

2008
Sales & Use Tax
Seminar Manual



South Carolina
Department of Revenue
www.sctax.org

Introduction

Sales and use taxes, which are used exclusively for education, are an important component of the state's annual budget.

The purpose of this handbook is to assist business owners, employees and others in gaining a better understanding of the sales and use tax laws and the impact these taxes may have on their business. We know that understanding your obligations is the first step in complying with tax laws.

While we strive to present this manual correctly, it is possible some errors may be found. Furthermore, tax law changes rapidly. The manual is written in general terms for widest possible use. It is intended as a guide only, and the application of its contents to specific situations will depend on the particular circumstances involved. It may not be relied on as a substitute for obtaining professional advice and researching original sources of authority. Nothing in this manual supersedes, alters or otherwise changes provisions of the South Carolina Code, regulations or department rulings.

We would appreciate your suggestions regarding how we can make this seminar and manual more useful for you and your business. Please call Sara Unrue, Taxpayer Education Coordinator, (803)898-5593 or email your comments to TaxpayerEd@sctax.org.

**South Carolina Department of Revenue
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This manual was produced with the assistance of many Department of Revenue Employees including:

Ulysses Byrd
Susan Cameron
Gary Heuer
Karen Hildebrand

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NEW INFORMATION

The following is a list of sales and use tax legislative changes for 2008.

PRIVATE SCHOOLS, USE TAX EXEMPTION

This temporary proviso exempts the use tax on purchases of tangible personal property for use in primary and secondary schools including kindergarten and early childhood by schools exempt from income taxes under IRS Code Section 501(c)(3). The exemption does not apply to purchases subject to sales tax. This provision is effective only for the state fiscal year beginning July 1, 2007 and ending June 30, 2008, unless reenacted by the General Assembly. (Proviso 72.51)

SPECIFIC FUEL EFFICIENT VEHICLES QUALIFY FOR TAX REBATE

The 2007 sales tax rebate program has ended. However, beginning July 1, 2008 and ending June 30, 2013, South Carolina car buyers who make an in-state purchase or lease of alternative fuel or fuel-efficient vehicles that meet specific criteria will have an opportunity to claim a sales tax rebate. The newest sales tax rebate will be phased in at twenty percent (20%) a year until the rebate equals three hundred dollars. Under this new sales tax rebate provision, the amount of rebate a person may claim is limited to the amount of rebate in effect for the year in which the vehicle was purchased. **The rebate is also limited by the total tax dollar amount paid to the retailer.** Vehicles that qualify for the rebate are flex-fuel vehicles, hydrogen fuel vehicles and advanced lean-burned vehicles, a hybrid vehicle, an electric vehicle, a plug-in hybrid vehicle and a high fuel-economy vehicle. (Adds Code Section 12-63-20)

Additionally, a rebate is allowed for not more than five hundred dollars for the purchase of equipment for conversion of a conventional hybrid electric vehicle to a plug-in hybrid electric vehicle or for the in-state purchase of EPA-certified equipment for conversion of conventional vehicles to operate on propane, compressed natural gas, liquefied natural gas, hydrogen, or E85. The amount of rebate that a person may claim is limited to the amount of rebate in effect for the year in which the vehicle was converted. The rebate will be provided in the form of a payment after the proper forms are submitted to the Department of Revenue. Forms are available from car dealers, the South Carolina Department of Motor Vehicles and the Department of Revenue offices or on the Department of Revenue website.

CERTAIN CONSTRUCTION MATERIALS - EXEMPTION AMENDED

The exemption for construction materials used in the construction of a single manufacturing and distribution facility that meet specific capital investment in the State over an eighteen-month period has been amended. Under this amendment, the exemption now applies to a new or expanded manufacturing or distribution facility or one that serves both purposes at a single site effective July 1, 2011. Beginning July 1, 2007, the state sales tax rate on qualifying construction materials is 4% and the rate decreases one percent per year until the total exemption is reached. (Amends Code Section 12-36-2120)

Effective July 1, 2011, construction materials used in the construction of a new or expanded single manufacturing or distribution facility, or one that serves both purposes, with a capital investment of at least one hundred million in real and personal property at a single site in the State over an eighteen-month period. The taxpayer must provide notice of the exemption, and the Department of Revenue may assess taxes owing in the manner provided in Section 12-36-2120(51)."

REDUCED SALES TAX ON FOOD

Effective November 1, 2007, sales of unprepared food items eligible to be purchased with United States Department of Agriculture food coupons (i.e., electronic benefit transfer cards) will be exempt from the state sales and use tax rate. This exemption does not apply to local sales and use taxes administered by the Department of Revenue (DOR) on the behalf of the counties unless otherwise specifically exempted.

As a result, the retail sale of unprepared food that is exempt from the state sales tax must be reported on the Form ST-3 worksheet and ST-389 worksheet if it is subject to a counties local sales and use administered by DOR. (Amended Code Section 12-36-2120)

TECHNOLOGY INTENSIVE FACILITIES SALES TAX EXEMPTION

In 2006 a sales tax exemption relating to electricity used by a technology intensive facility was added to Code Section 12-36-2120. This exemption applied to a facility that qualified for the sales tax exemption for computer equipment used in connection with a technology intensive facility as defined in Code Section 12-6-3360 (M)(14)(b). This exemption has been amended to clarify the running of the periods of limitation within which the Department may assess taxes under Code Section 12-54-85. (Amends Code Section 12-36-2120)

VISCOSUPPLEMENTATION THERAPIES

There is a suspension of the state's sales and use tax for viscosupplementation therapies from July 1, 2007 through June 30, 2008. The new law does not allow for refunds for any taxes paid on sales of this product during the suspension. (Proviso 72.97)

SALES TAX EXEMPTION FOR GOLD, SILVER, COINS OR CURRENCY

The state sales and use tax rate imposed on the sales price of gold, silver or platinum bullion, coins (that are or have been legal tender in the United States or other jurisdiction) or currency is exempt of sales and use tax. (Amends Code Section 12-36-2120)

AMUSEMENT PARK - SALES TAX EXEMPTION

Code Section 12-36-2120 is amended to add a sales tax exemption for an amusement park ride and any parts, machinery, and equipment used to assemble, operate, and make up an amusement park ride or performance venue facility located in a qualifying amusement park or theme park and any related or required machinery, equipment, and fixtures located in the same qualifying amusement park or theme park.

Amusement Park or Theme Park qualifying for this exemption is expected to make certain investment and employment qualifications. (Amends Code Section 12-36-2120)

SALES TAX EXEMPTION FOR EQUIPMENT OPERATED BY HYDROGEN OR FUEL CELLS

Effective October 1, 2007, a sales tax exemption is allowed for:

- any device, equipment, or machinery operated by hydrogen or fuel cells, or
- any device, equipment, or machinery used to generate, produce, or distribute hydrogen and designated specifically for hydrogen applications or for fuel cell applications, and
- any device, equipment, or machinery used predominantly for the manufacturing of, or research and development involving hydrogen or fuel cell technologies.

BUILDING MATERIALS, MACHINERY AND EQUIPMENT USED IN A RESEARCH DISTRICT

Effective October 1, 2007, a sales tax exemption is allowed for any building materials used to construct a new or renovated building or any machinery or equipment located in a research district designated by the University of South Carolina, Clemson University, the Medical University of South Carolina, South Carolina State University, or the Savannah River National Laboratory.

Under this exemption, the amount of the sales tax that would be assessed without this exemption provided must be invested by the taxpayer in hydrogen or fuel cell machinery or equipment located in the same research district within twenty-four months of the purchase of an exempt item. (Amends Code Section 12-36-2120)

DURABLE MEDICAL EQUIPMENT - SALES TAX RATE REDUCTION

Effective July 1, 2007, a sales tax exemption is phased-in for the sale of durable medical equipment and related supplies as defined under federal and state Medicare laws. Under this exemption, the State sales tax rate will be reduced to 5.5% for the sale of durable medical equipment and related supplies which is paid directly by funds of this State or the United States under the Medicaid or Medicare law in which state or federal law or regulation authorizing the payment prohibits the payment of sales or use tax.

It further provides that the reduced sales tax applies when such items are sold by a provider with a South Carolina retail license whose principal place of business is in this state. Further reductions in the State sales tax rate will be based upon information provided by the Board of Economic Advisors of annual general fund revenue growth for the upcoming fiscal year, and annually thereafter. (Amends Code Section 12-36-2120)

MEDICARE PART A PRESCRIPTION DRUG - SALES TAX EXEMPTION

The sale of prescription drugs dispensed to Medicare Part A patients residing in a nursing home is exempt of sales tax. (Amends Code Section 12-36-2120)

REGULATION - RETAIL LICENSE AND PARTNERSHIPS

SC Regulation 117-300.6 which applies to the retail licensing requirements under the sales and use tax law has been amended to provide that the retail license is no longer issued on an annual basis. It's, also, makes reference to a partnership engaged in the business of selling tangible personal property at retail must obtain a new retail license or retail licenses if:

- (1) the partnership incorporates,
- (2) a single partner takes over the business and operates it as a sole proprietorship,
- (3) the partnership is terminated (no part of any business, financial operation, or venture of the partnership continues to be carried on by any of its partners in a partnership) and a new partnership is begun, or
- (4) the partnership is otherwise required to obtain a new Taxpayer Identification Number (TIN).

RECENT IMPOSITIONS OF LOCAL OPTION TAXES

- 1) Beaufort County- a 1% Transportation Tax was imposed effective May 1, 2007.
- 2) Florence County- a 1% Capital Projects Tax was imposed effective May 1, 2007.
- 3) Greenwood County- a 1% Capital Projects Tax was imposed effective May 1, 2007.
- 4) Horry County- a 1% Capital Projects Tax was imposed effective May 1, 2007.

The Basics of the South Carolina Sales Tax

The state sales tax is imposed upon every person engaged within this state in the business of selling tangible personal property at retail. The measure, or basis, for the sales tax is the retailer's gross proceeds of sales. The retailer is liable for the tax. The state sales tax rate is 5% for January 1, 2007 through May 31, 2007 and is 6% beginning June 1, 2007.

Definitions:

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

Tangible personal property is personal property that may be seen, weighed, measured, felt, touched, or in any manner perceptible to the senses. It also includes certain services and intangibles - communications, laundry services, accommodations (hotels, motels, etc.) and electricity. It does **not** include stocks, notes, bonds, mortgages or other evidences of debt. It also 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.

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

Sale at retail 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 sales are the total amount proceeding or accruing from the retail sales of a business.

More about Gross Proceeds of Sales:

Gross proceeds of sales - the measure or basis for the sales tax - includes:

- proceeds of consignment sales; and

- the fair market value of tangible personal property previously purchased at wholesale that is withdrawn from inventory for personal or business use; and
- proceeds accruing or proceeding from the sale or recharge at retail of prepaid wireless calling cards.

Also, a retailer **may not deduct** from gross proceeds of sales any costs that are passed on to his customers, such as:

- cost of goods sold;
- cost of materials, labor or services;
- interest paid;
- transportation costs to acquire inventory; and
- manufacturers or importers excise taxes that are imposed by the federal government.

The following are **not included** in gross proceeds of sales:

- cash discounts allowed and taken;
- The sales price of property returned by customers when the full sales price is refunded in cash or by a credit;
- the value allowed for property taken as trade-ins;
- any excise taxes imposed by the federal government on retail sales;
- interest, fees or charges, however described, that are imposed on a customer for late payment of a bill for electricity or natural gas, or both, whether or not sales tax is required to be paid on the underlying electricity or natural gas bill;
- charges for data processing;
- bad debts and uncollectible accounts actually written off on the SC state income tax return; and
- the 5% excise tax imposed on alcoholic liquors by the drink pursuant to code section 12-33-245

Special impositions of the Sales Tax

In addition to applying to sales of items one normally thinks of as tangible personal property (e.g. furniture, appliances, clothing, computers, etc.), the sales tax also applies to sales in South Carolina of:

- 900/976 telephone services and certain other communications (however, the tax imposed upon communication does not apply to certain data processing as defined in §12-36-910);
- laundry and dry cleaning services; electricity; and
- the fair market value of tangible personal property brought into South Carolina by its manufacturer for storage, use or consumption in South Carolina.

Freight or Transportation Charges

Charges by freight or transportation companies (i.e. trucking companies, railroads, etc.) are **not** subject to the sales and use taxes. They are not required to obtain a retail license nor are they required to collect taxes from their customers.

Freight or transportation costs incurred by retailers to get merchandise (tangible personal property) to their place of business or from the factory to the customer's business are **not deductible** by the retailer.

Freight or transportation costs incurred in delivering merchandise (tangible personal property) from retailers to their customers are **includable** in the measure of the sales or use tax **if**:

- the retailer's shipping terms are **FOB Destination** or other terms whereby title (ownership) transfers to the customer at the customer's location; or if
- the retailer uses his **own vehicle** to make delivery.

Freight or transportation costs are **not includable** in the measure of the tax **if** the retailer's shipping terms are **FOB Point of Origin** or other terms whereby title (ownership) transfers to the customer at the retailer's location.

Individuals 85 Years and Older

As part of the Educational Improvement Act of 1984, the Legislature provided a one-percent exclusion from state sales tax for individuals age 85 and older. In 2001, the Legislature amended that law to require retailers to post signs providing notice of the one-percent exclusion and to require individuals 85 years and older request the exclusion and provide proof of age at the cash register.



Burden of proof

It is presumed that all gross proceeds are subject to tax until the contrary is established. The burden of proof that the sale of tangible personal property is not a sale at retail is on the seller. However, if the seller receives a resale certificate signed by the purchaser stating that the property is purchased for resale, the liability for the sales tax shifts from the seller to the purchaser.

The Basics of the South Carolina Use Tax

The state use tax is imposed on the storage, use or consumption of tangible personal property in South Carolina. Also, the property must have been purchased at retail from outside the state for the purpose of being stored, used or consumed in South Carolina.

The measure, or basis, for the use tax is the property's sales (purchase) price; and the person storing, using or consuming the property - usually the purchaser - is liable for the tax. However, an out-of-state retailer licensed (or required to be licensed) to collect the tax has a debt to the state for the amount of the tax.

The purpose of the use tax is to complement the state sales tax. It is to ensure that out-of-state retailers do not enjoy an unfair advantage over in-state retailers.

The use tax rate is 6%.

Definitions:

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

Tangible personal property is personal property that may be seen, weighed, measured, felt, touched, or in any manner perceptible to the senses. It also includes certain services and intangibles - communications, laundry services, accommodations (hotels, motels, etc.) and electricity. It does **not** include stocks, notes, bonds, mortgages or other evidences of debt. It also 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.

Purchase (sale) is a transfer of title or possession of tangible personal property for a consideration. Includes rentals, leases and license to use.

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

Sales price - the measure of the use tax - is the total amount for which

tangible personal property is sold. It includes the cost of any materials, labor, interest, services or transportation that are part of the sale.

Sales price does **not** include:

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

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

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

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

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

Special impositions of the Use Tax

In addition to applying to the storage, use or consumption of items one normally thinks of as tangible personal property (e.g. furniture, appliances, clothing, computers, etc.), the use tax also applies to the storage, use or consumption in South Carolina of:

- 900/976 telephone services and certain other communications (however, the tax imposed upon communication does not apply to certain data processing as defined in §12-36-910;
- Laundry and dry cleaning services;
- Electricity; and
- The fair market value of tangible personal property brought into South Carolina by its manufacturer for storage, use or consumption in South Carolina.

Individuals 85 Years and Older

As part of the Educational Improvement Act of 1984, the Legislature provided a one-percent exclusion from state sales tax for individuals age 85 and older. In 2001, the Legislature amended that law to require retailers to post signs providing notice of the one-percent exclusion and to require individuals 85 years and older request the exclusion and provide proof of age at the cash register.

Credit for taxes paid in another state

The law provides a credit against the use tax for taxes due and paid in another state. The credit, however, is allowed only upon proof that the state and local sales or use tax was due and paid in the other state.

Burden of proof

The law presumes any tangible personal property that is delivered or received in South Carolina is for storage, use or consumption in South Carolina. The purchaser, therefore, has the burden of proving that the property was not purchased for storage, use or consumption in South Carolina. The retailer also has the burden of proving that the property is not subject to the tax, unless the retailer has a certificate given by the purchaser stating the property was purchased for resale.

Tax paid to an out-of-state retailer

The purchaser is relieved of the liability for the use tax if he has a receipt (invoice) from a licensed out-of-state retailer showing that the South Carolina tax was collected by the retailer.



Substantial use outside South Carolina

The purchaser is not liable for the use tax on tangible personal property substantially used in another state before being stored, used or consumed in South Carolina. The purchaser must be prepared to prove the property was in fact substantially used outside South Carolina.

Exclusions from the Use Tax

The following transactions are excluded from the use tax:

- purchases of tangible personal property for resale;
- purchases of tangible personal property by manufacturers and compounders for use as an ingredient or component part of property manufactured or compounded for sale (i.e. raw materials);
- purchases of tangible personal property used directly in manufacturing, compounding or processing tangible personal property for sale;
- purchases of materials, containers, etc. used incident to the sale and delivery of tangible personal property; and
- purchases of tangible personal property brought into the state for first use outside the state.

- purchases by non-profit schools

All transactions that are exempt from the sales tax are also exempt from the use tax under South Carolina Code 12-36-2120.

Summary

The state use tax is imposed on the storage, use or consumption of tangible personal property that is purchased at retail from outside South Carolina for the purpose of being stored, used or consumed in South Carolina.

For the use tax to be imposed, *all of the following must be true:*

- Tangible personal property must have been purchased **at retail** from outside South Carolina.
- The property must have been purchased **for** storage, use or consumption in South Carolina.
- The property is **stored, used or consumed** in South Carolina. The person storing, using or consuming the tangible personal property in South Carolina is **liable** for the use tax. The purchaser is relieved of the liability for the tax if he has a receipt from a licensed out-of-state retailer showing the tax was collected.

3% Sales and Use Tax on Unprepared Food

Effective November 1, 2007, sales of unprepared foods (previously taxed at 3%) are exempt of the State sales and use tax rate. However, local taxes still apply to sales of unprepared foods unless the local tax law specifically exempts such sales.

Local Option Sales & Use Tax

Voters may approve through a county referendum the following taxes:

- **Transportation Tax**
 - 1% local sales and use tax to be used for transportation needs such as roads and bridges. This tax may be imposed in addition to the local option sales and use tax. (*effective: June 13, 1997*)

The following county imposes the special local 1% sales and use tax for transportation:

Beaufort (effective may 1, 2007)

Dorchester (*effective May 1, 2005*)

The following county imposes a special local ½% sales and use tax for transportation:

Charleston (*effective May 1, 2005*)

- **Capital Projects Tax**
 - 1% local sales and use tax to fund specific capital projects such as roads, bridges, public facilities, recreation facilities, and water and sewer projects. This tax may be imposed in addition to the local option sales and use tax but may not be imposed along with any other local sales tax. This referendum may first be held in November 1998. The Department of Revenue will collect this tax. (*effective: July 1, 1997*)

The following counties impose the special local 1% sales and use tax for capital projects:

Aiken (*effective May 1, 2001*)
Dillon (*effective May 1, 2003*)
Florence (*effective May 1, 2007*)
Greenwood (*effective May 1, 2007*)
Hampton (*effective May 1, 2003*)
Horry (*effective May 1, 2007*)
Newberry (*effective May 1, 1999*)
Orangeburg (*effective May 1, 1999*)
York (*effective May 1, 1998*)

Effective January 1, 2007, Allendale County no longer imposes the 1% Capital Projects Tax.

▪ **School District Tax**

- 1% local sales and use tax for schools. The tax is used for school construction and improvements.

The following counties impose the special local 1% sales and use tax for schools: Chesterfield (*effective September 1, 2001*)

Darlington (*effective February 1, 2004*)

Jasper (*effective December 1, 2002*)

Lee (*effective October 1, 2006*)

Lexington (*effective March 1, 2005*)

(See South Carolina Revenue Ruling #96-9 for more information on the Cherokee County local tax.)

Clarendon (*effective June 1, 2004*) The exemption for food has been eliminated and sales of goods which are eligible to be purchased with United States Department of Agriculture food stamps are now subject to the Clarendon County School Tax effective July 1, 2005.

Local option sales and use tax counties and their effective imposition dates:

| Effective Date | Counties |
|-------------------|--|
| July 1, 1991 | Charleston ³ , Colleton, Jasper ² , Hampton ¹ , McCormick and Marion |
| May 1, 1992 | Abbeville, Allendale ¹ , Bamberg, Edgefield, Lancaster, Marlboro and Saluda |
| May 1, 1994 | Chester and Florence |
| May 1, 1995 | Pickens |
| May 1, 1996 | Dillon ¹ , Lee and Sumter |
| July 1, 1996 | Cherokee (may not be imposed for more than 20 years) |
| May 1, 1997 | Berkeley, Chesterfield ² , Clarendon , Darlington ² , Kershaw and Williamsburg |
| May 1, 1998 | York |
| May 1, 1999 | Barnwell, Chester (1% Capital Projects), Jasper (1% Capital Projects), Laurens, Newberry , and Orangeburg |
| May 1, 2000 | Chester (1% Capital Projects repealed, Note 1% local option is still in effect) |
| September 1, 2000 | Chesterfield ² (1% School District Tax) |
| December 1, 2000 | Beaufort (1% Transportation repealed) |
| May 1, 2001 | Aiken (1% Capital Projects), Allendale (1% Capital Projects) |
| December 1, 2002 | Jasper ² (1% School District Tax imposed; Capital Project Tax repealed) |
| May 1, 2003 | Dillon ¹ (1% Capital Projects Tax); Hampton ¹ (1% Capital Projects Tax) |
| February 1, 2004 | Darlington ² (1% School District Tax) |
| June 1, 2004 | Clarendon ² (1% School District Tax) |
| March 1, 2005 | Lexington (1% School District Tax) |
| May 1, 2005 | Richland, Calhoun, Dorchester (Transportation Tax) and Charleston ³ (1/2% Transportation Tax) |
| May 1, 2006 | Fairfield |
| October 1, 2006 | Lee ² (1% School District Tax) |
| January 1, 2007 | Allendale (Capital Projects Tax repealed) |
| May 1, 2007 | Florence ¹ , Greenwood, Horry County (1% Capital Projects Tax) Beaufort County (1% Transportation Tax) |

Notes:

Counties in **bold** indicate a special local tax has been implemented.

¹ County has two local option taxes. Measure must be recorded twice in the ST-389 form, once in the Capital Projects Tax section on page 1 and again in the Local Option Tax section on page 2.

² County has two local option taxes. Measure must be recorded twice in the ST-389 form, once in the School District Tax section on page 1 and again in the Local Option Tax section on page 2.

³ County has two local option taxes. Measure must be recorded twice in the ST-389 form, once in the Transportation Tax section on page 1 and again in the Local Option Tax section on page 2.

Local Option Sales Tax

Liability

If a retailer is located in a local option tax county, he is liable for the 1% sales tax on all sales of tangible personal property delivered within the county in which he is located. If the retailer makes deliveries into another county (local option county or not), the 1% sales tax is **not** due. However, the 1% use tax may be due. (The 1% use tax is covered in the *Local Option Use Tax* section of this publication.)

Delivery: when and where

For purposes of the 1% sales tax, “delivery” takes place when and where transfer of title or possession occurs.

Delivery At Purchaser’s Location. Delivery of tangible personal property is considered to take place at the purchaser’s location if the retailer’s shipping terms are FOB Destination; the retailer uses his own vehicle to make deliveries; or if the shipping terms are unspecified.

Delivery At Retailer’s Location. Delivery is considered to take place at the retailer’s location if the retailer’s shipping terms are FOB Shipping Point.

Exemptions

All sales which are exempt from the state sales tax (6%) are also exempt from the 1% local sales tax.

Sales subject to a cap

The 1% local sales tax does NOT apply to sales that are subject to a “cap” or maximum tax, i.e. sales of aircraft, motor vehicles, motorcycles, boats, trailers and semi-trailers pulled by truck tractors, self-propelled light construction equipment, unassembled aircraft, mobile homes, musical instruments and office equipment purchased by certain religious organizations, and certain research and development equipment.

Transactions subject to casual excise tax

The 1% local sales tax does NOT apply to transactions that are subject to the 5% casual excise tax. The casual excise tax is imposed on “the issuance of every certificate of title, or other proof of ownership, for every motor vehicle, motorcycle, boat, motor or airplane, required to be registered, titled or licensed.”

Withdrawals for use

Code section 12-36-110(c) defines “retail sale” as including “the withdrawal, use, or consumption of tangible personal property by anyone who purchases it at wholesale.” Therefore, withdrawals of tangible personal property that has been purchased at wholesale are subject to the 1% local tax, if withdrawn, used, or consumed in a local option tax county.

Direct Pay Certificates

Holders of so-called *direct pay* certificates are allowed to make all purchases tax-free and are liable for any taxes that may be due. In other words, liability for the tax transfers to the purchaser. The tax is due, by the purchaser, upon the property being “withdrawn, used or consumed” and, for purposes of the 1% tax, such withdrawals, use or consumption are reportable by county and municipality where the property is first withdrawn, used or consumed.

Limited Exemption Certificates

Unlike a *direct pay* certificate, which allows the holder to make **all** purchases free of the tax, a so-called *limited* exemption certificate only allows **specific** items to be purchased tax-free. If the holder of a *limited* certificate purchases an item that is exempt under §12-36-2120 or §12-36-2130, then the purchase is exempt from tax. However, if the holder uses the certificate to purchase an item not exempt under §12-36-2120 or §12-36-2130, then the purchaser is liable for the tax upon the property being withdrawn, used or consumed. The 1% tax is reportable by county and municipality where the property is first withdrawn, used or consumed.

Leases

The 1% tax does **not** apply to lease payments made after the imposition date of the 1% tax on leases that are entered into **before** the imposition date of the 1% tax. However, the tax does apply to lease payments made after the imposition date on leases that are entered into **after** the imposition date. (See *SC Revenue Ruling #91-9 for more information on leases.*)

Installment Sales

Code section 12-36-2560 allows the retailer under certain conditions to elect “to include in the return only the portion of the sales price actually received by the retailer during the taxable period or to include the entire sales price in the return for the taxable period during which the sale was consummated.”

Retailer Has Elected To Pay On Each Payment. For installment sales made **after** the imposition date of the 1% tax - on which the retailer has elected to pay the tax as payments are received - the tax applies to all the payments. For installment sales made **before** the imposition date, the 1% tax does **not** apply to any of the payments - those made before and those made after the imposition date.

Retailer Has Elected To Pay Up Front. For installment sales made **before** the imposition date, the 1% tax is **not** due. For installment sales made **after** the imposition date, the 1% tax is due.

Construction Contracts

There is an exemption from the 1% tax for construction contracts executed before the imposition date of the tax and, also, for contracts for which a written bid was submitted before the imposition date that culminates in a contract either

before or after the imposition date. *(See SC Information Letter #92-7 for information on how to apply and qualify for this exemption.)*

For those **contracts not exempt** from the 1% tax: If building materials are delivered by a supplier in the county in which the supplier is located, and that county has imposed the 1% tax, then the 1% sales tax is due. The supplier is liable for the tax and it is reportable by the county and municipality where the property is delivered. If delivery is made into another local option tax county, that county’s 1% use tax may be due. *(See the section entitled Local Option Use Tax.)* If delivery is made into a non-local option tax county, neither the 1% sales tax nor the 1% use tax is due.

Utilities

Utilities are to report the 1% tax by county and municipality where their customers are located. *Utility* is defined in SC Revenue Ruling #91-17 as “an entity which sells products or services subject to the 5% state tax and transmits or delivers its products or services via electronic transmissions

or pipelines (i.e. electric and gas companies, telephone companies, cable TV companies and other communications companies).”

(NOTE: Entities that sell water via pipelines to the public are also *utilities*; however, their sales are exempt from state and local sales and use taxes.)

Businesses that bill monthly

Businesses billing on monthly cycles (e.g. electric & gas companies and cable television companies) are to begin billing the 1% tax “beginning on the first day of a billing period beginning on or after the date of general imposition (§4-10-100). For example, assume an electric company has a billing cycle ending May 10, 2001. If the company is billing customers in a county that imposed the tax on May 1, 2001, the first billing cycle subject to the tax is the period beginning May 11, 2001.

Accommodations

The 1% local sales tax applies to charges for accommodations (hotels, motels, etc.). The 1% tax also applies to “additional guest charges,” as defined in §12-36-920(B). Those subject to the 1% tax on accommodations are required to report the tax by county and municipality where rental units are located.

Returns, discounts, penalties and interest

The 1% tax is to be reported by county and municipality where delivery takes place. A breakdown by place of delivery is made on Form ST-389 (“Addendum”) and attached to Form ST-3 or ST-388.

Returns are due and taxes payable by the 20th day of the month following the month for which taxable transactions occur. For those taxpayers with 13 accounting periods, returns may be filed for 28-day periods - if approved by the Department of Revenue. Also, taxpayers whose liability is not more than \$100 per month may request permission to file quarterly. In determining whether a taxpayer’s liability is not more than \$100 per month, one must consider the taxpayer’s total tax liability - state taxes plus local taxes.

For returns filed timely (with taxes paid), a discount is allowed. The discount is 3% if the total liability on a return (state plus local) is less than \$100. The discount is 2% if the total tax amount is \$100 or more. The maximum discount allowed in any fiscal year is \$3,000. If returns are filed electronically the maximum discount allowed in any state fiscal year is \$3,100.

The penalty and interest provisions of Chapter 54 of Title 12 of the South Carolina Code of Laws also apply to the 1% local option taxes.

Refunds

The *retailer* receives a refund of sales taxes (1% local and the 6% (5% state)). However, the *purchaser* receives the use tax refund.

Refunds may be applied for by sending Form ST-14 or a letter to:
S.C. Department of Revenue, Office Audit - Sales Tax, P.O. Box 125,
Columbia, South Carolina 29214.

The letter should include:

- the retailer's name, address, telephone number and retail license number;
- reason(s) for the refund; and
- a schedule showing (by reporting period - e.g. month) a breakdown by county and municipality where the tax was originally reported. This schedule must also state the type tax (sales or use) and the amount of refund due.

NOTE: All refunds are subject to verification by audit, either before or after issuance.

Summary

The **retailer is liable** for the 1% local option sales tax. If a retailer is located in a local option tax county and makes **delivery** in that county, then the 1% sales tax is due (unless exempt or excluded). If he makes delivery into another county, the 1% sales tax is not due. However, the 1% use tax may be due. (Refer to the section entitled *Local Option Use Tax*.) The 1% tax is to be reported by the retailer by county and municipality where delivery is made.

Local Option Use Tax

Liability

If a retailer delivers tangible personal property into a local option tax county, the person taking delivery and first storing, using or consuming the property in the local option tax county is liable for the 1% use tax. The purchaser is **not** liable for the 1% use tax if he takes delivery in another county and pays that county's 1% sales tax. He is also relieved of the tax if he has a receipt from the retailer showing the retailer has collected the 1% use tax.

Retailer can be required to collect

If certain criteria are met, a retailer making deliveries into a local option tax county can be required to collect the 1% use tax and report it to the Department of Revenue. Basically, if a retailer has any sort of physical presence in a local option tax county (e.g. office, salesperson, etc.), he may be required to collect the tax. *(See SC Revenue Ruling #91-17 and SC Revenue Ruling #05-16 for additional criteria.)*

If a retailer is required to collect the tax, the retailer does not become liable for the tax. The retailer is, instead, held accountable for the tax as a collection agent for the state. Primary liability remains with the purchaser.

Purchases exempt from State Sales Tax

All purchases that are exempt from the state use tax are also exempt from the 1% local option use tax.

Purchases subject to a cap

The 1% use tax does not apply to purchases that are subject to a "cap" or maximum tax, i.e. sales of aircraft, motor vehicles, motorcycles, boats, trailers and semi-trailers pulled by truck tractors, self-propelled light construction equipment, unassembled aircraft, mobile homes, musical instruments and office equipment purchased by certain religious organizations, and certain research and development equipment.

Transactions subject to casual excise tax

The 1% use tax does not apply to transactions that are subject to the 5% casual excise tax. The casual excise tax is imposed on “the issuance of every certificate of title, or other proof of ownership, for every motor vehicle, motorcycle, boat, motor or airplane, required to be registered, titled or licensed.”

Direct Pay Certificates

Holders of so-called *direct pay* certificates are allowed to make all purchases tax-free and are liable for any taxes that may be due. In other words, liability for the tax transfers to the purchaser. The tax is due, by the purchaser, upon the property being “withdrawn, used or consumed” and, for purposes of the 1% tax, such withdrawals, use or consumption are reportable by county and municipality where the property is first withdrawn, used or consumed.

Limited Exemption Certificates

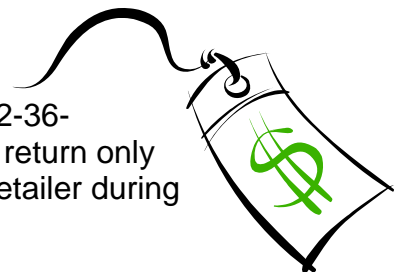
Unlike a *direct pay* certificate, which allows the holder to make **all** purchases free of the tax, a so-called *limited* exemption certificate only allows **specific** items to be purchased tax-free. If the holder of a *limited* certificate purchases an item that is exempt under §12-36-2120 or §12-36-2130, then the purchase is exempt from tax. However, if the holder uses the certificate to purchase an item not exempt under §12-36-2120 or §12-36-2130, then the purchaser is liable for the tax upon the property being withdrawn, used or consumed. Such withdrawals, use or consumption are reportable by county and municipality where the property is first withdrawn, used or consumed.

Leases

The 1% tax does **not** apply to lease payments made after the imposition date of the 1% tax on leases entered into **before** the imposition date of the 1% tax. However, the tax does apply to lease payments made after the imposition date on leases entered into **on or after** the imposition date. (See SC Revenue Ruling #91-9 for more information on leases.)

Installment sales

For installment sales that meet the requirements of §12-36-2560, **the in-state retailer** may elect “to include in the return only the portion of the sales price actually received by the retailer during



the taxable period or to include the entire sales price in the return for the taxable period during which the sale was consummated.”

For installment sales made on or after the imposition date of the 1% tax, and on which the retailer does not collect the 1% sales or use tax from the purchaser, the purchaser must pay the 1% use tax directly to the Department of Revenue. The purchaser may **not** pay the 1% use tax as payments are made to the retailer. The purchaser must pay the tax on the entire purchase price.

Construction Contracts

There is an exemption from the 1% tax for construction contracts executed before the imposition date of the tax and, also, for contracts for which a written bid was submitted before the imposition date that culminates in a contract executed before or after the imposition date. *(See SC Information Letter #94-34 for information on how to qualify and apply for the exemption.)*

For those **contracts not exempt** from the 1% tax: If building materials are delivered into a local option tax county, the county’s 1% use tax may be due. If delivery is made into a non-local option tax county, neither the 1% sales tax nor the 1% use tax is due.

Utilities

Utilities are to report the 1% tax by county and municipality where their customers are located. *Utility* is defined in SC Revenue Ruling #91-17 as “an entity which sells products or services subject to the state tax and transmits or delivers its products or services via electronic transmissions or pipelines (i.e. electric and gas companies, telephone companies, cable TV companies and other communications companies).” **(NOTE: Entities that sell water via pipelines to the public are also *utilities*; however, their sales are exempt from state and local sales and use taxes.)**

Business that bill monthly

Businesses billing on monthly cycles (e.g. electric & gas companies and cable television companies) are to begin billing the 1% tax “beginning on the first day of a billing period beginning on or after the date of general imposition” (§4-10-100). For example, assume an electric company has a billing cycle ending May 10, 2001. If the company is billing customers in a county that imposed the tax on May 1, 2001, the first billing cycle subject to the tax is the period beginning May 11, 2001.

Returns, discounts, penalties and interest

The 1% tax is to be reported by county and municipality where tangible personal property is first stored, used or consumed. A breakdown by county and municipality is made on Form ST-389 ("Addendum") and attached to Form ST-3 or ST-388.

Returns are due, and taxes payable, by the 20th day of the month following the month for which taxable transactions occur. For those taxpayers with 13 accounting periods, returns may be filed for 28-day periods, if approved by the Department of Revenue. Also, taxpayers whose liability is not more than \$100 per month may request permission to file quarterly. In determining whether a taxpayer's liability is not more than \$100 per month, one must consider the taxpayer's total tax liability - state taxes plus local taxes.

For returns filed timely (with taxes paid), a discount is allowed. The discount is 3% if the total liability on a return (state plus local) is less than \$100. The discount is 2% if the total tax amount is \$100 or more. The maximum discount allowed during any state fiscal year is \$3,000. The state has been amended to increase that discount to a maximum of **\$3,100 if the retailer timely files his returns and pays the tax due electronically.**

The penalty and interest provisions of Chapter 54 of Title 12 of the South Carolina Code of Laws also apply to the 1% local option taxes.

Refunds

The retailer is the party entitled to receive a refund of **sales taxes** (1% local and the 6% or (5%) state). However, the retailer may "assign" (transfer) his refund rights to another party (e.g. the customer), if he so desires. An assignment can be made by writing a letter to the assignee (e.g. customer). The purchaser is entitled to apply for a refund of **use taxes** (1% local and 6% (5%) state).

Refunds may be applied for by sending Form ST-14 or a letter to:
S.C. Department of Revenue, Sales Tax, P.O. Box 125, Columbia, South Carolina 29214.

The letter should include:

- the retailer's name, address, telephone number and retail license number;
- reason(s) for the refund; and

- a schedule showing (by reporting period - e.g. monthly) a breakdown by county and municipality where the tax was originally reported. This schedule must also state the type tax (sales or use) and the amount of refund due.

NOTE: All refunds are subject to verification by audit, either before or after issuance.

Summary

A transaction is subject to the 1% use tax if tangible personal property is stored, used or consumed in a local option tax county.

Liability for the 1% use tax is with the person who stores, uses or consumes tangible personal property in a local option tax county (usually the purchaser). However, if either the 1% sales tax or the 1% use tax has been paid, the purchaser is relieved of the liability.

The 1% use tax is to be reported by the county and municipality where the property is first stored, used or consumed.

(See SC Revenue Ruling #91-17 or Revenue Ruling 05-16 for more information on the local sales and use taxes.)

Local Government Taxes-

These taxes are not collected by SCDOR.

Local governments may by ordinance impose the following taxes:

- **2% local hospitality tax** on charges for food and beverages. The county may not impose a tax of more than 1% on taxpayers within a municipality without the consent of the municipality. (Effective: July 1, 1997)
- **3% local accommodations tax.** A county may not impose a local accommodations tax within a municipality of more than 1.5% without the consent of the municipality. The combined county and municipal accommodations tax may not exceed 3% unless it exceeded that amount before Dec. 31, 1996, in which case it may not exceed the percentage already in place. (Effective: July 1, 1997)



Note: Payment for these taxes is made to local county or city governments, **not** the South Carolina Department of Revenue.

Accommodations Tax

Code section 12-36-920(A) imposes a 7% sales tax on the gross proceeds derived from the rental or charges for any rooms, campground spaces, lodgings or sleeping accommodations furnished to transients by hotels, inns, tourist courts, tourist camps, motels, campgrounds, residences, or any places in which rooms, lodgings or sleeping accommodations are furnished to transients for consideration.

Exclusions

Excluded from the tax are the gross proceeds derived from facilities that:

- consist of less than six sleeping rooms;
- that are contained in a single premise; and
- the owner of the premise uses the premise as his place of abode.



Also excluded from the tax are the gross proceeds derived from the lease or rental of sleeping accommodations that are:

- supplied to the same person
- for a period of 90 or more continuous days.

For example, if a business (e.g. an airline or construction company) reserves specific hotel rooms for its employees for a period of at least 90 continuous days, the tax does **not** apply. The exclusion does not apply if **specific** rooms are not reserved.

Exemptions

Federal Government

Rentals of sleeping accommodations to the federal government are exempt from taxation, if the federal government is billed directly or a federal government credit card or check is used to make payment. The exemption does **not** apply if a federal employee uses his own money or credit card and is merely reimbursed by the government. The rental must be made directly to the federal government. *(See SC Revenue Advisory Bulletin #02-3 for more detail.)*

NOTE: Rentals to state, county, municipal and other local governments are not exempt.

Foreign Diplomats

Foreign diplomats enjoy certain exemptions from taxation. To be exempt from the tax on accommodations, a foreign diplomat should have a special tax exemption card containing the statement "Includes Hotel Room Taxes." (See *SC Information Letter #98-8* for more detail.)

Sales Tax on additional guest charges

Code section 12-36-920(B) imposes a 5%* sales tax on *additional guest charges*. The term *additional guest charges* includes, but is not limited 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.

* The rate increased to 6% effective June 1, 2007.

Tourist/Golf Packages

The individual items sold within a promotional tourist package may be billed to the customer in one daily total and taxed on their separate characteristics if the charges are reasonable and the books and records clearly identify the components.

Any amount in the tourist package which "flows through" to a third party which provides that service (golf, meals, theater, etc...) will not be taxed by the hotel, but by that service provider. (See Revenue Ruling #98-21 for more details).

Purchases by hotel/motels of items to be given away to guests, such as golf caps, golf balls, towels, food, etc are taxable at the time of purchase by the hotel/motel. However, if the hotel sells these items in a gift shop, they may

purchase these items at wholesale (free of the tax) and collect sales tax on the sales price of such. Items withdrawn from inventory as gifts would be taxable at cost to the hotel/motel at the time of withdrawal.

NOTE: Revenue which was booked to “flow through” should not be reported at the 7% tax rate.

The 1% local option Sales Tax

The 1% local option sales tax applies to accommodations and to additional guest charges. Therefore, the total tax rate on accommodations in a local option tax county is 8% (or 9% if a county imposes several local option sales tax) and the total tax rate on additional guest charges is 7%.

Reporting requirements

Businesses subject to the 7% sales tax on accommodations and/or the 1% local sales tax are to file Form ST-388 with the Department of Revenue. Those with more than one location are to report the 7% tax and the 1% tax by county and municipality. Use Form ST-389 (Addendum to report the 1% tax by county and municipality and attach it to Form ST-388).

Returns are due and taxes payable by the 20th day of the month following the month in which accommodations were rented.

For returns filed timely (with taxes paid), a discount is allowed. The discount is 3% if the total liability on a return (state plus local) is less than \$100. The discount is 2% if the total tax amount is \$100 or more. The maximum discount allowed in any state fiscal year is \$3,000. If returns are filed electronically the discount allowed in any state fiscal year is \$3,100.

Purchases by hotels and motels

Purchases by hotels, motels, etc. of tangible personal property (e.g. beds, sheets, pillows, televisions, plastic cups, toilet paper, etc.) are retail purchases subject to tax. Hotels, motels, etc. use or consume such items in providing accommodations. They do **not** rent or sell such items to their guests. They rent accommodations.

Exchange time share units

Vacation multiple ownership interests and exchanges of interests in vacation time sharing plans and vacation multiple ownership interests and any other exchange of accommodations in which the accommodations to be exchanged are the primary consideration are exempt from the tax.

Administration

The Department of Revenue oversees the spending of accommodations tax revenues by local accommodations tax committees to ensure the tax money is spent as required by law.

Local Accommodations Tax

State law permits local governments to impose a local accommodations tax of up to 3%. This is in addition to the statewide sales and accommodations taxes and the local option sales tax, if applicable. **The local accommodations tax is collected by the local government imposing the tax, not the Department of Revenue.** The frequency of payment of the local accommodations tax is based on the amount of tax owed:

- If the amount of the tax averages more than \$50 a month, the tax must be paid monthly.
- If the tax averages \$25-\$50 a month, the tax must be paid quarterly
- If the tax averages less than \$25-\$50 a month, the tax must be paid annually

Administrative Requirements

Before engaging in any retail business in South Carolina, a retail license must be purchased from the Department of Revenue.

Retail Licenses

The law provides for the following types of retail licenses:

Permanent locations. A \$50 license must be purchased for each permanent retail location.

Artists and craftsmen. Every artist and craftsman making retail sells at arts and crafts shows and festivals of items they have created or assembled may purchase a \$20 license. This license may only be used at one location at a time.

Transient or temporary businesses. A \$50 license must be purchased by persons operating a transient or temporary business in South Carolina. A retail license for a transient business may only be used for one location at a time. A retail license for a temporary business may only be used in one location.

A **transient business** is a business, other than artists and craftsmen, not having a permanent retail location in South Carolina. A **temporary business** is a business that makes retail sales in South Carolina for no more than 30 consecutive days at any one location.

How to get a license

You may apply for a retail license on-line by visiting our website at www.sctax.org and clicking on SCBOS.

If you choose not to file your application on-line, an application for a retail license (Form SCTC-111) may be obtained from one of the Department of Revenue's five Taxpayer Service Centers. The centers are located in Greenville, Charleston, Florence, Myrtle Beach and Rock Hill.

You can mail your completed application with the appropriate license tax amount - to: South Carolina Department of Revenue, P.O. Box 125, Columbia, South Carolina 29214, or you may submit the application at one of the Taxpayer Service Centers.



Who does not need a license?

A retail license is not required of:

- persons selling at flea markets or conducting a yard sale no more than once a quarter
- certain organizations conducting sales at festivals [see §12-36-2120(39)]
- persons furnishing accommodations to transients for one week or less in any calendar quarter
- certain nonprofit organizations [see §12-36-2120(41)]

When an out-of-state retailer must obtain a license

The Department of Revenue can require an out-of-state retailer to purchase a retail license and collect the South Carolina use tax if the retailer:

- has retail locations in South Carolina;
- maintains an office, warehouse or other place of business in South Carolina;
- has a salesperson in South Carolina soliciting orders on a regular basis;
- has an agent located in South Carolina;
- delivers his/her goods on his/her own trucks and advertises on a regular basis in South Carolina via South Carolina media; or
- delivers their goods on their own trucks and advertises on a regular basis in South Carolina via media located outside of South Carolina that has extensive coverage in South Carolina.

NOTE: The above is based on the concept of *nexus* - the minimal connection necessary between an out-of-state retailer and the state which allows the state to require the retailer to collect the use tax. What actually constitutes *nexus* is determined by the courts and may change from time to time. You are advised to be aware of changes.

Purchaser's certificate of registration

A Purchaser's Certificate of Registration is required for those persons **not** making retail sales that purchase tangible personal property from outside South Carolina and store, use or consume the property in South Carolina. Generally, they are issued to construction contractors. Those licensed as retailers do not need a Purchaser's Certificate of Registration.

An application for a Purchaser's Certificate of Registration (Form SCTC-111) may be obtained from one of the Department of Revenue's five Taxpayer Service Centers. The centers are located in Greenville, Charleston, Florence, Myrtle Beach, and Rock Hill.

You may mail your completed application to: South Carolina Department of Revenue, P.O. Box 125, Columbia, South Carolina 29214, or you may submit the application at one of the Taxpayer Service Centers. There is no charge for a Purchaser's Certificate of Registration.

Special events returns

In lieu of purchasing a retail license, certain retailers may report their sales on a special events return.

A special events return may be used by a retailer who is **not** required to be licensed as an artist or craftsman, or who is **not** already licensed as a transient or temporary retailer.

The Department of Revenue does not have a separate form called a *special events return*. A retailer should file Form ST-3 and write "**Special Events Return**," or similar notation, on the face of the form. The discount for prompt payment is not allowed on such returns.

Special events returns are due within five days of the completion of the special event. However, the Department of Revenue may require earlier filing and payment, if deemed necessary.

A special event is any promotional show, trade show, fair or carnival for which an admissions fee is required. Also, the event must operate for less than 12 consecutive days.

Reporting requirements

Most taxpayers are required to file their sales and/or use tax returns by the 20th day of the month following the month in which liability for the tax arises. For example, sales made in April are reportable to the Department of Revenue by May 20. Any tax due is payable with the return.

28-day returns. The Department of Revenue may allow filing of returns for 28-day periods. If permission is granted, the returns are due by the 20th day following the end of each 28-day period.

Quarterly returns. The Department of Revenue may allow a taxpayer to file quarterly, instead of monthly, if the taxpayer's monthly tax liability is \$500 or less.

Other Filing Periods. The Department of Revenue may authorize, in addition to monthly or quarterly, other filing periods.

Reporting and Paying the Tax Electronically



The South Carolina Department of Revenue Electronic Sales Tax System (ESales) is designed to give taxpayers a FAST, FREE and SECURE way to file and pay their sales, use, accommodations, local option and special local taxes on-line.

ESales will allow the filing of the following forms:

- ST3 - Sales and Use Tax Return
- ST3EZ – Simplified Sales Tax Return
- ST-455 – Maximum Sales Tax Return

- ST388 - Sales, Use, Accommodations and Local Option Tax Return

- ST389 – Schedule for Local Taxes



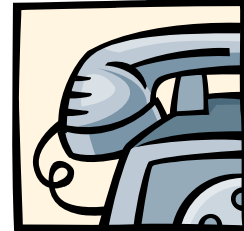
The SC Department of Revenue's ESales System will allow you to make payment by EFW (Electronic Funds Withdrawal/Bank Draft) or credit card (MasterCard and VISA).

For electronic purposes you must submit your tax return and payment

authorization to the South Carolina Department of Revenue no later than 12:00am (ET) on the due date of the 20th.

For more information, go to www.sctax.org and click on Electronic Services. Then, click on the Sales and Use link to see more details about ESales. For technical questions call (803) 896-1715.

Business Tax TeleFile



As a South Carolina business owner, you can conveniently file your Sales tax return by using the Business Tax TeleFile System. Business Tax TeleFile is available twenty-four hours a day/ seven days a week. To qualify to file a Business Tax TeleFile sales return, you must have zero gross proceeds of sales, rentals, use tax or withdrawals for the filing period covered.

As a first time user you're required to register on the Business Tax TeleFile System before filing. Registration can be handled directly on the system during the initial telephone call. The registration and filing process takes less than five minutes. Subsequent filings take less than three minutes. The procedure is completely paperless; mailing additional documentation to the Department of Revenue is not required. You need to keep a copy of your report for your files, however.

To use the Business Tax TeleFile System, dial (803) 898-5918 and follow the instructions. If assistance is needed with sales tax related questions, you can contact the DOR Sales Tax Help Line at (803) 896-1370. For all TeleFile support issues, you should contact the Business Tax TeleFile Help Line at (803) 896-1715 or contact us by e-mail at telefile@sctax.org.

Electronic Filing Program (EFT/EDI)



The Department of Revenue has designed an Electronic Filing Program (EFT/EDI) for the transmission of your payment and filing your tax return information for **sales, use, accommodations, local option and/or special local taxes.**

Businesses that have paid \$15,000 or more during any one filing period during the past year are required to pay electronically. Taxpayers with less than \$15,000 in tax due during a filing period may participate voluntarily with the EFT/EDI Program. For further information call 1-800-379-9409.

If you are interested in filing and paying one tax through EFT/EDI, you must file and pay all of these taxes through EFT/EDI. For example, you

cannot file and pay sales tax through this program and pay local option through a conventional process. Be aware that you must file both the return and the payment electronically; you cannot choose to do one part electronically and the other in a conventional method.

Electronic payments can be made by using the ACH (Automated Clearing House) debit or credit method.

Advantages of participating in the EDI/EFT program include:

- Eliminates paperwork, no more paper returns and checks
- Reduces return error potential due to no re-keying; no manual intervention
- Accurate timing of payment from your bank account
- Comprehensive audit trail for both the return and the payment

To register, please call 1-800-379-9409 or e-mail EDI@sctax.org.

Discount for Timely Payment

If returns are filed and the taxes paid in full by the due date, you will be allowed a discount on taxes due. For taxes less than \$100, you may take a 3% discount of the tax. For taxes of \$100 or more, your discount is 2% of the tax.

The maximum discount allowed per taxpayer (*all locations included*) during the state's fiscal year (*July 1 - June 30*) is \$3,000. The statute was amended (effective July 1, 2002) to increase that discount to a maximum of \$3,100 if the retailer files his sales and use tax returns electronically.

Nonresident retailers not required by law to collect South Carolina sales or use tax, but whom voluntarily register to do so, are allowed a maximum discount of \$10,000 each fiscal year. In calculating the maximum discount, begin with the June return filed in July and end with the May return filed in June.

Cash Deposit or Bond

Transient retailers who have no permanent business location from which retail sales are made may make a sufficient cash deposit or bond with the Department of Revenue to cover at least their annual sales tax liability. This cash deposit or bond must be made before receiving a retail license.

Types of Paper Returns

Taxpayers who are liable for the state sales tax **only** may file Form ST-3E z.

Taxpayers who are liable for the state sales tax and/or 1% local option taxes are to file Form ST-3. Those liable for the maximum tax of (\$300) are to file Form ST-455. Those liable for the 7% tax on accommodations (hotels, motels, etc.) are to file Form ST-388.

If the 1% local option tax is collected in more than one county or municipality, Form ST-389 (Addendum) must be completed and attached to Form ST-3, Form ST-388 or whichever is appropriate.

Recordkeeping

Every person subject to the sales and/or use taxes is required to keep “records, receipts, invoices and other pertinent papers in the form the commission requires.” This includes records in electronic format. Purchase invoices must show the names and addresses of vendors from whom purchases are made.

Separate records for wholesale sales and retail sales must be kept. If separate records are not kept, it is presumed all sales are at retail.

Records must be kept for a period of **three years**.

The penalty for failing to keep records as required by the Department of Revenue is a maximum of \$500 per return.

Assessments

The Department of Revenue may assess for unpaid taxes within three years of the date the taxpayer’s return was filed, or due to be filed, whichever occurs later.

For example, if a taxpayer files the May 2003 sales and use tax return on the due date, June 20, 2003, the Department of Revenue has until June 20, 2006, to determine if additional taxes are due and assess the taxpayer for those taxes. If the taxpayer had filed the May 2003 return late on August 30, 2003, then the Department of Revenue has until August 30, 2006, to determine if additional taxes are due and assess the taxpayer for those taxes.

However, there are exceptions to the three-year statute of limitations. The Department of Revenue may assess for additional taxes after the three-year period if:

- The taxpayer has consented in writing to extending the time period for assessing the tax. This consent form must be completed before the three-year statute of limitations expires. This consent form is usually completed at the beginning of the audit process when the taxpayer and the auditor agree to the period of time to be audited.
- The taxpayer understates 20% of total taxes. In this case, the Department of Revenue has six years to assess the taxpayer for the unpaid taxes.
- The taxpayer has failed to file the return. In this case, the Department of Revenue may go back to August of 1985.
- The taxpayer has filed a fraudulent return with the intent to evade the tax. In this case, the Department of Revenue may go back indefinitely to assess the taxpayer for unpaid taxes.
- The taxpayer who collects from the purchaser a state or local sales or use tax that exceeds the amount allowed or required by state law, may be held liable for a penalty. The penalty could be up to 150% of the tax amount collected that exceeds the amount authorized to collect.

Refunds

A taxpayer may seek a refund of any state tax by filing a written claim for refund with the Department of Revenue. A refund claim will be considered timely filed if it is filed within the period specified in §12-54-85. A claim for refund must include which identifies the taxpayers and explains why the refund should be granted. For a complete listing of what information must be provided in a claim for refund, a taxpayer should consult §12-60-470(B).

If the person claiming the refund is a collector and the person remitting the tax rather than the taxpayer (for example, an out-of-state seller required to collect and pay a use tax), the taxpayer must establish that they have paid the tax in question to the state. Additionally, such collector must establish that the taxpayer repaid the tax to the person from whom it was collected originally or has obtained the written consent of the person from whom the tax was collected.

The appropriate division of the Department of Revenue shall decide what refund is due and give the taxpayer a written decision of their conclusion. **If the decision is adverse to the taxpayer, the taxpayer may appeal the division's decision by filing a written protest within 30 days of denial of the refund and following the procedures for protesting an assessment of tax.**

After the final denial of the taxpayer's request for refund through a department determination, a taxpayer may seek a contested case hearing. The taxpayer has 30 days from the date of the department determination to request a contested case hearing. Requests for a contested case hearing before the Administrative Law Judge Division must be made according to their rules.

A claim for refund can be amended prior to, but not after, the expiration of time for filing the claim for refund under §12-54-85(F). The claim as amended must be treated as if it were first filed when the amendment was filed, and the procedures and time periods involved must begin again.

If a taxpayer exhausts his administrative remedy, and ultimately prevails on the merits in a lawsuit seeking a refund or abatement of a license fee or any tax based upon the allegation that the tax or fee has been imposed wrongfully as a matter of law, the Department of Revenue will issue a refund to all similarly situated taxpayers who timely and properly applied for a refund.

If a taxpayer is due a refund, it must first be applied against any amount of that same tax that is currently assessed and due and outstanding from the taxpayer. The remaining refund, if any, must then be applied against any other state taxes that have been assessed against the taxpayer and that are currently due. If any excess remains, the taxpayer will be refunded that amount plus interest or such amount may be credited to the taxpayer's future tax liabilities.

Penalties and Interest

Taxpayers who fail to file sales and use tax returns, or fail to pay these taxes when they are due, are subject to certain penalties. Penalties are imposed as follows:

Failure to file - This penalty is imposed at the rate of 5% of the taxes due for each month, or fraction of a month, the return is late. For example, if the May 2003 return is filed on June 30, 2003, it is 10 days late and the taxpayer is subject to a penalty equal to 5% of the tax due on that return. If this same return had not been filed until July 23, 2003, the taxpayer would be subject to a penalty equal to 10% of the tax due on that return.

Failure to pay - This penalty is imposed at the rate of 0.5% of the taxes due for each month, or fraction of a month, the taxes are late. For example, if the May 2003 return is filed on June 30, 2003, it is 10 days late and the taxpayer is subject to a penalty equal to 0.5% of the tax shown as due on that return. If this same return had not been filed until July 23, 2003, then the taxpayer would be subject to a penalty equal to 1% of the taxes shown as due on that return.

If the taxpayer is audited and taxes are found to be due, then the failure to pay penalty is not due if the taxes are paid within 10 days of the Department of Revenue's assessment for such taxes.

If the taxes found to be due under the audit are not paid within 10 days of the Department of Revenue's assessment, then the penalty is imposed at the rate of 0.5% of the taxes due for each month, or fraction of a month, from the 11th day after the assessment is issued until the taxes are paid.

Other Penalties

Other penalties, such as those imposed with respect to negligence, fraud and operating without a retail license, can be found in Chapter 54 of Title 12 of the South Carolina Code of Laws.

Interest

The Department of Revenue, by law, imposes interest if a taxpayer fails to pay any sales and use taxes due. Interest is imposed at the same rate as provided in the Internal Revenue Code. Interest changes quarterly, so contact the Department of Revenue to determine the applicable rate. These are the same interest rates used by the Department of Revenue in calculating the interest due a taxpayer if that taxpayer is issued a refund.

Waiver of Penalties

The Department of Revenue has the authority to waive penalties imposed if there is reasonable cause to do so. Taxpayers who request a waiver or reduction of penalties imposed should do so in writing, and should set forth the reasons why such penalties should be waived or reduced. The Department of Revenue employee reviewing the request will then determine if a waiver or reduction of penalties is warranted under the guidelines established by the Department of Revenue in SC Revenue Procedure #98-3.

Completion of an Audit

When an auditor has completed an audit, the auditor will meet with the taxpayer to discuss the preliminary findings. It is at this time that the auditor will explain the findings to the taxpayer and also seek clarification on certain transactions. Depending on the discussions, some items may be deleted from the preliminary findings.

If, at this point, the taxpayer does not agree with the findings, the taxpayer can then meet with the auditor's supervisor to discuss the issues. The taxpayer can appeal any issues to which he does not agree to the audit division's Appeals Section.

If the taxpayer is unable to resolve the issues with the Appeals Section, the matter can then be referred to the Office of the General Counsel. If the matter is not resolved by the Office of the General Counsel, the taxpayer can request a hearing before the Administrative Law Judge Division.

The administrative law judge's decision is the final administrative determination on the matter. If the administrative law judge does not agree with the taxpayer, the taxpayer will be assessed the taxes determined to be due by the administrative law judge. The taxpayer may then pay the taxes and consider the matter closed, or pay the taxes and litigate the issues in court.

Voluntary Disclosure Program

To further increase compliance and to foster cooperation, the Department of Revenue has developed a voluntary disclosure procedure for taxpayers who have sufficient South Carolina business activity or connection, which is called “nexus,” and have not registered with the Department of Revenue to collect or remit South Carolina taxes.

As set forth in Revenue Procedure Bulletin #01-5, this voluntary disclosure program is designed to (1) encourage non-filers to come forward voluntarily and begin paying taxes without incurring penalties and (2) allow the Department of Revenue to maximize compliance with limited resources. **The procedure applies only in cases where nexus is the issue.**

To attain voluntary filing status, one of the following requirements must be met:

- The taxpayer must register to collect or remit taxes without previous contact from the Department of Revenue;
- The taxpayer must respond timely and completely to the Department of Revenue’s nexus questionnaire and register with the Department of Revenue;

or

- The taxpayer agrees to register if, upon review of the nexus questionnaire by an Audit Services Division employee, nexus is determined to exist.

If the taxpayer qualifies as a voluntary filer, the Department of Revenue will:

- Accept the payment of taxes due and filing of returns for the immediately preceding tax years, or for the number of preceding years that nexus existed, if less than three years;
- Apply interest in accordance with the South Carolina Code;

and

- Waive all penalties, except in case of fraud or misrepresentation of fact.
- Register

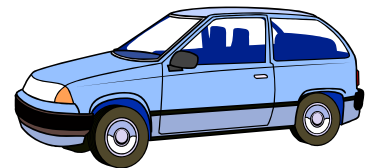
All companies and individuals who have been conducting business in South Carolina and have not filed required tax returns in the past are encouraged to contact the Department of Revenue for a determination of nexus and initiation of voluntary disclosure procedures.

If you would like more information about voluntary disclosure or have questions about the existence of nexus in South Carolina, please call Joy Causey of the South Carolina Department of Revenue at (803) 898-5671 or e-mail CauseyJ@sctax.org.

Casual Excise Tax

Code section 12-36-1710(A) imposes a 5% casual excise tax on the issuance of every certificate of title or other proof of ownership for every:

- motor vehicle,
- motorcycle,
- boat,
- motor, or
- airplane



required to be licensed, titled or registered. The measure of the casual excise tax is fair market value of the item to be licensed, titled or registered. *Fair market value* is the purchase price less any trade-in allowed, or the value shown in a national publication (NADA) of used values adopted by the Department of Revenue less any trade-in allowed.

Liability for the casual excise tax

The **purchaser** is liable for the casual excise tax and, unless he can prove the 5% state sales or use tax has been paid, the Division of Motor Vehicles, Department of Natural Resources or the Division of Aeronautics may not issue a license or transfer title until the tax has been paid.

Exclusions

Excluded from the casual excise tax are motor vehicles, motorcycles, boats, motors, or airplanes transferred to a:

- member of the immediate family (spouse, parents, children, sisters, brothers, grandparents and grandchildren);
- legal heir, legatee or distributee;
- partnership, from an individual, upon formation of a partnership;
- corporation, from a stockholder, upon formation of a corporation;
- motor vehicle or motorcycle dealer licensed under §56-3-2310 for the purpose of resale;
- financial institution for the purpose of resale; and
- transfers as a result of repossession to a secured party for the purpose of resale.

In addition to the above, the following also are excluded from the casual excise tax:

- the fair market value of motor vehicles, motorcycles and airplanes transferred to a seller or secured party in partial payment (trade-ins); and
- transfers of motor vehicles, motorcycles or airplanes specifically exempted by §12-36-2120 from the sales or use tax.

1% local option taxes

Transfers subject to the casual excise tax are **exempt** from the 1% local sales and use taxes.

Exemptions and Exclusions

In determining whether a transaction is taxable, you must first determine whether the transaction is *subject to* the tax. For example, all retail sales in South Carolina are *subject to* the sales tax, but not wholesale sales. Having determined that a transaction is *subject to* the tax (i.e. a retail sale) - and therefore **not excluded** from the tax - it must be determined if the transaction is **exempted** from the tax.

More on exclusions

Exclusions from the sales and use taxes are to be liberally construed. In other words, if there is doubt concerning whether a particular transaction is subject to tax, then the tax is **not** to be imposed.

The exclusions are found in several sections of the law and concern a variety of transactions. The list below provides the code section in which the exclusion is found and a brief explanation of the exclusion.

| Code Section | Explanation |
|--------------|--|
| 12-36-60 | Transmission of computer database information by a cooperative service when assembled by and for the exclusive use of the members of the cooperative service. |
| 12-36-110(2) | Sales of tangible personal property to a manufacturer or construction contractor when the property is partially or completely fabricated or manufactured in South Carolina by the manufacturer or construction contractor and transported out of state and assembled, installed or erected at the out-of-state job site. |
| 12-36-120(1) | Sales of property to a licensed retailer or another wholesaler for resale. This does not include sales to users or consumers not for resale. |
| 12-36-120(2) | Sales of property to a manufacturer or compounder as an ingredient or component part of the tangible personal property or product manufactured or compounded for sale. |

- 12-36-120(3) Sales of property “used directly” in manufacturing, compounding or processing tangible personal property into products for sale. Regulation 117-174.30 provides that property is “used directly” if it comes into direct contact with the product being manufactured and contributes to bring about a chemical or physical change in the product.
- 12-36-120(4) Sales of materials, containers, cores, labels, sacks or bags used incident to the sale and delivery tangible personal property, or used by manufacturers, processors and compounders in shipping tangible personal property.
- 12-36-120(5) Sales of food or drink products to licensed retail merchants for use as ingredients in preparing ready to eat food or drink sold at retail.
- 12-36-140(C) Purchases of tangible personal property from outside the state and transported to South Carolina for storage and for the exclusive purpose of subsequently transporting it outside of South Carolina for first use outside of South Carolina.
- 12-36-140(C) Purchases of tangible personal property from outside the state and transported to South Carolina for the purpose of first being manufactured, processed or compounded into other tangible personal property that will be transported and used solely outside of South Carolina.
- 12-36-910(C) Charges for or use of certain data processing.

NOTE: There is one other partial exclusion provided under the law. Taxable sales to individuals 85 years of age or older are taxed at 5%, not the full rate of 6%. This exemption applies even if other sales tax exemptions are in place.

More on exemptions

Unlike exclusions, which are liberally construed in favor of the taxpayer, exemptions are strictly construed **against** the taxpayer. Therefore, to enjoy an exemption, a taxpayer must fall squarely and clearly within the exemption.

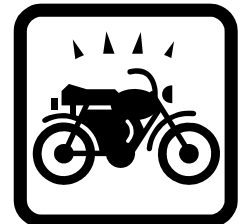
There are two types of exemptions provided under the sales and use tax law - (1) partial exemptions and (2) full exemptions. *Partial exemptions* are those that limit or “cap” the amount of tax and are found in §12-36-2110. The 1% local option sales and used tax does not apply to sales that are subject to a cap. There also is a partial exemption for people 85 years old and older who are exempt from paying the 1% sales tax imposed by the Education Improvement Act of 1984 as found in §12-36-2620.

There are many *full exemptions*, which are found in §12-36-2120 and §12-36-2130. The 1% local option sales and use tax does not apply to sales which are exempt from the 5% state sales and use tax.

Partial exemptions (caps)

A maximum tax of \$300 is imposed on the following sales:

- Aircraft - This includes unassembled aircraft assembled by the purchaser.
- Motor vehicles
- Motorcycles
- Boats
- Trailers and semi-trailers that can be pulled only by a truck tractor and horse trailers. This does not include house trailers and campers as defined in §56-3-710.
- Recreational vehicles - This includes tent campers, travel trailers, park trailers, motor homes and fifth wheels.
- Self-propelled light construction equipment with compatible attachments – The equipment, in order to qualify for the cap, cannot have a maximum net engine horse power of more than 160.
- Musical instruments or office equipment sold to religious organizations.



- Equipment provided or installed on a fire truck included in the purchase price at the time of the sale. The cap does not apply to firefighter's protective clothing.
- Fire safety education trailers.

The maximum cap also applies to leases of the above items, if the lease has a stated term in excess of 90 continuous days and remains in force for the stated period. The taxpayer may pay the total tax due at the time the lease is executed or with each lease payment until the \$300 is paid.

Special rules apply to the sale of mobile homes. Consult one of the Department of Revenue's Taxpayer Service Centers for assistance in calculating the sales tax on mobile home sales.

Full exemptions

The full or regular exemptions can be divided into the following categories:

- Government
- Business
- Agricultural
- Educational
- General public good

NOTE: These exemptions are not categorized as such in the law. These categories have been developed simply for discussion.

Government

| Code Section | Brief Description |
|---------------|--|
| 12-36-2120(1) | Transactions that are prohibited from being taxed by U.S. or state Constitutional provisions or federal provisions |
| 12-36-2120(2) | Sales to federal government (vendor tax) |

| | |
|----------------|--|
| 12-36-2120(22) | Material necessary to assemble missiles |
| 12-36-2120(25) | Sales of cars to nonresident military personnel |
| 12-36-2120(29) | Federal government contracts |
| 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(68) | Property sold through a sheriff's sale |

Business Incentives

| Code Section | Brief Description |
|---------------------|---|
| 12-36-2120(9) | Coal, coke, fuel for manufacturers, transportation companies, electric power companies, processors |
| 12-36-2120(11) | Long-distance telephone calls, access charges and charges for telegraph messages, transactions at automatic teller machines |
| 12-36-2120(13) | Fuel for ships on high seas |
| 12-36-2120(14) | Wrapping paper, containers, etc. used incident to sale and delivery of tangible personal property |
| 12-36-2120(15) | Motor fuel taxed under the motor fuel tax law |
| 12-36-2120(17) | Machines used to manufacture, process, recycle, compound, mine or quarry tangible personal property for sale, prevent and abate pollution |

| | |
|----------------|--|
| 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 |
| 12-36-2120(20) | Railcars, locomotives, engines, parts |
| 12-36-2120(21) | Certain vessels and barges |
| 12-36-2120(24) | Laundry supplies and machinery (services are taxed under the law) |
| 12-36-2120(31) | Vacation time-share leasing plans |
| 12-36-2120(34) | Partial exemption for modular homes (50%) |
| 12-36-2120(35) | Movies sold or rented to movie theaters (movie theaters are subject to the admissions tax) |
| 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 State Ports Authority |
| 12-36-2120(42) | Sale of depreciable assets as a result of a sale of an entire business |
| 12-36-2120(43) | Supplies, equipment, machinery for use in filming/producing motion pictures |

| | |
|----------------|---|
| 12-36-2120(50) | The following 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 to handle or transfer post consumer waste or manufactured products, or in 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 |
| 12-36-2120(52) | Parts and supplies used 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 become a part of the aircraft. |
| 12-36-2120(53) | Motor vehicle extended service contracts |
| 12-36-2120(54) | Clothing required for working in a clean room environment |
| 12-36-2120(55) | Audio/visual masters made or used by a production company in making visual and audio images for first generation reproduction |
| 12-36-2120(56) | Machines used in research and development. <i>(Effective for tax years beginning after June 30, 2001)</i> |
| 12-36-2120(58) | Cooperate direct mail promotional advertising materials |

delivered by means of interstate carrier, a mailing house or a United States Post Office to residents of this South Carolina from locations both inside and outside the state.

Promotional maps, brochures, pamphlets, or discount coupons for use by nonprofit chambers of commerce or convention and visitor bureaus

12-36-2120(59)

Facilities for transmitting electricity which is transcended, sold or exchanged by electric utilities, municipalities, electric co-operative or political subdivisions to a limited liability company which is subject to regulations under the Federal Power Act (16 U.S.C. Section 791(a)).

12-36-2120(60)

Lottery tickets sold in accordance with Chapter 150 of Title 59

12-36-2120(62)

70% of gross proceeds of rental/lease of portable toilets

12-36-2120(64)

Sweetgrass baskets made by artists of South Carolina using locally grown sweetgrass

12-36-2120(70)

Gold, silver or platinum bullion, legal tender coins and currency

12-36-2120(71)

Devices, equipment, machinery operated by hydrogen or fuel cells

12-36-2120(73)

Amusement park rides and machines and equipment used to assemble such in a qualifying amusement/theme park

Agricultural

| Code Section | Brief Description |
|---------------------|--|
| 12-36-2120(4) | Livestock |
| 12-36-2120(5) | Feed used to produce and maintain livestock |
| 12-36-2120(6) | Insecticides, chemicals, fertilizers, soil conditioners, seeds, seedlings or nursery stock used in the production of farm products |
| 12-36-2120(7) | Containers and labels used in preparing agriculture products for sale; turpentine gum, gum resin and gum spirit of turpentine |
| 12-36-2120(15) (c) | Fuel used in farm machinery and farm tractors |
| 12-36-2120(15)(d) | Fuel used in commercial fishing vessels |
| 12-36-2120(16) | Farm machinery |
| 12-36-2120(18) | Fuel used to cure agriculture products |
| 12-36-2120(23) | Farm products sold in their original state of production when sold by producer |
| 12-36-2120(32) | Electricity and gas used in the production of livestock and milk |
| 12-36-2120(44) | Electricity used to irrigate crops |
| 12-36-2120(45) | Building materials, supplies, fixtures and equipment used to construct commercial housing for poultry or livestock |

Educational

| Code Section | Brief Description |
|---------------------|--|
| 12-36-2120(3) | Textbooks, books, magazines, periodicals, newspapers and access to on-line information for use in a course of study or for students' use in the school library sold to public and private schools and colleges and public libraries. These items may be in printed form or in alternative forms such as audio tapes, videotapes, microfilm or CD ROM information |
| 12-36-2120(8) | Newspapers |
| 12-36-2120(10)(a) | Meals sold to students in schools (not for profit) |
| 12-36-2120(26) | Television, radio and cable TV supplies, equipment, machinery and electricity |
| 12-36-2120(27) | Zoo plants and animals |
| 12-36-2130(2) | Exhibition purchases or rentals for museums (charitable, eleemosynary, governmental museums) (USE TAX only) |
| Budget Proviso | Property purchased for use in private primary and secondary schools, including kindergartens and early childhood education programs, for entities exempt from income taxes under IRS Code 501(c)(3) (USE TAX only) |

General Public Good

| Code Section | Brief Description |
|---------------------|---|
| 12-36-2120(10)(b) | Meals provided to elderly or disabled persons at home by nonprofit organization |
| 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 and foodstuffs sold to organizations for service to homeless or needy or certain adults |
| 12-36-2120(12) | Water sold by public utilities. <i>(Note: Bottled water sold in retail stores is taxable.)</i> |
| 12-36-2120(28) | Medicine and prosthetic devices sold by prescription; certain free samples of medicine and certain medicine donated to hospitals; prescription medicines used in treating rheumatoid arthritis, cancer and other related diseases, and prescription medicines used to prevent respiratory syncytial virus |
| 12-36-2120(28)(b) | Hypodermic needles, insulin, swabs, strips and diabetic supplies sold to diabetics |
| 12-36-2120(28)(c) | Disposable medical supplies such as bags, tubing, needles and syringes which are dispensed by a licensed pharmacist |

| | |
|-------------------|--|
| 12-36-2120(28)(d) | Medicine donated by manufacturer for research or treatment of indigent patients |
| 12-36-2120(28)(e) | Dental prosthetic devices |
| 12-36-2120(28)(f) | Prescription drugs dispensed to Medicare Part A patients residing in a nursing home |
| 12-36-2120(33) | Residential electricity and fuel, kerosene and LP gas of 20 gallons or less |
| 12-36-2120(38) | Hearing aids |
| 12-36-2120(39) | Concession sales by nonprofit organizations at a festival |
| 12-36-2120(41) | Sales by nonprofit organizations |
| 12-36-2120(47) | Goods sold to nonprofit hospitals which primarily treat children at no cost to the patient |
| 12-36-2120(74) | Durable medical equipment and related supplies; tax rate reduced to 5.5% with subsequent rate reductions dependent upon economic forecasts |
| 12-36-2120(75) | Unprepared food (Note: the local tax may still apply) |

NOTE: Each exemption must be read in its entirety for complete details. The above explanations are intended only as general information.

Agriculture

The South Carolina sales and use tax law provides many exemptions for the agriculture industry. The exemptions are found in §12-36-2120 and are as follows:



- The sale of livestock is exempt from the tax. Livestock is defined as domesticated animals customarily raised on South Carolina farms for use primarily as beasts of burden or food. Livestock also means mammals raised for their pelts or furs.
- Animals such as dogs, cats, reptiles, fowls (except baby chicks and poults), and animals of a wild nature are not considered livestock. Sales of minnows, fish (except those cultivated for human consumption) and worms are subject to the tax, unless sold for resale
- The sale of feed used in the production and maintenance of livestock, as defined above, is exempt from the tax. Rabbit feed, used in the production and maintenance of rabbits for human consumption, has been held to be exempt from the tax.
- Insecticides, chemicals, fertilizers, soil conditioners, seeds or seedlings used solely in the production for sale of farm, dairy, grove, vineyard or garden products are exempt. This exemption includes:
- Explosives (chemicals) used solely in producing farm, dairy, grove, vineyard or garden products for sale
- Medicines (chemicals) used solely in the production for sale of livestock
- Insecticides, chemicals, fertilizers, soil conditioners, seeds or seedlings used solely in the production for sale of timber and timber products and nursery products
- Containers and labels used in preparing agricultural products for sale, turpentine gum, gum resin and gum spirit of turpentine are exempt. For purposes of this exemption, *containers* means boxes, crates, bags, bagging, ties, barrels and other containers.
- The sale of farm machinery that is used in planting, cultivating or harvesting farm crops for sale is exempt from the tax. The exemption also applies to replacement parts and attachments.

Planting includes all necessary steps in the preparation of the soil prior to, and including, the planting and sowing of the seed.

Cultivation includes the loosening of the soil around growing plants, control of moisture content in the soil, and weed and pest control.

Harvesting begins with the gathering of the crop and ends when the crop is placed in a temporary or permanent storage area. However, it also includes the additional preparation for storage or sale of certain crops such as the curing of tobacco, grains and peanuts and the grading and packaging of peaches, cucumbers, tomatoes, etc.

The machinery exemption also applies to:

Machinery used in constructing terraces, drainage and irrigation ditches; dikes used to control the water level in cultivated fields; and land clearing prior to cultivation of the soil

Machinery specially designed for irrigation purposes, including pumps, pipes, spigots, etc. when sold for use in the cultivation of farm crops

Farm dairy tanks used in the product and preservation of milk on dairy farms

Farm wagons used in planting, cultivating or harvesting farm crops

Pasteurizing machines, cooling machines, mechanical separators, homogenizing machines and bottling machines used by dairies in the production of milk for sale. Milking machines do not come within the exemption for farm machinery.

Fuel used in farm machinery and farm tractors is exempt. Also exempt is fuel used to cure agriculture products.

Various machines used in the production of poultry and poultry products have been held exempt from the tax. See Regulation 117-174.252 for more details.

Sales of electricity and gas to farmers for use in the production of livestock and milk are exempt from the tax. Sales of electricity for residential purposes and irrigating crops are also exempt. Sales of electricity for other uses are taxable.

Sales of building materials, supplies, fixtures and equipment used in the construction, repair or improvement of commercial housing for poultry or livestock, or that becomes a part of a self-contained enclosure or structure designed, constructed and used for the commercial housing of poultry or livestock are exempt from the tax.

Sales of farms products are exempt from tax if the products are sold in their original state of production and sold by the farmer or a member of the farmer's immediate family. This exemption allows a farmer to sell his products tax free. The Department of Revenue, in Technical Advice Memorandum #88-4, held that this exemption not only applies to sales of farm products by people, but it applies to corporations and their employees. The exemption does not apply if the farmer processes his products beyond the usual and customary preparation for sale. This exemption applies to sales of food products, ornamental plants and grass sod.

The machinery exemption does **not** apply to:

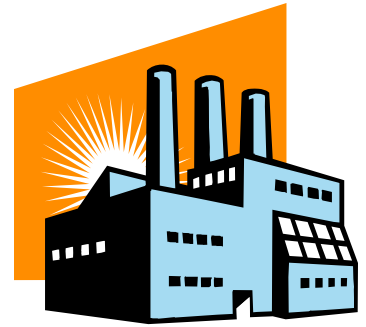
Automobiles and trucks

Machinery used in constructing fences and buildings and repairing machinery and equipment

Farm implements such as hoes, pitchforks and shovels

Manufacturers

Manufacturers, processors and compounders enjoy several exclusions and exemptions from the sales and use taxes.



Exclusions

Purchases of tangible personal property are excluded from being taxed if the tangible personal property:

- becomes an ingredient or component part of tangible personal property manufactured or compounded for sale; or
- is used directly in manufacturing, compounding or processing tangible personal property for sale. Regulation 117-174.30 provides that something is used directly if it comes in direct contact with the product being manufactured, compounded or processed for sale, and it contributes to bring about a chemical or physical change to the product.

Purchases of materials, containers, etc. that are used incident to the sale and delivery of tangible personal property are also excluded from taxation.

Sales by manufacturers and compounders of tangible personal property are not taxable if the property is sold for resale (wholesale sales). Sales to users or consumers are taxable.

Exemptions

Purchases of the following are exempt from the sales and use taxes:

Coal, coke or other fuel

- purchased by manufacturers for use in manufacturing tangible personal property for sale or for the production of by-products
- purchased by manufacturers and processors for the generation of heat or power used in manufacturing or processing tangible personal property for sale. For purposes of this exemption, mining and quarrying are considered to be manufacturing.

Machines

- used in manufacturing, processing, compounding, mining or quarrying tangible personal property for sale
- parts and attachments to the machines.

This exemption does not apply to automobiles and trucks.

Electricity

- used by manufacturers, miners, quarries and processors to manufacture, mine, quarry or process tangible personal property for sale

More on the machine exemption

As previously mentioned, sales of machines used in manufacturing, processing or compounding tangible personal property for sale are exempt from the sales and use taxes. During 2003, South Carolina courts decided two cases which clarify what qualifies as “machines used in manufacturing” for purposes of the South Carolina sales and use tax machine exemption in Code Section 12-36-2120(17). These cases are *Springs Industries, Inc. v. SCDOR*¹ (99-ALJ-17-0153-CC) and *Anonymous Taxpayer v. SCDOR* (02-ALJ-17-0350-C

The basis for the court's decision in both of the cases was the determination in *Hercules Contractors and Engineers Inc. v. S.C. Tax Commission*, 280 S.C. 426, 313 S.E.2d 300 (Ct. App. 1984). In *Hercules* the Court held that a waste water treatment facility was a machine and that “[i]ts various parts and attachments are integral and necessary to the operation of the system as a whole.”

The Court further defined the term “machine” to include “the concept of combination” and held that the statute “does not require a machine to have moving parts if it is an integral part of the manufacturing process” and that the statute makes no distinction “as to whether a machine is a fixture or personal property.”

In determining what is machinery and equipment for purposes of the exemption, the Court held that the “improvements, whether fast or loose, must be (1) ... used directly in manufacturing the products that the establishment is intended to produce; (2) ... necessary and integral parts of the manufacturing process; and (3) ...used solely for effectuating that purpose.” In addition, “improvements which benefit the land generally and may serve various users of the land are subject to taxation.”

¹ The Administrative Law Judge Division (“ALJD”) captioned this case “Anonymous Taxpayer v. SCDOR” to satisfy the confidentiality provisions of the South Carolina Code. Thus, the caption of the attached decision will also read “*Anonymous Taxpayer v. SCDOR*.” SCDOR has obtained permission from Springs Industries to formally identify this ALJD decision as the *Springs* decision.

Based on these guidelines, the Court held that buildings, such as those which house textile mills and nuclear reactors, do not come within the exemption.

The Court further held that the statute “does not require a machine to have moving parts if it is an integral part of the manufacturing process and, using the example of a butter churn, held that “no logical distinction exists between the moving parts of a machine and those which are static.”

Finally, the Court held that in order for a machine to be exempted from the tax the machine must be substantially “used in manufacturing ... tangible personal property for sale.” The statute does not require that the machine be used exclusively in manufacturing; however, incidental manufacturing use will not qualify for the exemption.

In Springs, the court mandated machinery is exempt if such machinery is “integral and necessary” to the manufacturing process. However, it is important to note that the determination hinges on whether a machine is integral and necessary to the manufacturing process, not whether it is integral and necessary to the manufacturer. As such, machines used for warehouse, distribution, or administrative purposes do not come within the machine exemption.

The case of *Anonymous Taxpayer v. SCDOR (02-ALJ-17-0350-CC)* dealt with the issue of whether buildings or parts of buildings could be exempt under the machine exemption. Considering the principles previously held in *Hercules Contractors and Engineers Inc. v. S.C. Tax Commission*, the court held that the buildings in question did not function as machines and were not exempt under the machine exemption.

For example, foundations (consisting of pilings, pile caps, elevated slab, and slab on grade) of a building in which exempt manufacturing machines are housed **are not** exempt from the tax as a machine, or a part or attachment to a machine, used in manufacturing tangible personal property for sale.

In reviewing the above referenced cases in conjunction with prior court cases, regulations, Commission Decisions, and Department advisory opinions, it is the opinion of the Department that a machine qualifies for the exemption under Code Section 12-36-2120(17) if the machine is integral and necessary to the manufacturing process and the product being manufactured is being manufactured “for sale.” A machine, which includes every mechanical device or combination of mechanical powers, parts, attachments and devices to perform some function and produce a certain effect or result, is integral and necessary to the manufacturing process if it meets all of the following:

1. The machine is used at a manufacturing facility. This exemption only applies to machines used at a facility whose purpose is that of manufacturing a product “for sale.” It does not apply to machines

used at a facility whose purpose is retailing, wholesaling, distributing, or some other non-manufacturing purposes. For example, machines used by a large industrial baker in manufacturing breads, cakes, and pies for sale may be purchased tax free; however, similar machines used by a “Ma & Pa” bakery on Main Street may not be purchased tax free since they are used at a facility whose purpose is retailing.

2. The machine is used in, and serves as an essential and indispensable component part of the manufacturing process, and is used on an ongoing and continuous basis during the manufacturing process. A machine is not a part of the manufacturing process merely because it is integral and necessary to the manufacturer. For example, machines used for warehouse, distribution, or administrative purposes are integral and necessary to the manufacturer, but not part of the manufacturing process.
3. The machine must be substantially “used in manufacturing ... tangible personal property for sale.” The statute does not require that the machine be used exclusively in manufacturing; however, incidental manufacturing use will not qualify for the exemption. In the Department’s opinion, more than one-third of a machine’s use in manufacturing is substantial. See *Hercules Contractors and Engineers Inc. v. S.C. Tax Commission* where the Court held 35% to be substantial.

Machines that meet the above requirements do not lose the exemption because they do not have moving parts or because they are fixtures upon the real estate where they stand. However, buildings and parts of buildings, as well as other improvements which benefit the land generally and may serve other users of the land, do not come within the exemption.

More on the electricity exemption

As previously stated, electricity used by manufacturers, miners, quarries and processors to manufacture, mine, quarry or process tangible personal property for sale may be purchased tax-free.

The exemption applies to electricity used to operate machines used in manufacturing or processing tangible personal property for sale and to provide lighting necessary to operate the machines.

Purchases of electricity for other purposes are **not** exempt from tax (e.g. administrative offices, parking lots, warehouses, maintenance shops, comfort air conditioning, cafeterias, etc.).

In lieu of having separate meters to record usage of electricity for exempt and non-exempt purposes, a square footage ratio is generally used. The cost of electricity used for non-exempt purposes may be computed as follows:

$$\frac{\text{Non-exempt square feet}}{\text{Total square feet}} \times \text{Cost of electricity} = \text{Taxable electricity}$$

Exemption certificates

Exemption certificates are issued to those taxpayers who make large numbers of purchases during the year, some of which are exempt and some of which are taxable. Typically, they are issued to manufacturers. By using an exemption certificate, the retailer and the manufacturer do not have to decide each time a sale is made if the transaction is exempt or taxable. The manufacturer makes that determination. Also, the certificate protects the retailer, as the purchaser assumes liability for any taxes due. Exemption certificates make it easier for the retailer and the purchaser to do business.

To obtain an exemption certificate, an application (Form ST-10) must be completed and submitted to the Department of Revenue. Usually, a field visit will be made to determine if issuance of a certificate is warranted. If warranted, the certificate (Form ST-9) will be issued.

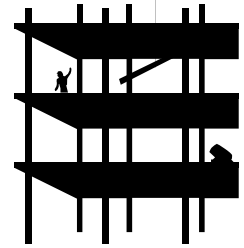
Direct pay certificate

A *direct pay* certificate, or “19,” allows its holder to make all purchases tax-free and to report and pay directly to the Department of Revenue any taxes due. The holder of a direct pay certificate is liable for any taxes due. The tax is due upon the withdrawal, use or consumption of tangible personal property purchased with the certificate. This certificate is issued on Form ST-9.

Special or limited certificate

A *special* or *limited* exemption certificate, as opposed to allowing its holder to make **all** purchases tax-free, allows its holder to make only **certain** purchases tax-free (e.g. machinery, electricity or raw materials). Just as with a direct pay certificate, the tax is due upon the withdrawal, use or consumption of tangible personal property purchased with the certificate. This certificate is issued on Form ST-9.

Construction Contractors



The general rule is construction contractors are the users or consumers of everything they buy, which means purchases by contractors are retail purchases subject to the sales or use tax. However, there are some exceptions which will be discussed later.

A **contractor** is any person or business making repairs, alterations or additions to real property. For purposes of discussion, the term *contractor* means construction contractor.

Building Materials

The term **building materials** means any tangible personal property that becomes a part of real property.

If a contractor buys property from an in-state supplier and the supplier delivers the property to the contractor (or to an agent or donee of the contractor) outside the state, then the purchase may be made free of the South Carolina sales tax. Remember, the supplier is liable for the sales tax; therefore, the supplier must be prepared to prove the property was delivered to the contractor outside the state.

There is also an exclusion from the sales tax for purchases in South Carolina of tangible personal property used on contracts outside South Carolina. To come within this exclusion, the contractor must perform some work on the property in South Carolina and the property must not be brought back into the state.

If a contractor buys building materials in another state and brings them into South Carolina for use on a construction contract in South Carolina, then the contractor is liable for the state use tax. If the contractor first stores, uses or consumes the property in a local option tax county, the contractor may also be liable for that county's 1% use tax.

Construction materials used in the construction of a single manufacturing and distribution facility with a capital investment of at least one hundred million in real and personal property in the state over an eighteen month period are exempt for the sales tax effective July 1, 2011. Beginning July 1, 2007, the sales tax rate on these materials is 4% and the rate decreases one percent per year until the total exemption is reached.

Credit for taxes due and paid in another state

If a contractor takes delivery of building materials in another state, the contractor will most likely be charged that state's sales tax, plus the local sales tax, if applicable. Credit is allowed against the South Carolina use tax for the total taxes (state and local) **due and paid** in the other state.

Local option tax counties

If building materials are first stored, used or consumed in a local option tax county and the total tax due and paid in the other state is 6% or more, no tax is due in South Carolina. If the total tax due and paid in the other state is less than 6%, then the difference is due in South Carolina. If the other state's total tax rate (state plus local) is greater than 6%, no refund or credit is allowed for the excess tax amount.

If building materials are first stored, used or consumed in a non-local option tax county, and the total tax due and paid in the other state is 5% or more, no tax is due in South Carolina. If the total tax due and paid in the other state is less than 5%, then the difference is due in South Carolina. The amount due is state use tax. If the other state's total rate (state plus local) is greater than 5%, no refund or credit is allowed for the excess tax amount.

Construction contracts executed before the imposition date of the 1% local option tax are exempt from the 1% local option sales and use taxes. The exemption from the 1% tax also applies to written bids submitted before the imposition date, which culminates in a contract executed before or after the imposition date.

How do contractors receive the exemption from the 1% local option tax? To come within the exemption, contractors must apply to the Department of Revenue, using Form ST-10-C. If the application is approved, an exemption certificate will be issued (ST-35). An application form must be filed for each contract, accompanied by a copy of each contract. A separate exemption certificate will be issued for each contract.

Light construction equipment

There is a maximum tax amount, or "cap," of \$300 on purchases of light construction equipment. The equipment must be self-propelled, with a maximum of 160 net engine horsepower.

- If light construction equipment is leased, it comes within the \$300 cap if:
- the lease agreement states the lease is for a period in excess of 90 continuous days; **and**

 - the lease does, in fact, remain in effect for more than 90 continuous days. The \$300 tax can be paid up front or as each lease payment is made. Purchases of light construction equipment are exempt from the 1% local option tax.

Construction contracts with manufacturers

Machines and materials used to build machines, which are used in manufacturing tangible personal property for sale may be purchased tax-free by a manufacturer. However, as previously mentioned, construction contractors usually cannot make tax-free purchases.

How can a contractor purchase an exempt machine or materials to build an exempt machine? Manufacturers usually have what is known as a “direct pay” exemption certificate or “19.” A direct pay exemption certificate is issued by the Department of Revenue, upon application, and it allows the manufacturer to make all purchases tax-free. Any tax due is the liability of the manufacturer and it is paid directly to the Department of Revenue by the manufacturer.

A method by which a contractor may purchase such items tax-free is to enter into a **limited agency agreement** with the manufacturer. By entering into an agency agreement, the contractor is allowed to purchase exempt machines, and materials to build exempt machines, using the manufacturer’s direct pay exemption certificate. The manufacturer is liable for any taxes due, so it is important for the agency agreement to be in writing and clearly state what the contractor can and cannot buy with the certificate. Before entering into such an agreement, legal counsel should be obtained.

Another method which can be utilized is by the manufacturer supplying information to the contractor relevant to materials purchased by contractors. The letter on the following page is a sample that can be utilized by contractors to purchase materials free of the tax when such materials are purchased to construct exempt, manufacturing machinery. This letter is extended to material suppliers.

**LETTER TO BE USED WHEN CONSTRUCTION
CONTRACTORS ARE FURNISHING
EXEMPT PROCESSING MACHINERY**

We have placed with you our Purchase Order Number _____ for a construction contract which includes tangible personal property for use at our plant located in the vicinity of _____
_____.

This tangible personal property will become part of our manufacturing machinery which is exempt from the South Carolina Sales and Use Tax under Section 12-36-2120, Paragraph 17.

Please do not pay or bill us for the Sales and Use Tax on these materials. You may advise your suppliers that the materials are being used to construct tax exempt processing machinery for

_____, who holds Direct Pay or Exemption Certificate Number _____, which may not be extended to your suppliers, but is merely evidence that _____ is exempt by statute.

The purpose of this letter is to enable you to purchase certain machines, to include their parts and attachments, free of the South Carolina Sales/Use Tax as provided at the above cited South Carolina Code Section. No other tangible personal property such as construction equipment, supplies, building material, etc. may be purchased tax free.

Should this letter be used to purchase machines, parts, attachments thereto which do not fall within the exemption, free of tax and its is later determined to be subject to the South Carolina Sales and/or Use Tax, _____ (owner) _____, will reimburse _____ (Contractor) _____ for such tax paid to the South Carolina Department of Revenue and Taxation.

Contracts with the federal government

Sales to and purchases by the federal government are exempt from the sales and use taxes; however, as stated above, sales to contractors are generally taxable. Therefore, when a contractor is engaged by the federal government, the question invariably arises whether purchases for the contract are exempt or taxable.

To answer this question, it must be determined if the contractor is making purchases as an *agent* for the federal government. If the contractor is acting as an agent for the federal government, then any purchases made by the contractor as agent are exempt from the sales and use taxes. If the contractor is not acting as an agent for the federal government, then all purchases made by the contractor are taxable.

Determining whether a contractor is acting as an agent for the federal government is not always easy. However, there are two U.S. Supreme Court cases, which provide guidance in this area -*State of Alabama v. King & Boozer*, 314 U.S. 1, 62 S.Ct. 43, 86 L.Ed. 3 (1941) and *Kern-Limerick, Inc. v. Scurlock*, 347 U.S. 110, 74 S.Ct. 403, (1954). In *King & Boozer*, the court ruled the purchases in question were those of the contractors (King & Boozer) and, therefore, taxable. In *Kern-Limerick*, the court ruled the federal government was the actual purchaser and sales by Kern-Limerick were not taxable.

In *King & Boozer*, the court reasoned:

....the government was not bound by their [King & Boozer's] purchase contracts, but was obligated only to reimburse the contractors when the materials purchased should be delivered, inspected and accepted at the site. But however extensively the government may have reserved the right to restrict or control the action of the contractors in other respects, **neither the reservation nor the exercise of that power gave to the contractors the status of agents of the government to enter into contracts or to pledge its credit** (emphasis added).

In *Kern-Limerick*, the court distinguished the facts from *King & Boozer* as follows:

The significant difference lies in this. Both the request for bids and the purchase order, in accordance with the contract arrangements making the contractors [WHMS] purchasing agents for the government, note 2, *supra*, contain the identical, specific provision:

“This purchase is made by the government. The government shall be obligated to the vendor for the purchase price, but the contractor shall handle all payments hereunder on behalf of the government. The vendor agrees to make demand or claim for payment of the purchase price from the government by submitting an invoice to the contractor.

Title to all materials and supplies purchased hereunder shall vest in the government directly from the vendor. The contractor shall not acquire title to any thereof.”

The purchase order is headed Navy Department Bureau of Yards and Docks, is signed by the contractor as purchasing agent...

Under these circumstances, it is clear that the government is the disclosed purchaser and that no liability of the purchasing agent to the seller arises from the transaction.

We find that the purchaser under this contract was the United States.

Sales of tangible personal property to a contractor are exempt as sales to the federal government, if the contractor can demonstrate purchases made under a contract are made as an agent of the federal government.

Most contracts with the federal government contain a standard clause stating title to property purchased under the contract vests with the federal government. Such a clause, by itself, is not controlling in determining whether a contractor is an agent for the federal government. Also, whether a contract is a “cost-plus-fixed-fee” or a “fixed-price” contract is not controlling. *King & Boozer*, supra. What matters is whether the contractor is acting as an agent of the federal government.

There are procedures for subcontractors to purchase materials free of the tax when performing work for contractors who have a contract with the Federal Government. SC Revenue Ruling #04-9 provides these procedures in detail.

Contracts with state, county and municipal governments

Purchases made by contractors under contracts with state, county and municipal governments generally are **not** exempt from the sales and use taxes.

Manufacturer/contractors

A so-called **manufacturer/contractor** is a business that:

- manufactures its own building materials for use under its own construction contracts; **and**
- sells standard, finished products to others.

A **manufacturer/contractor** owes the sales tax on the **fair market value** of materials it manufactures and uses at the time and place where they are used. A **manufacturer/contractor** owes the tax on materials it sells on the **selling price** of the materials (i.e. gross proceeds of sales).

What exemptions and exclusions are available to Manufacturer/ contractors?

Manufacturer/contractors are entitled to the same exemptions as other manufacturers (e.g. machines used in manufacturing and electricity). Also, they are entitled to the same exclusions as other manufacturers (e.g. “ingredient or component parts” - raw materials, packaging and “used directly” items).

Manufacturer/contractors are required to pay the sales tax “at the time and place where [the property manufactured] is used or consumed.” Therefore, if the property is used or consumed in a local option tax county, then the 1% local option sales or use tax will be due. However, *manufacturer/contractors* are entitled to apply for an exemption from the 1% local option tax, just as other contractors are so entitled.

Summary

Construction contractors are considered the users or consumers of everything they buy including building materials, equipment, tools, etc. Therefore, everything a contractor buys is a retail sale subject to the sales or use tax. However, there are certain exemptions affecting contractors.

Research and Development Machinery

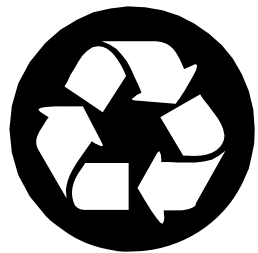
The \$300 sales tax cap was deleted in legislation passed in 2000, *effective for tax years after June 30, 2001.*

“Machines used in research and development” includes machines and parts of machines, attachments and replacements which are used or manufactured for use on or in the operation of the machines, which are necessary to the operation of the machines, and which are customarily used in that way. “Machines used in research and development” means machines used directly and primarily in research and development, in the experimental or laboratory sense, of new products, new uses for existing products or improvement of existing products.

Qualified Recycling Facility

Code section 12-36-2120(50) provides an exemption from sales and use tax for:

- recycling property;
- electricity, natural gas, propane or fuels of any type, oxygen, hydrogen, nitrogen or gases of any type, and fluids and lubricants used by the facility;
- tangible personal property that becomes, or will become, an ingredient or component part of products manufactured for sale by the facility;
- tangible personal property of, or for, the facility, which is, or will be, used: (1) for the handling or transfer of post-consumer waste material, (2) in or for the manufacturing process, or (3) in or for the handling or transfer of manufactured products; and
- machinery and equipment foundations used or to be used by the facility.



The requirements to qualify for this exemption include a minimum level of investment for the recycling facility of at least \$300 million by the end of the fifth calendar year in which the taxpayer begins construction or operation of the facility. Further, the facility must manufacture products for sale composed of at least 50% post-consumer waste material by weight or volume. The definitions of the terms “recycling property,” “qualified recycling facility,” and “post-consumer waste material” are defined in §12-6-3460.

Machines Used in Recycling

Code section 12-36-2120(17) was amended in 1996 to include machines used in recycling tangible personal property for sale in this exemption from sales and use tax. "Recycling" is defined to mean any process by which materials which would otherwise become solid waste are collected, separated, or processed and reused or returned to use in the form of raw materials or products, including composting, for sale. This exemption was phased-in. For the period June 1, 1997, through June 30, 1998, 50% of the sales price of machines used in recycling was exempt from sales and use tax. After June 30, 1998, 100% of the sales price is exempt.

Material Handling Systems and Equipment

Code section 12-36-2120(51) exempts from sales and use tax material handling systems and material handling equipment including, but not limited to, racks, whether or not the racks are used to support a facility structure or part thereof, used in the operation of a distribution facility or a manufacturing facility. In order to qualify for this exemption, the taxpayer shall notify the Department of Revenue before the first month it uses the exemption and shall invest at least \$35 million in any real or personal property in this State over the five-year period beginning on the date provided by the taxpayer to the Department of Revenue in its notices.

Sale of Business

Code section 12-36-2120(42) exempts from sales and use tax the sale of depreciable assets used in the operation of a business pursuant to the sale of the business. This exemption only applies where the entire business is sold by the owner pursuant to a written contract and the purchaser continues its operation. **The purchase of real property and inventory for resale are not subject to tax.**

For purposes of this exemption, the Department of Revenue has issued S.C. Revenue Advisory Bulletin #01-1. This Bulletin provides guidance regarding the circumstances for which the sale of an entire business would qualify for exemption.

Computer Services and Software



Code section 12-36-910(C) provides that sales and use tax does not apply to data processing. As used in this statute, “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.

The term 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.

The applicability of sales and use tax to the sale or purchase of computer software depends upon the form of software sold.

Computer software sold and delivered to a purchaser in a tangible form, such as magnetic tape or diskette, is subject to sales and use tax. [See *Citizens and Southern Systems, Inc. v. South Carolina Tax Commission*, 280 S.C. 138, 311 S.E. 2d 717 (1984)].

In South Carolina Revenue Ruling #96-3, however, the Department of Revenue concluded that computer software sold and delivered by electronic means is not subject to sales and use tax since it does not meet the definition of tangible personal property. (See *South Carolina Revenue Ruling #05-13 for a discussion of the taxability of software and software maintenance contracts.*)

Goods Shipped from South Carolina

Code section 12-36-2120(36) provides that when tangible personal property is sold within South Carolina and the seller is obligated by contract to deliver it to the buyer or to an agent of the buyer at a point outside of South Carolina or to deliver it to a carrier or to the mails for transportation to the buyer or to an agent of the buyer at a point outside this state, the sales and use tax does not apply provided the property is not returned to a point within South Carolina.

The most acceptable proof of transportation outside South Carolina is:

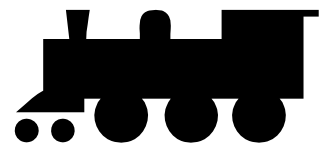
- a way-bill or bill of lading made to the seller's order and calling for delivery;
- an insurance receipt or registry issued by the U.S. Postal Department, or a Postal Department Form 3817; or
- a trip sheet signed by the seller's delivery agent and showing the signature and address of the person outside this state who received the goods delivered.

The tax applies when tangible personal property pursuant to a sale is delivered in South Carolina to the buyer or to an agent other than a common carrier even though the buyer may subsequently transport the property out of South Carolina.

Interstate and International Commerce

Code sections 12-36-2120(13), (20), (21) and (40) exempt from sales and use tax:

- railroad cars, locomotives and their parts;
- vessels and barges of more than 50 tons;



- containers and chassis, including all parts and components sold to international shipping lines which have a contractual relationship with the South Carolina State Ports Authority and are used for the import or export of goods to or from this state; and
- fuel lubricants and supplies for use or consumption aboard ships in intercoastal trade or foreign commerce

Regulation 117-174.207 provides that (1) these exemptions do not apply to sales of materials used in fulfilling a contract for the painting, repair or reconditioning of vessels, barges, ships or other watercraft and (2) the exemption in South Carolina Code §12-36-2120(13) also does not apply to sales of fishing craft, tugs, vessels or other watercraft not used in trade or commerce between South Carolina ports and ports of other states or foreign countries.

Ship chandlers sell marine supplies to operators of all kinds of watercraft and to others. Regulation 117-174.208 provides that sales by ship chandlers of fuel, lubricants and supplies for use aboard ships plying on the high seas engaged in trade or commerce between South Carolina ports and ports of other states and foreign countries are not subject to the tax. All other sales made by ship chandlers, not for resale, are taxable except for tangible personal property delivered to a ship from a bonded warehouse in the custody and under the supervision of United States Customs officials, who deliver such properties aboard ships to a locked compartment on which a custom seal is placed, which seal by Federal rule cannot be broken until the vessel has passed the 12-mile limit.

Broadcast Equipment

Code section 12-36-2120(26) exempts from sales and use tax the sale of all supplies, technical equipment, machinery, and electricity to radio, television, and cable television systems for use in producing, broadcasting, or distributing programs. For the purpose of this exemption, radio stations, television stations, and cable television systems are deemed to be manufacturers. See Regulation 117-174.250.

Motion Picture Industry



Code section 12-36-2120(43) exempts from sales and use tax supplies, technical equipment, machinery, and electricity sold to motion picture companies for use in filming or producing motion pictures in South Carolina.

For the purpose of this exemption, “motion picture” means any audiovisual work with a series of related images either on film, tape, or other embodiment, where the images shown in succession impart an impression of motion together with accompanying sound, if any, which is produced, adapted, or altered for exploitation as entertainment, advertising, promotional, industrial, or educational media; and a “motion picture company” means a company generally engaged in the business of filming or producing motion pictures.

Motion Picture Production Company Incentives- Exemption

Motion picture production companies are now exempt from the sales and use tax on funds expended in South Carolina in connection with the filming or production of motion pictures in South Carolina if the company intends to expend in the aggregate \$250,000 or more in connection with the filming or production of one or more motion pictures in South Carolina within a consecutive 12 month period. In order to qualify, the motion picture production company must make application for, meet the requirements of, and receive written certification of such designation from the Director of the South Carolina Film Commission. Once approved, the Department shall issue a written certification of state sales and use tax exemption to the motion picture production company. (Effective date: July 1, 2004) (HB 4968)

Sales Tax Holiday

If your business sells clothing, footwear and/or educational supplies, South Carolina's sales tax exemption may impact your business. The three-day sales tax exemption occurs from 12:01a.m. on the **first Friday in August** and ends at midnight the following Sunday.

The following items are sales tax exempt during this period:

- Clothing
- Clothing accessories including, but not limited to:
 - Hats
 - Scarves
 - Hosiery
 - Handbags
 - Footwear
- School supplies including, but not limited to:
 - Pens
 - Pencils
 - Paper
 - Binders
 - Notebooks
 - Books
 - Book bags
 - Lunch boxes
 - Calculators
 - Bath towels
 - Blankets
 - Bed linens
 - Pillows/ cases
 - Shower Curtains
 - Computers
 - Printers



Sales of the following items are NOT sales tax exempt during this period:

- Jewelry
- Cosmetics
- Eye wear
- Wallets
- Watches
- Furniture

For more information about the Sales Tax Holiday see our Revenue Ruling 05-9.

Sales and Use Tax Policy

The Department of Revenue Policy Department recommends Advisory Opinions to the Director for approval as set forth in SC Revenue Procedural Bulletin #02-3. The types of advisory opinions are referred to as:

1. Revenue Advisory Bulletins (Final and Temporary),
2. Revenue Procedural Bulletins (Final and Temporary), and
3. Private Revenue Opinions.

The purposes of advisory opinions include providing guidance to the general public and employees concerning the Department's opinion on the application of laws administered by the Department. These opinions are not binding on the public.

Our website (www.sctax.org) contains advisory opinions and informational bulletins issued by the Department from 1987 to present. Many of these opinions have been modified, superseded, or are obsolete. The Department issues a Revenue Informational Bulletin quarterly that identifies the effect new advisory opinions have on those previously published to the best of our knowledge. As part of the implementation of these purposes, the Department's website includes the following information on advisory opinions and informational bulletins:

- An **Advisory Opinion E-Mail Subscription Service** to allow the public to automatically receive draft, temporary, and final advisory opinions via e-mail.
- An **Index of Advisory Opinions (Temporary and Final)**.
- A **Keyword Search Database of Advisory Opinions (Temporary and Final)**.
- An **Advisory Opinion Calendar** where interested parties may track the progress of draft and temporary Revenue Advisory Bulletins and Revenue Procedural Bulletins. This includes information and deadlines on how to provide comments about and suggest alternatives to draft opinions. Upon issuance, the final advisory opinion will be listed here temporarily and will be indexed by topic.
- An Information Guide briefly explaining the procedure for requesting an advisory opinion.

It is important to understand the types of rulings and decisions issued by the Department. Advisory Opinions consist of Revenue Advisor Bulletins, Revenue Procedural Bulletins and Private Revenue Opinions. The following will provide a brief description of the types of advisory opinions issued to taxpayers and Department of Revenue employees. The opinions are available in detail at the Department of Revenue's web site at www.sctax.org.

Revenue Rulings (RR) – an interpretation of the tax laws by the commission that concerns a specific set of facts and applies to all taxpayers or a large group of taxpayers

Revenue Procedures (RP) – a statement that provides information to commission employees of a procedural nature

Private Letter Rulings (PLR) – an interpretation of the tax laws by the commission that concerns a specific taxpayer and a specific set of facts and is issued only upon a written request by such taxpayer

Technical Advice Memoranda (TAM) – an interpretation of the tax laws by the commission that concerns a specific set of facts and is issued only upon a written request by one of the operating divisions within the Department of Revenue

Information Letters (IL) – a statement used to disseminate tax information of a general nature (i.e. changes in tax rates, enactments of new exemptions)

Commission Decisions – a determination concerning a specific taxpayer and a specific set of facts that is issued as a result of an appeal by a taxpayer of a proposed audit assessment or a denial of a refund claim

Private Revenue Opinion (PRO) – a written statement issued to a specific taxpayer applying principles of law to a specific set of facts or a particular tax situation.

Revenue Advisory Bulletin (RAB) – a written statement issued to apply principles of tax law to a specific set of facts or a general category of taxpayers.

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|---|--------------------------|
| Software | TAM90-6 |
| Used in Institution of Higher Learning | PLR90-5 |
| Transportation: | |
| Factory-to-Customer | TAM89-9 |
| Fuel Used in Tugs | PLR88-10 |
| Use Tax: | |
| General Questions & Answers | RR07-5 |
| | RR06-2 |
| Information for Individuals, Businesses & Nonprofits | RR07-5 |
| Liability of Contractor or Retailer | RR89-16 |
| Vending Machine Sales of Tangible Personal Property | RR92-5 |
| | PLR06-1 |
| Veterinarians: | |
| Medicine Sold by Prescription | TAM88-23 |
| Medicines and Insecticides | RAB01-10 |
| Warranties: | |
| Auto Warranties | IL91-26 |
| Warranty, Maintenance, and Similar Service Contracts | RR06-9 |
| | RR05-12 |
| | RR93-6 |
| Waste Disposal-Containers | PLR88-20 |
| -Service | PLR04-2 |
| Water/Wastewater Treatment Plants (See Machine) | |
| Withdrawal of Parts-Retailers Service of Auto Warranties | IL91-26 |

Forms, Applications, and Certificates

SCTC-111 - Business Tax Application

This form is used to apply for:

- an employee withholding number;
- a retail sales license;
- a purchaser's certificate of registration; or
- nonresident registration.

Form ST-3 - Sales and Use Tax Return

This form is used by those reporting the state sales and use taxes. Local taxes are reported on Form ST-389 which is then attached to the ST-3. For most taxpayers, returns are due by the 20th day of the month following the month the sales tax is collected. For example, the return for September 2006 is due by October 20, 2006.

ST-8 - Single Sale Exemption Certificate

This certificate is used by taxpayers making exempt purchases who do not have a retail license or other type of exemption certificate (e.g. farmers). A certificate is given to the retailer **for each purchase**.

To be valid, the certificate must be signed by the owner, partner or corporate officer; include information relevant to the purchase (e.g., a description of the property); the selling price; the date of purchase; and the purchaser's address.

If the purchaser uses a single sale certificate to make a purchase upon which the tax should have been made, then the purchaser becomes liable for the tax. The retailer is relieved of the liability. The purchaser's signature on each sales invoice is not required.

Retailers are to maintain these certificates on file for at least three years.

ST-8A - Resale Certificate

A resale certificate is used by retailers to purchase, tax-free (at wholesale), tangible personal property that is to be resold. If the Department of Revenue determines a sale was not for resale, the purchaser will be held liable for the tax. By having a resale certificate on file, the seller is relieved of the liability for the tax.

Resale certificates can be obtained from any Department of Revenue office; however, it is not necessary that the Department of Revenue form (ST-8A) be used. As long as the document given to the retailer shows the purchaser's name, address, and retail sales tax license number, it should be acceptable.

It is not necessary that a certificate be taken each time a sale is made; however, retailers should maintain them on file for at least three years.

ST-8F - Agricultural Exemption Certificate

This certificate is used by people making exempt agricultural use purchases. A certificate may be presented upon each purchase or the retailer may keep a copy on file.

All agricultural exemptions are scheduled on this form. Previously most of these exemptions were found on the ST-8.

ST-9 - Exemption Certificate

An ST-9 is a certificate issued to taxpayers who make numerous purchases, some of which are taxable and some of which are exempt. Some taxpayers are issued a “direct pay” certificate and others are issued a “limited” or “special” certificate. A “direct pay” certificate allows its holder to make all purchases tax-free and to account to the Department of Revenue for any taxes due. A “limited” or “special” certificate allows its holder to make certain purchases tax-free. The holder of an exemption certificate assumes liability for any taxes which may be due.

A copy of the certificate does not have to be given to the retailer for each sale. However, the retailer should maintain a copy on file for at least three years.

ST-10 - Application for Certificate (Form ST-9)

This application is used to apply for a:

- “direct pay” or “special” exemption certificate;
- a wholesaler’s certificate; or
- a certificate for a transit authority or motor carrier.

ST-10-C - Application For Exemption From the 1% Local Option Sales Tax For Construction Contractors

If certain requirements are met, a construction contractor can be exempt from the local option sales and use taxes for certain contracts. This form is used to apply for an exemption certificate (ST-35).

ST-10-G- Application for Exemption for Federal Government Contract

This form is to be used by persons under a written contract with the federal government in applying for an exemption certificate for making purchases free of the sales and use tax for federal government contracts.

ST-14 - Claim For Refund

This is an optional form to be used for filing refund claims.

ST-178 - Nonresident Military Tax Exemption Certificate

This form is used by auto dealers to show proof that a motor vehicle was sold to a nonresident member of the armed forces and is entitled to an exemption from the sales tax.

A current leave and earning statement (LES) may be substituted for this form. Both forms must be dated 10 days prior to or after the date of purchase.

ST-382- Affidavit to Limit to Three Hundred Dollars (\$300.00) the Maximum Sales/Use Tax on Sales of Musical Instruments and Office Equipment to Religious Organizations

The religious organization must furnish this affidavit to the seller when making purchases of musical instruments and office equipment which are subject to the \$300 tax limitation.

ST-385 - Affidavit for Intent to License Motor Vehicles

Motor vehicles and trailers which will be transported out of South Carolina and licensed in another state are subject to the sales tax which would be due in the other state or the South Carolina sales tax, whichever is less. If the purchaser will not receive credit for South Carolina taxes paid, no tax is due.

ST-387 - Application For Sales Tax Exemption For Exempt Organizations

This form is used by certain exempt organizations (e.g. Girl Scouts, PTOs, etc.) to apply for a certificate (ST-9) to purchase items for resale tax-free and to sell items tax-free.

ST-388 - Sales, Use and Accommodations Tax Return

This return is used by those taxpayers reporting the state sales and use taxes and the 2% tax on accommodations.

Local taxes are reported on Form ST-389 which you then attach to this form.

Just as with the ST-3, most taxpayers file the ST-388 monthly. The return is due by the 20th day of the month following the month for which a return pertains. For example, the return for September 2006 is due by October 20, 2006.

ST-389 - Schedule for Local Option Sales Tax

Form ST-389 (“Addendum”) is used by those taxpayers who report the 1% local option taxes. The form is used to report the 1% taxes by county and municipality. Each county and municipality is identified by a four digit code, which is required to be shown on this form.

Form ST-389 is attached to and submitted with Form ST-3, ST-3A, ST-388 or ST-388A.

ST-389A--Local Option Addendum

This form is used by those taxpayers who have multiple 1% local option taxes to report.

The form is used to report the 1% taxes by county and municipality. Each county and municipality is identified by a four digit code, which is required to be shown on this form.

SC8822 - Change of Address/Business (Formerly Form ST-395)

This form is used to provide information relative to change of business location.

ST-405 - Certificate to Limit to \$300 the Maximum Sales/Use Tax on Sales of Self-Propelled Light Construction Equipment

Self-propelled light construction equipment used for construction purposes is subject to a \$300 maximum sales tax cap. This form is to be completed by the purchaser and given to the seller as proof that the purchase was for an allowable purpose in the event the seller is questioned on the sale.

ST-455 - State Sales, Use, Maximum Tax and Special Filers Tax Return

This form is used by those taxpayers reporting the state sales and use tax of 6% and 5%.

This form is normally used by businesses that have Maximum Tax sales (\$300 cap or who receive a 1% exemption certificate from the state sales tax)

Local taxes are reported on Form ST-389 which you then attach to this form.

Just as with the ST-3, most taxpayers file the ST-455 monthly. The return is due by the 20th day of the month following the month for which a return pertains. For example the return for April 2007 is due by May 20, 2007.

ST-501- State Sales and Use Tax Return for Durable Medical Equipment and Related Supplies

This form is used by those taxpayers reporting the state sales tax of 6% and/or the durable medical equipment and related supplies sales tax of 5.5%.

This form is used by businesses which are directly paid by funds of this State or the United States under the Medicaid or Medicare program, where state or federal law or regulation authorizing the payment prohibits the payment of the sales and use tax.

Local taxes are reported on Form ST-389 which you then attach to this form.

Just as with the ST-3, most taxpayers file the ST-501 monthly. The return is due by the 20th day of the month following the month for which a return pertains. For example the return for April 2007 is due by May 20, 2007.

UT-3 - Individual Purchase Use Tax Return

This form is used by individuals who are not required to file a sales tax return but who have use tax to report on purchases made from out-of-state. The UT-3 is also found in the individual income tax booklet.

Frequently Asked Sales Tax Questions



1. Are freight charges taxable?

Freight charges are taxable unless the shipping is billed F.O.B. point of origin.

2. If Company A (located in California) makes a sale to Company B (located in New Jersey) but ships the merchandise to Company C (located in South Carolina); who is responsible for the South Carolina tax?

This is a third party drop shipment scenario. Company A is considered to be making a nontaxable sale for resale to Company B. Company C is liable for the South Carolina use tax unless it has a receipt (invoice) showing payment of the South Carolina tax to company B.

3. If I am leasing a car, can I pay all of the sales tax up front or do I have to pay it monthly?

There is an option available for payment of the sales tax up front.

4. If I lease a car and then decide to buy the car, why do I have to pay taxes again? This is double taxation.

The sales tax is a transaction tax; this is not double taxation. The lease of the car is one taxable transaction. The sale of the car is a second taxable transaction.

5. Are warranties taxable?

Effective for sales or renewals on or after October 1, 2005, Code Sections 12-36-910(B) and 12-36-1310(B) impose the sales and use tax on the: gross proceeds accruing if proceeding from the sale or renewal of warranty, maintenance, or similar service contracts for tangible personal property, whether or not such contracts are purchased in conjunction with the sale of tangible personal property.

As such, charges for sales or renewals of warranty, maintenance, or similar service contracts (whether optional or mandatory) for tangible personal property are subject to the sales and use tax effective October 1, 2005. However, charges for motor vehicle extended service contracts and

motor vehicle extended warranty contracts are exempt from the sales and use tax under Code section 12-36-2120(53).

Note: The tax does not apply to the withdrawal from inventory of tangible personal property for use in replacing defective part under a warranty contract if:

1) tax was paid on the sale or the renewal of the warranty contract and the customer is not charged for any labor or material when the part is replaced; or,

2) the warranty contract is given without charge at the time of the original purchase of the defective property, and the tax was paid on the sale of the defective part or on the sale of the property of which the defective part was a component, and the customer is not charged for any labor or material when the part is replaced.

If both conditions set forth in Item 1 are not met, or if all three conditions set forth in Item 2 are not met, then tax is due on the withdrawal from inventory of the tangible personal property for use in replacing a defective part under the warranty contract. The tax would be based on the fair market value of the property withdrawn from inventory.

For a more detailed discussion of this issue, see SC Revenue Ruling #05-12.

6. Are computer software contracts taxable?

Effective for sales or renewals on or after October 1, 2005, Code Sections 12-36-910(B) and 12-36-1310(B) impose the sales and use tax on the:

gross proceeds accruing if proceeding from the sale or renewal of warranty, maintenance, or similar service contracts for tangible personal property, whether or not such contracts are purchased in conjunction with the sale of tangible personal property.

As such, a charge for the sales or renewal of a warranty, maintenance, or similar service contract for computer software what was delivered in tangible form (tangible personal property) is subject to the sales and use tax, whether or not such contract was purchased in conjunction with the sale of computer software that was delivered in tangible form. A charge for the sale or renewal of a warranty, maintenance, or similar service contract for computer software that was delivered solely by electronic means is not subject to the sales and use tax, provided no part of the software (including back-up diskettes and tapes) that is covered by the maintenance agreement is to acquire services and is not to acquire

tangible personal property (e.g. software updates provided by tangible means).

For a more detailed discussion of this issue, see SC Revenue Ruling #05-13.

7. Are churches exempt from sales tax?

Churches are not exempt from sales tax on anything purchased for their own use. Churches may obtain an exemption for fundraising sales.

8. What is the tax rate?

The statewide South Carolina sales and use tax rate is 6%.

9. How do you complete the sales and use tax return?

Instructions are available for assistance in completion of the return. You also may call (803) 898-5788 in Columbia or call one of the nine Taxpayer Service Centers listed in the State.

10. If my nonprofit organization holds an exemption certificate in another state, will South Carolina honor it and exempt me from South Carolina sales tax.

No. Nonprofit organizations are taxable on all items purchased for their own use. Certain qualifying organizations are exempt on items to be sold (such as at fundraisers). Application Form ST-387 must be completed.

11. If I present my exemption certificate can I stay in South Carolina hotels free of the tax?

South Carolina does not recognize other states' exemption certificates issued to nonprofit organizations for staying in hotels free of the tax.

12. What are deductions?

Deductions are those transactions considered nontaxable by law. These include sales for resale, out-of-state deliveries and trade-ins. A complete list of deductions is available from the Department of Revenue.

13. What is your fiscal year?

The South Carolina fiscal year is July 1 through June 30.

14. How can I take a credit on my return?

There is no provision for taking a credit on the return. Deductions should be increased by the appropriate amount to reflect any credit due for current period or an amended return should be submitted for previous periods.

15. How do I submit an amended return?

An amended return is submitted by marking a regular return with "amended" across the top and mailing it to the Department of Revenue.

16. Are delivery charges taxable?

Delivery charges are considered part of the sales price and are subject to the tax.

Numbers to call

All phone numbers are in the 803 area code

| SALES/USE AND ACCOMMODATIONS TAX | |
|--|----------|
| Accommodations Tax | 896-1420 |
| Extensions | 896-1420 |
| Failure to File | 898-5788 |
| Form ST 236 Or Refunds | 896-1370 |
| General Questions | 898-5788 |
| Local Option Sales Tax | 896-1420 |
| Rental Surcharge | 896-1420 |
| Technical Questions on Sales, Use, Local Option, Accommodation & Miscellaneous Tax Questions | 898-5744 |

| ELECTRONIC SERVICES | |
|---|--|
| E-Sales Information & Assistance | 896-1715 #1 |
| Electronic Fund Transfers (EFT) | 896-1715 #4 or (800) 476-0311 #4 |
| Electronic Data Interchange (EDI) | 896-1715 or (800) 379-9409 #4 |
| Business Tax TeleFile (Registration & Filing) | 898-5918 |
| Business Tax TeleFile (Sales Tax Help Line) | 896-1715 #2 |
| Business Tax TeleFile Help Line | 896-1715 #2 |
| Business Tax TeleFile E-mail | telefile@sctax.org |

| OTHER HELPFUL TELEPHONE ASSISTANCE | |
|---|-------------------------------|
| Alcoholic Beverage License (Beer, Wine & Alcoholic Liquors) | 898-5864 |
| Business Personal Property | 898-5222 |
| Business Taxpayer Registration (Retail Licenses) | 896-1350 |
| Copies of Previously Filed Forms | 896-1166 |
| Forms Fax on Demand | 898-5320 or (800) 768-3676 |
| Problems Resolution Office | 896-1100 |
| Taxpayer Advocate | 898-5444 |

Internet Address.....www.sctax.org

TAXPAYER SERVICE CENTERS

Charleston Service Center: 3 South Park Circle
Suite 202
Charleston, S.C. 29407
Phone: 843-852-3600
Fax: 843-556-1780

Columbia Main Office: 301 Gervais Street
P.O. Box 125
Columbia, S.C. 29214
Phone: 803-898-5000
Fax: 803-898-5822

Florence Service Center: 1452 West Evans Street
P.O. Box 5418
Florence, S.C. 29502
Phone: 843-661-4850
Fax: 843-662-4876

Greenville Service Center: 211 Century Drive
Suite 210-B
Greenville, SC 29607
Phone: 864-241-1200
Fax: 864-232-5008

Myrtle Beach Service Center 1330 Howard Parkway
P.O. Box 30427
Myrtle Beach, S.C. 29588
Phone: 843-839-2960
Fax: 843-839-2964

Rock Hill Service Center: 454 South Anderson Road
Business and Technology Center
Suite 202
P.O. Box 12099
Rock Hill, S.C. 29731
Phone: 803-324-7641
Fax: 803-324-8289

Internet Address..... www.sctax.org

