Carolina Code of Laws.

²⁸ Chapter 13 of Title 12 of the South Carolina Code of Laws.

²⁹ See also Chapter 19 of this publication and SC Revenue Ruling #08-12.