

Chapter 22

Administrative Requirements

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

A. 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.¹

Fairs, Carnivals, and Athletic Events: The single retail license covers sales of tangible personal property made from all stands under the immediate management or control of each operator. A separate license will not be required for each change of location provided the operator furnishes the Department an itinerary giving a schedule of locations and dates.²

Vending Machines: For persons engaged in the business of operating vending or coin-operated machines dispensing cigarettes or soft drinks in closed containers in South Carolina, each point from which the service for such machines or other tangible personal property originates, is considered to be a retail outlet and a retail license must be obtained for each such point of service.³

Also, an out-of-state retailer must 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; or delivers his/her goods on his/her own trucks.⁴

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.⁵

¹ South Carolina Code §12-36-510(A)(1) and SC Regulation 117-300.

² SC Regulation 117-300.5.

³ SC Regulation 117-300.2.

⁴ This 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, and you are advised to be aware of changes.

⁵ South Carolina Code §12-36-510(A)(2).

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 location⁶.

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.

A licensed retailer may, upon written application and approval by the Department, have his retail dealer's license transferred from one location to another without incurring additional license tax liability, but only in cases where there is an abandonment of the licensed business location and a simultaneous moving to a new location. The licensed retailer making application for transfer must surrender his license of original issue and indicate on the license the address of his new location⁷.

The Department may determine which retail license or licenses a retailer must obtain⁸.

A retail license is not required of:

- (a) persons selling at flea markets or conducting a yard sale no more than once a quarter;⁹
- (b) organizations devoted exclusively to public or charitable purposes conducting concession sales at festivals,¹⁰ if all the net proceeds are used for those public or charitable purposes and if in advance of the festival its organizers provide the Department information necessary to ensure compliance with the law;¹¹
- (c) persons furnishing accommodations to transients for one week or less in any calendar quarter;¹² and
- (d) certain nonprofit organizations exempt from the sales and use tax under Code Section 12-36-2120(41).¹³

⁶ South Carolina Code §12-36-510(A)(3).

⁷ SC Regulation 117-300.4.

⁸ South Carolina Code §12-36-510(D).

⁹ South Carolina Code §12-36-510(B)(1).

¹⁰ For purposes of this provision, a festival does not include a recognized state or county fair.

¹¹ South Carolina Code §12-36-510(B)(2) and South Carolina Code §12-36-2120(39).

¹² South Carolina Code §12-36-510(B)(3).

¹³ South Carolina Code §12-36-510(B)(4) and South Carolina Code §12-36-2120(41). See also SC Revenue Procedure #03-6 and SC Revenue Ruling #04-8 for a list of the type of nonprofit organizations eligible for this exemption and for other information related to this exemption.

B. Obtaining a Retail License

A retail license may be obtained on-line by visiting the Department's website at www.sctax.org and clicking on "Business One-Stop Online Business Registration."

A retail license may also be obtained by filing an application (Form SCTC-111) at one of the Department's five Taxpayer Service Centers (located in Greenville,¹⁴ Charleston,¹⁵

Florence,¹⁶ Myrtle Beach¹⁷ and Rock Hill¹⁸) or at the main Columbia office.¹⁹

A completed application with the appropriate license tax amount may also be mailed to: South Carolina Department of Revenue, P.O. Box 125, Columbia, South Carolina 29214.

C. Operating Without a Retail License – Penalty

A person required to obtain a retail license that engages in business as a retailer in this State without a retail license or after the license has been suspended is guilty of a misdemeanor and, upon conviction, must be punished by a fine of not more than two hundred dollars or imprisonment not exceeding thirty days, or both. This offense is triable in magistrate's court. This provision also applies to each officer of a corporation which engages in business without a retail license or after the license is suspended.²⁰ In addition, this provision²¹ may be enforced by local law enforcement authorities as well as the Department.²²

Also, a person required to obtain a retail license who fails to pay the \$50 license tax or obtain the license within the time provided is liable for a penalty not to exceed five hundred dollars.²³

D. Returning a License²⁴

When a business is closed, sold or otherwise transferred to another person, the retail license, as well as all other licenses issued by the Department, must be returned to the department for cancellation and the taxpayer must remit unpaid or accrued taxes.

The Department may refuse to issue a license to a person, and may revoke one or more licenses held by a person, who has failed to return a license and remit taxes.

¹⁴ 211 Century Drive, Suite 210-B, Greenville, SC, 29607; (864) 241-1200.

¹⁵ One Southpark Circle, Suite 100, Charleston, SC, 29407; (843) 852-3600.

¹⁶ 1452 West Evans Street, Florence, SC, 29502; (843) 661-4850.

¹⁷ 1330 Howard Parkway, Myrtle Beach, SC, 29577; (843) 839-2960.

¹⁸ 454 South Anderson Rd., Business & Technology Ctr., Suite 202, Rock Hill, SC, 29731; (803) 324-7641.

¹⁹ 301 Gervais Street, Columbia, SC, 29214; (803) 898-5000.

²⁰ South Carolina Code §12-36-560.

²¹ South Carolina Code §12-36-560.

²² Attorney General Opinion dated 1/29/1996.

²³ South Carolina Code §12-36-570.

²⁴ South Carolina Code §12-54-126. See also SC Regulation 117-300.6 for special rules regarding partnerships.

E. Purchaser's Certificate of Registration

A Purchaser's Certificate of Registration is required for those businesses and nonprofit organizations **not** making retail sales who purchase tangible personal property from outside South Carolina and store, use or consume the property in South Carolina.²⁵ 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 at one of the Department's five Taxpayer Service Centers (located in Greenville,²⁶ Charleston,²⁷ Florence,²⁸ Myrtle Beach²⁹ and Rock Hill³⁰) or at the main Columbia office.³¹

A completed application may also be mailed to: South Carolina Department of Revenue, P.O. Box 125, Columbia, South Carolina 29214. There is no charge for a Purchaser's Certificate of Registration.

F. Special Events Returns³²

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

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.

G. 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 arises³³. For example, sales made

²⁵ For more detailed information on use tax reporting requirements for business and nonprofit organizations, as well as individuals, see SC Revenue Ruling #08-6.

²⁶ 211 Century Drive, Suite 210-B, Greenville, SC, 29607; (864) 241-1200.

²⁷ One Southpark Circle, Suite 100, Charleston, SC, 29407; (843) 852-3600.

²⁸ 1452 West Evans Street, Florence, SC, 29502; (843) 661-4850.

²⁹ 1330 Howard Parkway, Myrtle Beach, SC, 29577; (843) 839-2960.

³⁰ 454 South Anderson Rd., Business & Technology Ctr., Suite 202, Rock Hill, SC, 29731; (803) 324-7641.

³¹ 301 Gervais Street, Columbia, SC, 29214; (803) 898-5000.

³² South Carolina Code §12-36-510(C).

³³ South Carolina Code §12-36-2570(A) & (B).

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.³⁴

Quarterly returns. The Department of Revenue may allow a taxpayer to file quarterly, instead of monthly, if the taxpayer's monthly tax liability is \$100 or less.³⁵

Other Filing Periods. The Department of Revenue may authorize, in addition to monthly or quarterly, other filing periods.³⁶

Where a store has leased departments operated by other persons, each such person operating a leased department must make a separate return, if he keeps his own books and makes his own collections on accounts.³⁷

Where the store leasing such department keeps the books and makes collections for the leased department the store may, as agent for the lessee, make returns for such leased department and pay the taxes due. Note, however, the lessee shall not be relieved of his liability until the amount due has been paid. This method of accounting for the tax is authorized only by special permission of the Department.³⁸

Where the store makes returns as agent for leased departments, it shall make separate returns for each department leased or shall make a consolidated return for both its business and the leased departments using "Schedule of Locations" to show a breakdown of gross proceeds of sales and other required information relating to its business and relating to each leased department. In any case, the lessor must obtain the permission of the Department of Revenue to make returns for his lessee.³⁹

H. Reporting and Paying the Tax Electronically

E-Sales

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

³⁴ South Carolina Code §12-36-2570(D).

³⁵ South Carolina Code §12-36-2580.

³⁶ South Carolina Code §12-36-2590.

³⁷ SC Regulation 117-327.

³⁸ SC Regulation 117-327.

³⁹ SC Regulation 117-327.

ST3EZ – Simplified Sales Tax Return

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

ST389 – Schedule for Local Taxes

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

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) 896-1850.

Business Tax TeleFile

A retailer who has **zero gross proceeds of sales, rentals, use tax or withdrawals for the filing period covered** may file that period's sales tax return by using the Business Tax TeleFile System. Business Tax TeleFile is available twenty-four hours a day/ seven days a week.

A first time user is 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. However, the retailer should maintain a copy of his report for his files.

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 the Department by e-mail at elefile@sctax.org.

Electronic Filing Program (EFT/EDI)

The Department has designed an Electronic Filing Program (EFT/EDI) for the transmission of the payment and filing of 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 file and pay electronically.⁴⁰ 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.

⁴⁰ South Carolina Code §12-54-250.

A retailer interested in filing and paying one tax (e.g., sales tax, use tax, local sales tax, local use tax,) through EFT/EDI must file and pay all of these taxes through EFT/EDI. For example, a retailer cannot file and pay sales tax through this program and pay local option through a conventional process. Be aware that both the return and the payment must be filed and paid electronically; a retailer cannot choose to do one part electronically and the other by a different 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:

- (1) Eliminates paperwork, no more paper returns and checks;
- (2) Reduces return error potential due to no re-keying; no manual intervention;
- (3) Accurate timing of payment from the retailer's bank account; and
- (4) Comprehensive audit trail for both the return and the payment.

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

I. Discount for Timely Payment

If returns are filed and the taxes paid in full by the due date, the taxpayer is 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.⁴¹

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.⁴²

Nonresident retailers not required by law to collect South Carolina sales or use tax, but who voluntarily register to do so, are allowed a maximum discount of \$10,000 each fiscal year.

In calculating the maximum discount (whether \$3,000, \$3,100 or \$10,000), begin with the June return filed in July and end with the May return filed in June.⁴³

J. Cash Deposit or Bond

Transient retailers who have no permanent business location from which retail sales are made may be required to make a sufficient cash deposit or bond with the Department of

⁴¹ South Carolina Code §12-36-2610.

⁴² South Carolina Code §12-36-2610.

⁴³ South Carolina Code §12-36-2610.

Revenue to cover at least their annual sales tax liability. This cash deposit or bond must be made before receiving a retail license.⁴⁴

K. Types of Paper Returns

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

Most other taxpayers who are liable for the state and/or local taxes that are administered and collected by the Department must file Form ST-3. However, the following forms must be used instead of Form ST-3 (depending on the taxpayer's business):

- (A) Taxpayers liable for the state tax on accommodations (hotels, motels, etc.) must file Form ST-388;
- (B) Taxpayer selling tangible personal property subject to the maximum tax must file Form ST-455;
- (C) Taxpayers selling aviation gasoline and fuel must file Form ST-403; and
- (D) Taxpayers selling durable medical equipment meeting the requirements of a lower tax rate must file Form ST-501.

If local sales and use taxes are 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.

L. 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."⁴⁵ This includes records in electronic format.⁴⁶ Purchase invoices must show the names and addresses of vendors from whom purchases are made.⁴⁷

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.⁴⁸

Records must be kept for a period of **four years**.⁴⁹

The penalty for failing to keep records as required by the Department is a maximum of \$500 per return.⁵⁰

⁴⁴ South Carolina Code §12-36-520.

⁴⁵ South Carolina Code §12-36-2540(A); South Carolina Code §12-54-210; SC Regulation 117-200; and SC Regulation 117-200.1.

⁴⁶ SC Regulation 117-200.2.

⁴⁷ South Carolina Code §12-36-2540(C).

⁴⁸ South Carolina Code §12-36-2540(B).

⁴⁹ SC Regulation 117-200.1.

⁵⁰ South Carolina Code §12-54-210.

M. Assessments

The Department may assess unpaid taxes within three years of the date the taxpayer's return was filed, or due to be filed, whichever occurs later.⁵¹

For example, if a taxpayer files the May 2008 sales and use tax return on the due date, June 20, 2008, the Department has until June 20, 2011, to determine if additional taxes are due and assess the taxpayer for those taxes. If the taxpayer filed the May 2008 return late on August 30, 2008, then the Department has until August 30, 2011, to determine if additional taxes are due and assess the taxpayer for those taxes.

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

- (1) The taxpayer has consented in writing to extending the time period for assessing the tax.⁵² This consent form must be completed before the three-year time limit 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.
- (2) The taxpayer understates 20% of total taxes. In this case, the Department has six years to assess the taxpayer for the unpaid taxes.⁵³
- (3) The taxpayer has failed to file the return.⁵⁴ In this case, the Department may go back to August of 1985.⁵⁵
- (4) The taxpayer has filed a fraudulent return with the intent to evade the tax.⁵⁶ In this case, the Department may go back to August of 1985.⁵⁷

⁵¹ South Carolina Code §12-54-85(A).

⁵² South Carolina Code §12-54-85(C)(4).

⁵³ South Carolina Code §12-54-85(C)(3).

⁵⁴ South Carolina Code §12-54-85(C)(2).

⁵⁵ South Carolina Code §12-54-85(C). At one time there was a statute that presumed that any tax due for more than 10 years had been paid. That statute was repealed effective August 1, 1995. Now there are no limitations on assessment of taxes where no return was filed and none on fraudulent returns. The Department has consistently taken the position that the former 10 year statute would continue to apply to taxes due before August 1, 1995; therefore it does not seek to make assessments for periods before August 1, 1985 (10 years prior to the August 1, 1995, effective date).

⁵⁶ South Carolina Code §12-54-85(C)(1).

⁵⁷ South Carolina Code §12-54-85(C). At one time there was a statute that presumed that any tax due for more than 10 years had been paid. That statute was repealed effective August 1, 1995. Now there are no limitations on assessment of taxes where no return was filed and none on fraudulent returns. The Department has consistently taken the position that the former 10 year statute would continue to apply to taxes due before August 1, 1995; therefore it does not seek to make assessments for periods before August 1, 1985 (10 years prior to the August 1, 1995, effective date).

- (5) The taxpayer has failed to pay a use tax and the Department assesses the use tax as a result of information received from other state or local taxing authorities, regional or national tax administration organizations, or the federal government. The use taxes may be assessed within 12 months of receiving the information, but no later than 72 months after the last day the use tax may be paid without penalty.⁵⁸

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 authorized amount.⁵⁹

N. Refunds

Initial Process

- A. A taxpayer may seek a refund of any state tax by filing a written claim for refund with the Department of Revenue (Department).

Only the taxpayer legally liable for the tax may claim or receive a refund.⁶⁰ In the case of the sales tax, this is the retailer. In the case of the use tax, this is the purchaser. However,

- (1) with respect to sales tax, a purchaser who has paid the sales tax to the retailer for a specific transaction may claim and receive a refund if the retailer who paid the sales tax to the Department has assigned in writing the right to the refund of the sales tax to the purchaser.⁶¹
- (2) with respect to the use tax, the retailer who collected the use tax from the purchaser and remitted to the Department may claim and receive the refund if the retailer establishes that the use tax has been repaid to the purchaser or the retailer has obtained written consent from the purchaser to claim and receive the use tax refund.⁶²

Also, the taxpayer legally liable for the tax (the retailer for sales tax and the purchaser for use tax) may assign in writing the refund to another person if the taxpayer legally liable for the tax has filed the claim for refund, the Department determines the claim is allowable, the amount of the refund is decided by the Department, and the Department has approved the refund.⁶³

For special rules concerning foreign diplomats, see Code Section 12-60-470(C)(3).

⁵⁸ South Carolina Code §12-54-85(C)(5).

⁵⁹ South Carolina Code §12-54-196.

⁶⁰ South Carolina Code §12-60-470(C)(1).

⁶¹ South Carolina Code §12-60-470(C)(1)(b).

⁶² South Carolina Code §12-60-470(C)(1)(a).

⁶³ South Carolina Code §12-60-470(C)(2).

- B. The refund claim must specify:⁶⁴
- (a) the taxpayer's name, address, and telephone number;
 - (b) the appropriate taxpayer identification number or numbers;
 - (c) the tax period or date for which the tax was paid;
 - (d) the nature and kind of tax paid;
 - (e) the amount claimed as erroneously paid;
 - (f) a statement of facts supporting the taxpayer's positions; and
 - (g) a statement outlining the reasons for the claim, including any law or other authority upon which the taxpayer relies.
- C. The refund claim must be filed within three years of the time the return was filed, or two years from date of payment, whichever is later. If no return was filed, the claim must be filed within two years from date of payment.⁶⁵
- D. The appropriate division of the Department will decide what refund is due, if any, and give a written notice of its decision.
- E. If a taxpayer's claim for refund is denied, the taxpayer can appeal by filing a written protest with the Department. The protest must be in writing and must be filed within 90 days from the date of the denial. The protest must also provide any information that was previously omitted but required for a refund claim as listed above.
- F. If a refund is due, it must be first applied against other sales or use taxes due by the claimant and then against other state taxes due by the claimant.⁶⁶

Review by the Department of Revenue

- A. After the appeal, the taxpayer will be offered a conference with the person who denied the refund claim, and if requested, that person's supervisor. The purpose of the conference is to give the taxpayer a better understanding of the facts and issues and to also afford the taxpayer the opportunity to present additional information. At the Department's discretion, the conference may be conducted by telephone. After the conference, if the protest is not resolved, the file will be transferred to the Department's Office of General Counsel for Litigation.

⁶⁴ South Carolina Code §12-60-470(B).

⁶⁵ South Carolina Code §12-54-85(F).

⁶⁶ South Carolina Code §12-60-490.

- B. The Office of the General Counsel for Litigation will review the file and prepare a written Department Determination addressing the issues raised by the appeal. Once the Department's Director approves the Determination, it will be mailed to the taxpayer.

Contested Case Hearing before the Administrative Law Court

- A. A taxpayer can request a contested case hearing before the Administrative Law Court if the taxpayer disagrees with the Department Determination.
- B. The request for a contested case hearing must be made in writing within 30 days after the date of the Determination.
- C. The rules of the Administrative Law Court will control the request for a contested case hearing and the hearing.
- D. A refund denial will become final if the taxpayer does not request a contested case hearing within 30 days.

O. 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.

P. Other Penalties

Other penalties, such as those imposed with respect to negligence,⁶⁷ fraud⁶⁸ and operating without a retail license,⁶⁹ can be found in Chapter 54 of Title 12 of the South Carolina Code of Laws.

Q. Interest

The Department, 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. The interest rate changes quarterly, and such rate changes may be found on the Department's website (www.sctax.org).⁷⁰ These are the same interest rates used by the Department in calculating the interest due a taxpayer if that taxpayer is issued a refund; however, 2007 Act No. 117, Part IB, Section 56DD, Proviso 56DD.38 directs the Department to reduce the rate of interest paid on eligible refunds by two percentage points from the above the rates for refunds paid from July 1, 2007 through June 30, 2008.

R. 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 #08-6.

S. Completion of an Audit

Initial Process

- A. When a division of the Department determines a taxpayer owes additional taxes, it will mail or deliver a proposed assessment.
- B. The proposed assessment is the first written notice a taxpayer will receive that says the taxpayers owes or requests that the taxpayer pays additional taxes, interest, or penalties. The term "proposed assessment" does not include the auditor's work papers or draft audit reports. If the taxpayer disagrees with a proposed assessment, the taxpayer is entitled to appeal the findings using the following procedures.

⁶⁷ South Carolina Code §12-54-43(F)(1).

⁶⁸ South Carolina Code §12-54-44.

⁶⁹ South Carolina Code §12-36-560.

⁷⁰ Interest rate information is published quarterly in an information letter issued by the Department. To obtain a copy of such an information letter, click on "Dept. Advisory Opinions" on the website, then go to the "Alphabetical Index of Advisory Opinions" and then to the "Administrative" index.

- C. If the taxpayer agrees with the proposed assessment, the amount due should be paid on or before the due date of the proposed assessment to avoid additional interest and penalties, if applicable.

If the taxpayer cannot pay, the taxpayer may request to enter into an installment payment agreement. An installment payment agreement will allow the taxpayer to pay over an agreed period of time. The taxpayer may contact the district manager of the nearest Taxpayer Service Center for additional information about installment agreements.

- D. A taxpayer may agree with portions of the proposed assessment and disagree with others. The portion of the assessment with which the taxpayer agrees may be paid to avoid additional interest and penalties, and the remainder can be appealed.

- E. If the taxpayer disagrees with part or all of the proposed assessment, the taxpayer may appeal by sending a written protest within 90 days from the date on the proposed assessment to the address on the proposed assessment. The written protest must contain:

- (a) the taxpayer's name, address, and telephone number;
- (b) the appropriate taxpayer identification number or numbers;
- (c) the tax period or date for which the tax was proposed;
- (d) the nature and kind of tax in dispute;
- (e) a statement of facts supporting the taxpayer's position; and
- (f) a statement outlining the reasons for the appeal, including any law or other authority upon which the taxpayer relies.

A taxpayer does not need to provide legal or other authority, as provided above, if the total amount of the proposed assessment is less than \$2,500.00, unless the taxpayer is a partnership, "S" corporation, exempt organization, or employee plan and the proposed tax is imposed by Chapters 6, 11, or 13 of Title 12. This exception does not apply to protests involving sales or use taxes.

- F. The Department may extend the time for filing a protest at any time before the period has expired.

Review by the Department of Revenue

- A. After a taxpayer files a protest, the taxpayer will be offered a conference with the person who issued the proposed assessment, and if requested, that person's supervisor. The purpose of the conference is to give the taxpayer a better understanding of the facts and issues and to also afford the taxpayer the

opportunity to present additional information. At the Department's discretion, the conference may be conducted by telephone. After the conference, if the protest is not resolved, the taxpayer's file will be transferred to the Department's Office of General Counsel for Litigation.

- B. The Office of the General Counsel for Litigation will review the file and prepare a written Department Determination addressing the issues raised by the appeal. Once the Department's Director approves the Department Determination, it will be mailed to the taxpayer.

Contested Case Hearing Before the Administrative Law Court

- A. A taxpayer can request a contested case hearing before the Administrative Law Court if the taxpayer disagrees with the Department Determination.
- B. The request for a contested case hearing must be made in writing and filed with the Administrative Law Court within 30 days after the date of the Department Determination.
- C. The rules of the Administrative Law Court will control the request for a contested case hearing and the hearing.
- D. A final assessment will be sent to the taxpayer for payment, if the taxpayer does not properly request a contested case hearing within 30 days.

License Revocation

- A. The Department may deny or revoke any license issued by the Department for failure to pay taxes or certain regulatory violations.
- B. Notice will be sent to the taxpayer if a division of the Department proposes to deny or revoke your license.
- C. A taxpayer can appeal the denial or revocation by filing a written protest with the Department within 90 days of the notice. The written protest must contain:
 - (a) the taxpayer's name, address, and telephone number;
 - (b) the appropriate taxpayer identification number or numbers, if any;
 - (c) the kind of license in dispute;
 - (d) a statement of facts supporting the taxpayer's position; and
 - (e) a statement outlining the reasons for the appeal, including any law or other authority upon which the taxpayer relies.

- D. If a protest involves a failure to pay taxes, a written protest should be filed with the Department's District Manager who signed the denial or revocation. The District Manager will transfer the matter to the Department's Office of the General Counsel for Litigation if it cannot be resolved. The Office of the General Counsel for Litigation will review the file and prepare a written Department Determination addressing the issues raised by the appeal. Once the Department's Director approves the Department Determination, it will be mailed to the taxpayer.
- E. If a protest involves a regulatory violation of the alcoholic beverage laws, bingo laws, or other coin operated devices provisions, a written protest should be filed with the Department's Regulatory Division.
- F. A taxpayer can request a contested case hearing before the Administrative Law Court if the taxpayer disagrees with the Department Determination. The request for a contested case hearing must be made in writing and filed with the Administrative Law Court within 30 days after the date of the Department Determination. The rules of the Administrative Law Court will control the request for a contested case hearing and the hearing.