

Chapter 1

General Overview

A. History

The state sales and use tax was first imposed in South Carolina in 1951. The imposition of the tax was upheld by the State Supreme Court in *State ex rel. Roddey v. Byrnes*, 219 S.C. 485, 66 S.E.2d 33 (1951). Over the years, the state tax rate has increased as follows:

1951 – 3%¹

1969 – 4%²

1984 – 5%³

2007 – 6%⁴

As enacted in 1951, the original state sales and use tax law contained 19 exemptions. Today, there are 82 exemptions;⁵ and several of these 82 “exemption provisions” are in fact multiple exemptions. In addition, there are other sales and use tax exemptions contained in other areas of the South Carolina Code of Laws.

The original sales and use tax law established a maximum tax of \$75.00 on any single item. This was repealed in 1955.⁶ From 1984 through 1986 various maximum tax provisions were enacted for specific items, such as motor vehicles, boats, aircraft, self-propelled light construction equipment, certain trailers, manufactured homes, musical instruments and office equipment sold to a religious organization, and certain research and development machinery.⁷

Over the years, the imposition of the sales and use tax has been expanded to include various services and intangibles such as sleeping accommodations, communication services, laundry and drycleaning services, and electricity.

In 1991, the first local sales and use tax to be administered and collected by the Department of Revenue was authorized by the General Assembly. Today, the Department of Revenue

¹ Act No. 379 of 1951.

² Act No. 274 of 1969.

³ Act No. 512 of 1984.

⁴ Act No. 388 of 2006.

⁵ S.C. Code Ann. § 12-36-2120 lists 84 exemptions; however, two of those exemptions (numbers (76) and (77)) were ruled unconstitutional. Additionally, the legislature also may enact annual provisos that exempt certain items from sales and use tax, although the exemptions are not codified.

⁶ Act No. 234 of 1955.

⁷ The maximum tax for certain research and development machinery was later repealed and replaced by a full exemption for such machinery.

administers and collects on behalf of local jurisdictions several types of local sales and use taxes as well as the Catawba Tribal Sales Tax.

These provisions, as well as many others found in the present sales and use tax law, will be discussed in this publication.

The “South Carolina Sales and Use Tax Act” can be found in Chapter 36 of Title 12.

B. Rates and Impositions

South Carolina imposes a 6% sales tax⁸ on the gross proceeds of sales of every person engaged in the business of selling tangible personal property at retail. The retailer is liable for the tax. The sales tax is also imposed on the fair market value of items originally purchased at wholesale that are withdrawn for use by the business or by any person withdrawing the property.⁹

South Carolina imposes a complementary 6% use tax¹⁰ on the sales price of tangible personal property purchased at retail for storage, use, or other consumption in South Carolina, regardless of whether the retailer is engaged in business in South Carolina. The use tax is the liability of the purchaser.¹¹ If the purchaser, however, has a receipt from a seller required or authorized to collect the state use tax showing the seller collected the tax from the purchaser, the purchaser is relieved of the liability for the tax.¹² South Carolina allows a credit against the use tax due in South Carolina for the state and local sales or use tax due and paid in another state on purchases of tangible personal property.

In addition to applying to the sale or use of tangible personal property (e.g., furniture, clothing, computers, etc.), the sales and use taxes also apply to:

- (1) certain communication services,¹³
- (2) laundry and dry cleaning services,¹⁴
- (3) electricity,¹⁵
- (4) the fair market value of tangible personal property manufactured within South Carolina or brought into South Carolina by its manufacturer for storage, use, or consumption in South Carolina by the manufacturer,¹⁶

⁸ S.C. Code Ann. §§ 12-36-910(A) and 12-36-1110.

⁹ S.C. Code Ann. § 12-36-110(1)(c).

¹⁰ S.C. Code Ann. §§ 12-36-1310(A) and 12-36-1110.

¹¹ S.C. Code Ann. § 12-36-1310(A).

¹² S.C. Code Ann. § 12-36-1330. *See also* S.C. Code Ann. § 12-36-2130(1) and *McJunkin v. City of Orangeburg*, 238 F.2d 528 (1956).

¹³ S.C. Code Ann. §§ 12-36-910(B)(3), 12-36-910(B)(5), 12-36-1310(B)(3), 12-36-1310(B)(5), and 12-36-2645; S.C. Regulation 117-329, “Communications Services.”

¹⁴ S.C. Code Ann. §§ 12-36-910(B)(1) and 12-36-1310(B)(1).

¹⁵ S.C. Code Ann. §§ 12-36-910(B)(2) and 12-36-1310(B)(2).

¹⁶ S.C. Code Ann. §§ 12-36-910(B)(4) and 12-36-1310(B)(4).

(5) transient construction property,¹⁷ and

(6) the furnishing of accommodations.¹⁸

South Carolina imposes a 7% sales tax¹⁹ on charges for any rooms, lodgings, or sleeping accommodations for less than 90 days to the same person and a 6% sales tax²⁰ on “additional guest charges” added to the guest’s room charge for a specific amenity or service.

C. Local Sales and Use Taxes

Local governments have limited authority to levy local taxes and fees. As explained below, local sales and use taxes may be imposed for various purposes. The majority of these are administered and collected by the Department in the same manner as the state sales and use taxes. Below is a brief description of the local taxes. For more information on these local taxes, see Chapter 12 of this manual.

D. Local Taxes Administered by the Department

General Property Tax Relief. Counties have the option of increasing the sales, use, and accommodations tax rate by 1% to provide additional revenue for local governments and a property tax rollback.²¹ The tax must be approved by voter referendum and is typically referred to as the “local option sales tax.”

Local Sales and Use Tax for Transportation Facilities. A governing body of a county may raise revenue for a transportation project by either imposing a sales and use tax up to 1% or by authorizing a transportation authority created by the county governing body to impose tolls.²² The increase is imposed by enacting an ordinance, subject to approval by voter referendum, and must be for a specific period of time to collect a limited amount of money. At no time may any portion of the county area be subject to both the local sales and use tax for transportation facilities and the capital project sales tax (discussed below).

Capital Project Sales Tax. A governing body of a county may impose a 1% sales and use tax to defray the debt service on bonds issued to pay for authorized capital projects.²³ The increase is imposed by enacting an ordinance, subject to approval by voter referendum. It may not be imposed for more than 8 years for newly imposed taxes or 7 years for reimposed taxes. At no time may any portion of the county area be subject to both the capital project sales tax and the local sales and use tax for transportation facilities (discussed above).

¹⁷ S.C. Code Ann. § 12-36-1320.

¹⁸ S.C. Code Ann. § 12-36-920.

¹⁹ S.C. Code Ann. § 12-36-920(A).

²⁰ S.C. Code Ann. §§ 12-36-920(B) and 12-36-1110.

²¹ S.C. Code Ann. § 4-10-20.

²² S.C. Code Ann. § 4-37-30.

²³ S.C. Code Ann. § 4-10-300.

Personal Property Tax Relief. The county council may impose, by referendum, a local sales and use tax in lieu of the personal property tax imposed on private passenger motor vehicles, motorcycles, general aviation aircraft, boats, and boat motors.²⁴ The tax may not exceed the lesser of 2% or the amount necessary to replace the property tax on these items in the most recently completed fiscal year.

School District Taxes. The General Assembly authorized certain school districts to impose a sales and use tax within the county. These taxes are generally imposed to pay debt service on general obligation bonds and/or the cost of capital improvements for school districts. Most of these taxes are imposed at a rate of 1%. Currently, only six of the 20 school districts authorized by the General Assembly impose a school district tax.

Catawba Tribal Sales and Use Tax. The Catawba Indian Reservation is located in Lancaster and York counties. Section 27-16-130(H) of the South Carolina Code contains the specific sales and use tax provisions relating to the Catawba Tribal Sales and Use Tax. The tribal sales tax is administered and collected by the Department and the tribal use tax is administered and collected by the tribe.²⁵ For more information concerning the Catawba Tribal Sales and Use Tax, see Chapter 18 of this manual.

Local Option Sales and Use Tax for Local Property Tax Credit. The governing body of the county, by a county council ordinance or by an initiated ordinance submitted to the governing body of the county by a petition signed by at least 7% of the qualified electors of the county, may impose a sales and use tax in increments of one-tenth of 1%, not to exceed 1%, subject to referendum approval.²⁶ The tax provides a credit against property tax imposed by a political subdivision.

Education Capital Improvements Sales and Use Tax. The General Assembly authorized a school district or school districts within a county to impose a 1% sales and use tax within the county for specific education capital improvements for the school district for not more than 15 years.²⁷ The tax must be approved by a referendum open to all qualified electors residing in the county. Pursuant to a memorandum of agreement, a portion of the revenue may be shared with the area commission (governing body of a technical college) or higher education board of trustees (governing body of a public institution of higher learning) or both, for specific education capital improvements on the campus of the recipient located in the county and listed in the referendum. The General Assembly established several criteria that, if met, will allow a county or school district to impose this tax. The county or school district must meet only one of these criteria in order to impose the tax.²⁸ This tax may not be imposed in a county that is imposing or is scheduled to impose a local sales and use tax for public school capital improvements authorized under local law.

²⁴ S.C. Code Ann. § 4-10-540.

²⁵ See S.C. Revenue Ruling #98-18 and S.C. Information Letter #25-5, Notes 1 and 2 for additional information.

²⁶ S.C. Code Ann. §§ 4-10-720 through 4-10-810.

²⁷ S.C. Code Ann. §§ 4-10-410 through 4-10-470 (Act No. 316 of 2008).

²⁸ S.C. Code Ann. § 4-10-470.

Tourism Development Tax. The governing body of a municipality, by an ordinance adopted by a two-thirds majority of the municipal council or by approval by a majority of qualified electors voting in a referendum authorized by a majority of the municipal council, may impose a general sales and use tax within the municipality.²⁹ The tax is imposed specifically for tourism advertisement and promotion directed at non-South Carolina residents; however, in the second and subsequent years of this tax a portion of the tax may be used for certain property tax rollbacks and other purposes. It may only be imposed by a municipality located in a county where revenue from the state accommodations tax is at least fourteen million dollars in a fiscal year.

County Green Space Tax: The county green space sales and use tax is authorized under Code Section 4-10-1010 et seq. This tax is a general sales and use tax on all sales at retail (with a few exceptions) taxable under the state sales and use tax. This tax is imposed specifically for procuring, or for servicing bonds used to procure, open lands or green space for preservation by and through the acquisition of interests in real property. The interest in real property that may be acquired for preservation includes the acquisition of fee simple titles, conservation easements, development rights, rights of first refusal, options, leases with options to purchase, and any other interest in real property.

E. Local Taxes Administered by Local Governments

Local Accommodations Tax. The governing body of a county or municipality may impose, by ordinance, a local accommodations tax, on the gross proceeds derived from the rental or charges for accommodations furnished to transients as provided in Code Section 12-36-920(A), not to exceed 3%.³⁰ The revenue generated by this additional tax must be used exclusively for certain tourism purposes.

Local Hospitality Tax. The governing body of a county or municipality may impose, by ordinance, a tax on the sales of prepared meals and beverages sold in establishments, or sales of prepared meals and beverages sold in establishments licensed for on-premises consumption of alcoholic beverages, beer, or wine.³¹ The tax may not exceed 2% of the charges for food and beverages.

F. Exclusions

If a transaction is excluded from the tax, it is not subject to sales and use tax in South Carolina. The exclusions are found in several sections of the sales and use tax statutes and apply to a variety of transactions. See Chapter 8 of this manual for more information about South Carolina's sales and use tax exclusions.

²⁹ S.C. Code Ann. §§ 4-10-910 through 4-10-970 (Act No. 3 of 2009 and Act No. 130 of 2010).

³⁰ S.C. Code Ann. § 6-1-500.

³¹ S.C. Code Ann. § 6-1-700.

G. Partial Exemptions

There are two types of exemptions provided under South Carolina's sales and use tax law: (1) partial exemptions, and (2) full exemptions.

Partial exemptions limit or "cap" the amount of tax.³² The local sales and use taxes collected by the Department do not apply to sales that are subject to a limit or cap under Code Section 12-36-2110.

See Chapter 9 of this manual for more information about South Carolina's partial sales and use tax exemptions.

H. Full Exemptions

Although a transaction is subject to sales and use tax, a particular exemption in the statute may exempt it from sales and use tax in South Carolina. South Carolina Code Sections 12-36-2120 and 12-36-2130 contain numerous full exemptions. The local sales and use taxes collected by the Department do not apply to sales exempt from the state sales and use tax.³³

See Chapter 9 of this manual for more information about South Carolina's full sales and use tax exemptions.

³² See, e.g., S.C. Code Ann. § 12-36-2110.

³³ All sales and purchases exempt from the state sales and use tax under S.C. Code Ann. §§ 12-36-2120 and 12-36-2130 are exempt from local sales and use tax administered and collected by the Department on behalf of local jurisdictions, except for sales of unprepared food under Code Section 12-36-2120(75). Code Section 12-36-2120(75) specifically states the exemption for unprepared food only applies to the state sales and use tax. Therefore, such sales are subject to local sales and use taxes unless the local sales and use tax specifically exempts sales of unprepared food. See S.C. Regulation 117-337 and S.C. Information Letter #25-9.