
State of South Carolina
Department of Revenue
301 Gervais Street, P.O. Box 125, Columbia, South Carolina 29214
Website Address: <http://www.sctax.org>

July 28, 2006

The Honorable Stephen T. Draffin
Legislative Council of the General Assembly
P.O. Box 11489
Columbia, South Carolina 29211

The Honorable Monty Felix, Chairman
South Carolina Small Business Regulatory Review Committee
1201 Main Street, Suite 1600
Columbia, South Carolina 29201

Re: Report to the Code Commissioner
Report to the Small Business Regulatory Review Committee

Dear Gentlemen:

Code Section 1-23-120 and Code Section 1-23-270 requires each state agency to review the regulations under its authority – one review for the Code Commissioner and a second review for the Small Business Regulatory Review Committee.

The Department of Revenue has conducted both of these reviews and has combined the findings into the enclosed report.

If you have any questions concerning these reports and any specific regulation proposals, please call me.

Yours very truly,

John P. McCormack
Policy Section
(803) 898-5138

cc: Ray N. Stevens, Director
Harry T. Cooper, Deputy Director
Richard C. Handel, General Counsel
Meredith F. Cleland

South Carolina Department of Revenue Regulations

The General Assembly has enacted two review provisions concerning regulations promulgated by each state agency.

The first provision requires an agency to conduct a formal review of all its regulations every five years and to submit a report concerning this review to the Code Commissioner. The Department's last report to the Code Commissioner was issued in October of 2001.

The second provision requires the agency to review its regulations with respect to their economic impact on small businesses. This review must be conducted by May of 2009. In addition, the Department must review all future regulations within five years of the publication of the final regulation with respect to a regulation's economic impact on small businesses.

This report will address both these requirements – the five year review for the Code Commissioner and the initial small business review of Department regulations. To comply with the requirement to review regulations and submit a report to the Code Commissioner every five years and the review all future regulations within five year of their publication, the Department intends to combine these reports in the future as well. The next combined report after this one will be issued in 2011.

Report to the Code Commissioner:

Code Section 1-23-120 states in part:

Each state agency which promulgates regulations or to which the responsibility for administering regulations has been transferred shall ... every five years ..., conduct a formal review of all regulations which it has promulgated or for which it has been transferred the responsibility of administering, Upon completion of the review, the agency shall submit to the Code Commissioner a report which identifies those regulations:

- (1) for which the agency intends to begin the process of repeal in accordance with this article;
- (2) for which the agency intends to begin the process of amendment in accordance with this article; and
- (3) which do not require repeal or amendment.”

The Department of Revenue has conducted this review and the following details the Department's plan with respect to the regulations under its authority:

Reorganization of Regulations: In recent years, the Department has, through the regulation approval process established in Chapter 23 of Title 1, reorganized almost all its regulations by subject matter. In addition, each regulation now has several “subsections” numbered in a manner to allow future issues concerning the subject matter to be added on and still be in the same place in the regulation code as other similar issues.

For example, all issues concerning the sales and use tax and agriculture can be found in one regulation under SC Regulation 117-301. This regulation has several “subsections” numbered 117-301.1, 117-301.2, and so on. This change reduced the number of sales and use tax regulations from 225 to 37. Regulations for all other taxes and regulatory matters (e.g., alcoholic beverage regulations) have been reorganized in a similar manner.

In addition, as part of this reorganization of regulations, various tax and regulatory regulations have been repealed since they were no longer needed due to changes in the law.

Except for the two regulations (noted below), the reorganization of Department of Revenue regulations has been completed with respect to:

Administrative Regulations	Article 10 of Chapter 177
Sales and Use Tax Regulations	Article 11 of Chapter 177
Income Tax Regulations	Article 12 of Chapter 177
Withholding Tax Regulations	Article 18 of Chapter 177
Corp. License Fee/Annual Report Regulations	Article 20 of Chapter 177
Miscellaneous Tax Regulations	Article 24 of Chapter 177
Property Tax Regulations	Article 37 of Chapter 177

To complete this reorganization process, the Department is in the process of amending the following two regulations;

SC Regulation 117-8. This property tax regulation concerns the responsibilities of the Department of Revenue with respect to property taxation and fees in lieu of property taxes. Since this same regulation was codified on June 25, 2004 as SC Regulation 117-1720.1 as part of the reorganization discussed above, SC Regulation 117-8 is therefore no longer needed. The proposal to repeal this regulation was approved by the General Assembly on January 17, 2006 and became effective upon its publication in the State Register on February 24, 2006. (Note: See the information below under “current Regulation Proposals” concerning SC Regulation 117-1720.1.)

SC Regulation 117-105. This property tax regulation concerns the definitions for “real property” and “personal property.” The Department is presently researching this matter and is considering recommending that this regulation be revised to provide more complete definitions for real and personal property and less examples. This regulation would also be renumbered to conform to the Department’s reorganization of all property tax regulations. The Department

hopes to publish the Notice of Drafting with respect this proposal sometime in 2006 or 2007.

Other Regulation Changes: Since the Department's last report in October of 2001, other changes have been made to various regulations. The following will summarize these changes.

SC Regulation 7-201 This alcoholic beverage regulation was added in 2003 to provide guidance for protesting the issuance or renewal of beer and wine permits and alcoholic liquor licenses.

SC Regulations 117-190, 117-190.1, 117-190.2 and 117-190.3. These regulations concerned locations that operated video poker machines and were repealed since such machines are now illegal in South Carolina.

SC Regulation 7-702.5. This regulation concerns a prohibition against selling or delivering beer or wine to anyone who remains in a motor vehicle during the transaction. This regulation is specifically intended to prohibit the sale of beer and wine at drive-in/drive-thru establishments and on a curbside service basis. This regulation incorporated the provisions of former SC Regulation 7-98, which was inadvertently deleted during the drafting process in 2004 when all alcoholic beverage regulations were reorganized by subject matter.

SC Regulation 117-302.5. This regulation concerns the sales and use tax for machines used in manufacturing, processing, compounding, mining, or quarrying tangible personal property for sale. As a result of two recent court decisions, the Department issued an advisory opinion, SC Revenue Ruling #04-7. This regulation was amended to combine the guidance provided in the advisory opinion, which is based on the two court cases, with provisions of the previous regulation that were still applicable under the two court decisions. *This regulation was approved by the General Assembly on January 17, 2006 and became effective upon its publication in the State Register on February 24, 2006.*

SC Regulation 7-200.1. This regulation concerns alcoholic beverage license applications and deletes the cooking license provisions of subsection F and replaces those provisions with one stating that the holder of a retail permit or license issued pursuant to Title 61 must obtain and maintain a retail sales tax license issued pursuant to Chapter 36 of Title 12. In addition, the provisions state that if the retail sales tax license is revoked, then the Department must cancel, suspend or revoke all permits and licenses issued under Title 61. It also amended subsection J to clarify that a request for refund only applies to the permit or license fee when a timely refund request is received with respect to a permit or license that was not used. *This regulation was approved by the General Assembly on January 17, 2006 and became effective upon its publication in the State Register on February 24, 2006.*

SC Regulation 117-1400. This regulation concerns the electric power tax and was amended to state that the Department will no longer use the Standard Industrial Classification (“SIC”) Manual from 1967 as its guide in classifying “industrial customers” as that term is used in the electric power tax law. The Department will use the North American Industry Classification System (“NAICS”) Manual as its guide in classifying industrial customers under the electric power tax law. The NAICS Manual has replaced the U.S. Standard Industrial Classification (SIC) system as the classification system used by the Census Bureau. *This regulation was approved by the General Assembly on January 17, 2006 and became effective upon its publication in the State Register on February 24, 2006.*

SC Regulation 117-325. This regulation concerns the sales and use tax and the bulk sales statute. Since the bulk sales statute in Title 36, Chapter 6 of the Commercial Code was repealed effective July 1, 2001 by Act 67 of 2001, this regulation was no longer needed. *This regulation was approved by the General Assembly on January 17, 2006 and became effective upon its publication in the State Register on February 24, 2006.*

SC Regulation 117-875. This regulation concerns voluntary “check-offs” on income tax returns. Act No. 248 of 2004, Part IB, Section 64, Proviso 64.16, “Voluntary Tax Contribution K-12,” and Proviso 64.17, “Voluntary Tax Contribution for PRT,” stated that these check off provisos would be implemented by the Department by regulation. This regulation is also used for other check offs currently provided in Chapter 6 of Title 12 and any future check offs. *This regulation was approved by the General Assembly on January 17, 2006 and became effective upon its publication in the State Register on February 24, 2006.*

SC Regulation 117-334. This regulation concerns the sales and use tax and interstate commerce. The regulation clarifies which tax applies, the sales tax or the use tax, to goods being shipped into South Carolina. The regulation represents the longstanding position of the Department of Revenue and is designed to assist South Carolina purchasers in determining when they are liable for the use tax. *This regulation was approved by the General Assembly on May 20, 2006 and became effective upon its publication in the State Register on June 23, 2006.*

SC Regulation 117-318.1. This regulation concerns the application of the sales and use tax to charges for warranty agreements. The regulation was repealed since it was no longer needed due to a change in the sales and use tax law on warranty agreements that became effective October 1, 2005 as a result of Act 161, Section 19, of 2005. *This regulation was approved by the General Assembly on May 20, 2006 and became effective upon its publication in the State Register on June 23, 2006.*

SC Regulation 7-200.2. This regulation concerns records kept by beer and wine permittees and liquor licensees of beer, wine and liquor purchases. The regulation no longer requires the holder of a beer, wine or liquor permit or license to

maintain the records of purchases of beer, wine or liquor at the location to which these beverages were delivered. The regulation requires that such records be maintained for three (3) years within South Carolina and be available for inspection by an authorized representative of the Department of Revenue or the State Law Enforcement Division upon ten days notice. This change allows a person with multiple locations to consolidate the purchase records in one location within the State instead of having to maintain the purchase records for each location at that location as required now. *This regulation was approved by the General Assembly on May 20, 2006 and became effective upon its publication in the State Register on June 23, 2006.*

SC Regulation 117-335. This regulation concerns the application of the sales and use tax to manufactured and modular homes. The regulation addresses a change in the law in 2004 as to how modular homes are taxed and addresses the issue of furniture and appliance sold with manufactured and modular homes. The portion of the regulation concerning the taxation of furniture and appliances sold with manufactured and modular homes is consistent with present Department of Revenue policy. *This regulation was approved by the General Assembly on May 20, 2006 and became effective upon its publication in the State Register on June 23, 2006.*

SC Regulation 117-328. This regulation concerns the sales and use tax and radio and television stations. The amendment to this regulation deleted the last paragraph of the regulation. This paragraph concerned outdated “wired music.” Such music is now transmitted via satellite and the charges for such transmissions, in the opinion of the Department, are subject to the tax under Code Sections 12-36-910(B)(3) and 12-36-1310(B)(3)) which impose the sales tax and use tax on charges for the ways or means for the transmission of the voice or messages. In addition, the last sentence of the paragraph concerning the proceeds from wired music was in conflict with the provisions of Code Sections 12-36-910(B)(3) and 12-36-1310(B)(3). *This regulation was approved by the General Assembly on May 20, 2006 and became effective upon its publication in the State Register on June 23, 2006. A small business regulatory review was also prepared and submitted to the Small Business Regulatory Review Committee in February of 2006.*

Current Regulation Proposals: The Department is currently working on the following proposals to amend, add or repeal regulations.

These proposals are listed on a “Proposed Regulation Calendar” on the Department’s website (<http://www.sctax.org/Tax+Policy/Policy/Proposed+Regulation+Calendar.htm>) where the public may monitor the status of each proposal and submit comments and suggestions with respect to each proposal.

SC Regulation 117-300.6. This regulation concerns retail licenses and partnerships. Presently, this regulation is out of date since this regulation references an annual license and the retail license is no longer issued on an annual basis. In addition, Federal law states that a partnership is terminated if there is a 50% change in ownership over a 12 month period; however, federal law states that the partnership does not need a new employer identification number (“EIN”). This proposal would not require a new retail license in such cases (similar to the federal law that does not require a new EIN). The proposal would also not require a new retail license with respect to certain conversions of partnerships to either limited liability partnerships or limited liability companies. *This proposal was submitted to the General Assembly in March of 2006 for its review during the 2006 session.*

Future Regulation Proposals: The Department is considering other proposals to amend or repeal regulations; however, no action has been taken on any such proposals at this time. When a Notice of Drafting is ready for publication in the State Register, the proposal will be posted on the Department’s “Proposed Regulation Calendar” that it maintains on its website (<http://www.sctax.org/Tax+Policy/Policy/Proposed+Regulation+Calendar.htm>). Under consideration for possible amendment or repeal are SC Regulation 117-309.8 (Sales and Use Tax – Undertakers); SC Regulation 117-329 (Sales and Use Tax – Communications); SC Regulation 117-329 (Sales and Use Tax – Manufactured and Modular Homes); SC Regulation 117-640.1 (Income Tax – Military Pay, Non-Service Income, and Income Earned by Military Spouses); and SC Regulation 117-1720 (Property Tax - Department of Revenue Responsibilities).

Small Business Regulatory Review Report:

In 2004 the General Assembly enacted the "South Carolina Small Business Regulatory Flexibility Act of 2004." The legislation outlines the importance of small businesses and the need for state agencies to develop regulations that meet the goals of the Act - which is essentially to avoid placing unnecessary burdens on small employers and to consider small businesses when promulgating regulations.

Code Section 1-23-270(F) states:

(F)(1) Within five years of the effective date of this article, each agency shall review all agency regulations existing at the time of the effective date to determine whether to continue the regulations without change or amend or rescind them to minimize economic impact of the regulations on small businesses in a manner consistent with the stated objective of applicable statutes. If the head of the agency determines that completion of the review of existing regulations is not feasible by the established date, the agency shall publish in the State Register a statement certifying that determination.

(2) Regulations that take effect on or after the effective date of this article must be reviewed within five years of the publication of the final regulation in the State Register and every five years after that to ensure that they minimize economic impact on small businesses in a manner consistent with the stated objectives of applicable statutes.

(3) In reviewing regulations to minimize their economic impact on small businesses, the agency shall consider the:

(a) continued need for the regulation;

(b) nature of complaints or comments received concerning the regulation from the public;

(c) complexity of the regulation;

(d) extent to which the regulation overlaps, duplicates, or conflicts with other federal, state, and local governmental regulations; and

(e) length of time since the regulation has been evaluated or the degree to which technology, economic conditions, or other factors have changed in the area affected by the regulation.

Under the above provision, the Department must review its present regulations within 5 years of the effective date of the Act (effective date - May 18, 2004) to determine whether to continue a regulation without change or to amend or rescind a regulation to minimize the economic impact on small businesses. A similar review is required of all future regulations within five years of the publication of the final regulation in the State Register.

In recent years, the Department has, through the regulation approval process established in Chapter 23 of Title 1, reorganized almost all its regulations by subject matter. In addition, each regulation now has several “subsections” numbered in a manner to allow future issues concerning the subject matter to be added on and still be in the same place in the regulation code as other similar issues.

For example, all issues concerning the sales and use tax and agriculture can be found in one regulation under SC Regulation 117-301. This regulation has several “subsections” numbered 117-301.1, 117-301.2, and so on. This change reduced the number of sales and use tax regulations from 225 to 37. Other taxes have been reorganized in a similar manner.

In addition, as part of this reorganization of regulations, various tax and regulatory regulations have been repealed since they were no longer needed due to changes in the law.

Except for the two regulations, the reorganization of Department of Revenue regulations has been completed with respect to:

Administrative Regulations	Article 10 of Chapter 177
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The Department believes this reorganization has simplified our regulations for all taxpayers, but should be especially helpful to the small business community.

As part of its review under the South Carolina Small Business Regulatory Flexibility Act, the Department requested assistance in this “small business” review of our regulations from several business organizations that represent small businesses. In addition, the Department sought comments and suggestions directly from the small business community through website postings and news releases. Each letter, notice and news release requested that comments and suggestions be submitted to the Department by September 1, 2005.

During this process, the Department:

1. Sent letters on February 8, 2005 to the following business organizations requesting their assistance in identifying any regulations that may place an undue burden on small businesses:

South Carolina Small Business Chamber of Commerce
South Carolina Chamber of Commerce
National Federation of Independent Businesses
South Carolina Hospitality Association
South Carolina Retail Association

2. Posted on February 16, 2005 a “Notice to Small Businesses” on the Department’s website (www.sctax.org). The notice requested the assistance of small businesses in identifying any regulations that may place an undue burden on small businesses. A link to this notice was posted in the “What’s New” section of our website, which is prominently displayed on the first page of the website, and remained on the website during the entire review period.

3. Published a “Notice to Small Businesses” in the February, 2005 edition of the State Register. The notice requested the assistance of small businesses in identifying any regulations that may place an undue burden on small businesses.

4. Published on February 14, 2005 information concerning the “small business” review of Department of Revenue regulations in a weekly e-mail newsletter to Department employees to ensure all employees were aware of the review. This would allow employees to submit comments and suggestion as well as direct taxpayers to the employee with the responsibility for gathering the comments and suggestion submitted by the public.
5. Posted on February 17, 2005 a link to the Department’s “Notice to Small Businesses” on the website of the Office of Small and Minority Businesses, a division of the Governor’s Office. The notice requested the assistance of small businesses in identifying any regulations that may place an undue burden on small businesses. A link to this notice was posted on the first page of their website and remained on their website during the entire review period. *The Department would like to thank the Governor’s Office, in particular Ms. Shirley Mack and Mr. Robert Barnett of the Office of Small and Minority Businesses, for their assistance in this matter.*
6. Issued on February 18, 2005 via e-mail a “News Release” to all daily newspapers and others (over 46 news releases). The news releases requested the assistance of small businesses in identifying any regulations that may place an undue burden on small businesses.
7. Issued on July 21, 2005 via e-mail a second “News Release” to all daily newspapers and others (over 46 news releases). The news releases requested the assistance of small businesses in identifying any regulations that may place an undue burden on small businesses.

As a result of this public review and comment period, the Department did not receive any comments or suggestions stating that its regulations placed an undue burden of small businesses. The Department believes that it did not receive any negative comments concerning its regulations for the following reasons:

1. The Department’s recent reorganization of its regulations has made it much easier for taxpayers to find one regulation that deals with the subject matter that interests them and concerns their business.
2. The Department has and continues to eliminate regulations that have become outdated due to law changes. This reduces any taxpayer confusion that may result from having a published regulation that is no longer needed.
3. The Department, since the reorganization of its regulations, continues to amend regulations to ensure they are up-to-date.
4. The Department, since the reorganization of its regulations, has established a “Proposed Regulation Calendar” on its website at <http://www.sctax.org/Tax+Policy/Policy/Proposed+Regulation+Calendar.htm>.

This is in addition to the requirements established in Chapter 23 of Title 1. By visiting this “Proposed Regulation Calendar,” taxpayers may view regulation proposals, submit comments and suggestions, and determine the status of each proposal. Once the Department is ready to publish a “Notice of Drafting,” information concerning the proposal is posted on this calendar and remains on the calendar throughout the process. In fact, staff drafts of Notices of Drafting and Notices of Proposed Regulation (Public Hearing Notices) are posted on this calendar before they are published in the State Register giving taxpayers additional time to comment.

As stated above, the Department did not receive any comments or suggestions that dealt with regulations placing an undue burden on small businesses. The comments received during the review process essentially concerned the law itself or the taxpayer’s dealing with other agencies or governmental entities. The following is a summary of each of the comments received and is provided for completeness:

Comment #1 (Dated March 1, 2005): A taxpayer expressed concerns about the corporate license fee. The taxpayer had prepared its federal and state income tax return for filing and did not owe any additional federal taxes but owed South Carolina an additional \$1,458.00. This was not the result of additional income taxes due, but was the result of the corporate license fee due by the taxpayer.

This issue did not concern a regulation. The imposition of the corporate license fee is established by the statute. The Department can not change this situation by regulation and that any change would require a change in the law by the General Assembly. The taxpayer was advised of this and that the General Assembly had implemented many tax incentives over the years and some of these were applicable to the corporate license fee. The taxpayer was also advised of several Department publications that explained these tax incentives.

Comment #2 (Dated March 11, 2005): A taxpayer expressed concerns about having to complete so many “Change of Address” forms for different agencies and local government jurisdictions.

The taxpayer was advised that none of the regulations dealt with this issue, but was informed of the Department’s work with other agencies to create an online “one-stop” system for taxpayers. This system, known as SCBOS (South Carolina Business One-Stop), is currently operational, but does not yet include a change of address option. This is, however, one of the projects on the “to do” list of SCBOS.

Comment #3 (Dated July 30, 2005): A taxpayer expressed a concern about the paperwork required of a business and the collection of the use tax.

The Department does not have a regulation that specifically states what businesses must keep what records. Code Section 12-54-210 states that a taxpayer must maintain records and SC Regulation 117-200 states that a taxpayer

must “maintain all records that are necessary to a determination of the correct tax liability under the laws administered by the Department.” However, this regulation establishes requirements, consistent with other states, for maintaining records generated through various computer, electronic, and imaging processes and systems. This ensures companies have a relatively “uniform” requirement among the states. It was a recommendation of the Multistate Tax Commission.

The requirements of the use tax are established under the law. A regulation does address collection and remittance responsibilities of the use tax; however, the seller must have nexus with South Carolina. The taxpayer’s concern addressed the need to ensure everyone is paying the use tax and this is not addressed in a regulation. The Department addresses this issue through its various enforcement procedures, agreements with other states to share information, and taxpayer education.

Comment #4 (Dated August 2, 2005): A taxpayer expressed concern about the limitation on the discount allowed retailers who file and remit their sales and use taxes timely. The discount, for most retailers, is limited to \$3,000.00 during any one fiscal year.

The limitation on the discount is not established by regulation. The limitation is established in the law and cannot be changed by regulation.

Comment #5 (Dated August 12, 2005): A taxpayer expressed concerns about filing a sales tax return for each location and about paperwork required of a business.

The requirement to file sales tax return by locations is established by law and is needed to ensure local jurisdictions receive any local sales and use taxes that they have imposed and are being administered and collected by the Department. This requirement is not established by regulation.

The Department does not have a regulation that specifically states what businesses must keep what records. Code Section 12-54-210 states that a taxpayer must maintain records and SC Regulation 117-200 states that a taxpayer must “maintain all records that are necessary to a determination of the correct tax liability under the laws administered by the Department.” This regulation establishes requirements, consistent with other states, for maintaining records generated through various computer, electronic, and imaging processes and systems. This ensures companies have a relatively “uniform” requirement among the states. It was a recommendation of the Multistate Tax Commission.

Comment #6 (Dated August 26, 2005): A taxpayer expressed concern the requirement by a utility that all floatations on a lake owned by the utility be encapsulated by January 2007.

This was not a tax issue and the taxpayer was informed of other state or federal agencies that might deal with this matter and to whom the taxpayer could direct his concern.

Comment #7 (Date Unknown): A taxpayer operates a “high-end” car wash and expressed concerns about the restrictions (permits, fees, etc.) imposed on it by local governments when it was starting its business and the high cost of the use tax imposed upon the equipment it purchased from out-of-state

The taxpayer was advised that the restrictions imposed by local governments in this case were not under the authority of the Department, but were issues that would need to be addressed by either the local government or the General Assembly. The taxpayer was also advised that the imposition of the use tax was established by statute, and not regulation. (Note: A regulation does address collection and remittance responsibilities of the use tax.)

Based on the above and the Department’s review of its regulation based on the standard of review established in Code Section 1-23-270(F)(3) (continued need, complexity, extent of overlap, duplication, or conflict with other federal, state and local regulations, and changes in technology, the economy and other factors), and the Department’s prior efforts to reorganize and update regulations as described in the Report to the Code Commissioner, the Department believes its regulations, and regulations it is presently proposing, are in compliance with the intent of the General Assembly and do not place an undue burden on small businesses¹.

¹ Please note that the Department prepared, at the request of the Small Business Regulatory Review Committee, a small business regulation review with respect to its proposal to repeal the portion of SC Regulation 117-328 concerning “wired music.” This report was submitted to the Small Business Regulatory Review Committee in March of 2006. The Department’s proposal with respect to SC Regulation 117-328 was submitted to the General Assembly in January of 2006 for its review during the 2006 session. The General Assembly approved SC Regulation 117-328 on May 20, 2006 and it became effective upon publication in the State Register on June 23, 2006.