Chapter 2

Sales Tax Impositions

This chapter will discuss the basics of the "general" sales tax imposition and the specific "special" impositions enacted by the General Assembly. Later chapters will provide a more in-depth discussion of certain concepts, such as "gross proceeds," "sales at retail," and "tangible personal property," as well as the "special" impositions.

A. General Sales Tax Imposition

"In general, the sales tax is an imposition upon the privilege of the business of selling at retail and measured by the amount of business done, which is a clear case of an excise tax to which the constitutional provisions relating to property taxes are irrelevant."[1] It is a "transaction tax" imposed with respect to the transaction of a "retail sale" of tangible personal property.

South Carolina imposes a "general" sales tax, equal to 6[2]% of the gross proceeds of sales, upon every person engaged or continuing within this State in the business of selling tangible personal property at retail.[3]

The tax will therefore be applicable if:

- a person is engaged or continuing in the business of selling,[4]
- the person is selling tangible personal property in South Carolina, and
- the sales of tangible personal property in South Carolina are at retail.[5]

The tax, if the above conditions are met, will be based upon the "gross proceeds of sales."[6]

With respect to goods shipped into South Carolina, the sales tax will apply (as opposed to the use tax) when:[7]

- tangible personal property is purchased for use or consumption;

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[1] *State ex. rel. Roddey v. Byrnes,* 219 S.C. 485, 66 S.E.2d 33 (1951).
[2] S.C. Code Ann. § 12-36-1110 increased the sales and use tax rate by 1% beginning June 1, 2007.
[3] S.C. Code Ann. §§ 12-36-910 and 12-36-1110.
[4] S.C. Regulation 117-322 states that "[c]asual or isolated sales <u>by persons not engaged in the business of selling tangible personal property at retail</u> are not subject to the sales or use tax." (Emphasis added). The regulation defines the term "casual" to mean "occurring, encountered, acting or performed without regularity or at random" and defines the term "occasional" and the term "isolated" to mean "occurring alone or once, an incident not likely to recur, sporadic." *See* S.C. Code Ann. § 12-36-70 for the definition of "retailer" and "seller."
[5] *International Harvester Co. v. Wasson,* 281 S.C. 458, 316 S.E.2d 378 (1984).
[6] S.C. Code Ann. § 12-36-90.
[7] S.C. Regulation 117-334.

- the seller is engaged or continuing within this State in the business of selling tangible personal property at retail;
- delivery is made in this State;[8] and
- the order for the future delivery of tangible personal property is sent by the purchaser to, or the subsequent delivery of the property is made by, any local branch, office, outlet or other place of business of the retailer in this State, or agent or representative operating out of or having any connection with, such local branch, office, outlet or other place of business.

The seller may pass the sales tax on to the purchaser when billing the purchaser, but while many sellers collect the sales tax from the purchaser, this is not a requirement. However, the seller's inability, refusal, or failure to collect the sales tax from the customer does not relieve the seller from remitting the sales tax to the State.[9] In fact, the seller may advertise that the seller will absorb the sales tax and not collect it from the purchaser.[10]

B. Definitions

To understand the imposition of the sales tax, the definitions provided in the law for certain terms must be reviewed.

<u>Person</u>[11] includes any individual, firm, partnership, limited liability company, association, corporation, receiver, trustee,[12] or group or combination acting as a unit. It also includes the state, state agencies, and any instrumentality, authority, political subdivision, or municipality.[13]

<u>Tangible personal property</u>[14] is personal property that may be seen, weighed, measured, felt, touched, or is in any manner perceptible to the senses. It does **not** include stocks, notes, bonds, mortgages, or other evidences of debt.

<u>Sale or purchase</u>[15] is a transfer of title or possession of tangible personal property for a consideration. It includes rentals, leases, and licenses to use.

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[8] S.C. Regulation 117-334.1(A) states that "[d]elivery is held to have taken place in this State (1) when physical possession of the tangible personal property is actually transferred to the purchaser or the purchaser's designee within this State, or (2) when the tangible personal property is placed in the mails at a point outside this State and directed to the purchaser or the purchaser's designee in this State or (3) when the tangible personal property is placed on board a carrier at a point outside this State (regardless of shipping terms) and directed to the purchaser or the purchaser's designee in this State."
[9] S.C. Code Ann. § 12-36-940.
[10] Attorney General Opinion 1228 (11/18/1961).
[11] S.C. Code Ann. § 12-36-30.
[12] An Attorney General Opinion dated 11/29/1983 concluded that, "[e]xcept for Chapter 7 liquidation sales, sales made by bankruptcy trustees, Chapter 11 debtors in possession or their agents are subject to sales taxes even when conducted pursuant to judicial order."
[13] *See also* S.C. Regulations 117-304 and 117-304.1.
[14] S.C. Code Ann. § 12-36-60.
[15] S.C. Code Ann. § 12-36-100. By definition, "tangible personal property" (personal property that may be seen, weighed, measured, felt, touched, or is in any manner perceptible to the senses) also includes certain services and intangibles that are specifically subject to the sales tax. See discussion entitled "Special Sales Tax Impositions."

Sale at retail[16] means a sale of tangible personal property to an end-user or consumer of the property. Included within the term are (1) leases and rentals of tangible personal property, and (2) the withdrawal, use, or consumption of tangible personal property by any person who previously purchased it at wholesale.[17] If a sale is not a retail sale, then it is a wholesale sale.

Gross proceeds of sales[18] is the total amount proceeding or accruing from the retail sales of a business and is the measure or basis for the sales tax.

Retailer and Seller[19] mean every person selling or auctioning tangible personal property whether owned by the person or others, including persons operating as a marketplace facilitator, as defined in Code Section 12-36-71.

C. Summary of the General Sales Tax Imposition

Based on the general imposition and the above definitions, the sales tax, which is 6% of the total amount proceeding or accruing from the retail sales of a business, is imposed on:

- any individual, firm, partnership, limited liability company, association, corporation, receiver, trustee, state agency, instrumentality, authority, political subdivision, county, municipality, or any group or combination acting as a unit
- engaged in the business of selling, leasing, renting, or otherwise providing for a consideration[20]
- personal property that may be seen, weighed, measured, felt, touched, or is in any manner perceptible to the senses[21]
- to an end-user or consumer.

D. Special Sales Tax Impositions

South Carolina also imposes its sales tax on specific services and intangibles. By definition, these specifically taxed services and intangibles are "tangible personal property."[22] As "tangible personal property," various other provisions of the sales and use tax law apply to these services and intangibles (e.g., exemptions, wholesale sales, etc.).

The following will address each of these "special" impositions.

[16] S.C. Code Ann. § 12-36-110.
[17] S.C. Code Ann. § 12-36-110(1)(c) and S.C. Revenue Ruling #08-11.
[18] S.C. Code Ann. § 12-36-90.
[19] S.C. Code Ann. § 12-36-70.
[20] *See* definition of "retailer" and "seller" in Section B above.
[21] By definition, "tangible personal property" (personal property that may be seen, weighed, measured, felt, touched, or is in any manner perceptible to the senses) includes certain services and intangibles that are specifically subject to the sales tax. See discussion entitled "Special Sales Tax Impositions."
[22] S.C. Code Ann. § 12-36-60.

Laundry and Drycleaning Services[23]

The sales tax, equal to 6% of the gross proceeds of sales, also applies to every person in the business of providing or furnishing at retail any of the following:

- laundering services,
- drycleaning services,
- dying services, or
- pressing services.

The tax applies to all charges from these businesses related to items laundered, dry-cleaned, dyed or pressed, including but not limited to, charges for:[24]

- repairing,
- altering,
- storing,
- pick-up, and
- delivery.

Charges derived from coin-operated laundromats and drycleaning machines[25] are not subject to the tax.[26] However, charges at coin-operated laundromats for laundering services, such as a "wash and fold" service, are subject to the tax.[27]

Electricity[28]

The sales tax, equal to 6% of the gross proceeds of sales, also applies to every person in the business of selling at retail electricity.

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[23] S.C. Code Ann. § 12-36-910(B)(1). See also *Textile Restoration Services, Inc. v. South Carolina Department of Revenue*, 14-ALJ-17-0524-CC (2015).
[24] S.C. Regulation 117-303.
[25] A coin-operated laundromat machine includes any laundromat machine operated by a slot in which is deposited or placed a coin, token, debit card, or other thing of value so as to begin operation of the machine for the purposes of laundering, cleaning, or drying clothing and other textiles.
[26] S.C. Code Ann. § 12-36-910(B)(1).
[27] S.C. Revenue Ruling #88-7.
[28] S.C. Code Ann. § 12-36-910(B)(2).

Communications Services[29]

The sales tax, equal to 6% of the gross proceeds of sales, also applies to every person in the business of selling at retail "the ways or means for the transmission of the voice or messages."

The tax applies to charges for:[30]

- Telephone services,[31] including telephone services provided via the traditional circuit-committed protocols of the public switched telephone network (PSTN), a wireless transmission system, a voice over Internet protocol (VoIP), or any other method
- Teleconferencing services
- Paging services
- Automated Answering Services[32]
- Cable television services
- Satellite programming services and other programming transmission services (includes, but is not limited to, emergency communication services and television, radio, music or other programming services)
- Fax transmission services
- Voice Mail Messaging Services[33]
- E-mail services
- Electronic filing of tax returns when the return is electronically filed by a person who did not prepare the tax return
- Database access transmission services (online information services), such as legal research services, credit reporting/research services, charges to access an individual website (including Application Service Providers), etc.[34]

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[29] S.C. Code Ann. § 12-36-910(B)(3). By definition, "tangible personal property" 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. Therefore, such transmissions are not subject to the sales tax.
[30] S.C. Regulation 117-329 and S.C. Revenue Ruling #17-2.
[31] See S.C. Code Ann. § 12-36-2120(11) for exemptions specifically related to telephone services.
[32] See S.C. Information Letter #89-28.
[33] See S.C. Revenue Ruling #89-14.
[34] See also S.C. Private Letter Ruling #12-2, S.C. Private Letter Ruling #10-2, and S.C. Private Letter Ruling #07-2.

- Streaming services for television programs, movies, music, and other similar content[35]

- Cloud-Based Services for Processing and Routing Telephone Calls within a Customer's Telephone System[36]

For a more detailed discussion on the sales tax as it applies to communication services, see Chapter 17 of this manual.

<u>Manufactured Property Used by the Manufacturer</u>[37]

The sales tax, equal to 6%, also applies to every manufacturer when that manufacturer manufactures within South Carolina tangible personal property for sale, but instead of selling the tangible personal property the manufacturer uses or consumes it within South Carolina. The tax applies to the fair market value of the tangible personal property used or consumed by the manufacturer.

For example, a manufacturer that produces computers in South Carolina for sale throughout the world is liable for the sales tax on the fair market value of any computers that it removes from its inventory to use in any of its offices or manufacturing operations in South Carolina or that it provides free to its employees.

<u>Prepaid Wireless Calling Arrangements</u>[38]

The sales tax, equal to 6%, also applies to sales at retail of prepaid wireless calling arrangements and to recharges at retail for prepaid wireless calling arrangements. A "prepaid wireless calling arrangement" is a communication service that:

(1) is used exclusively to purchase wireless telecommunications;

(2) is purchased in advance;

(3) allows the purchaser to originate telephone calls by using an access number, authorization code, or other means entered manually or electronically; and

(4) are sold in units or dollars, which decline with use in a known amount.

For example, if a retailer sells a prepaid phone card that can only be used in making wireless telephone calls, then the sale or recharge of that card is subject to the sales tax, provided the card meets the remaining requirements of a prepaid wireless calling arrangement as defined above.

For a more detailed discussion on the sales tax as it applies to communication services, see Chapter 17 of this manual.

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[35] *See* S.C. Revenue Ruling #16-5 and S.C. Private Letter Ruling #18-1.
[36] *See* S.C. Private Letter Ruling #14-4.
[37] S.C. Code Ann. § 12-36-910(B)(4).
[38] S.C. Code Ann. § 12-36-910(B)(5). *See also* S.C. Revenue Ruling #04-4.

<u>900 and 976 Numbers</u>[39]

The sales tax, equal to 11%, also applies to the gross proceeds accruing or proceeding from the business of providing a 900 telephone service, a 976 telephone service, or both.

<u>Accommodations and "Additional Guest Charges"</u>[40]

The sales tax is also imposed upon charges for accommodations and "additional guest charges." The term "additional guest charge" means an amount which is added to the guest's room charge for room service, laundering and dry cleaning services, in-room movies, telephone service, and the rental of meeting rooms.

Charges for rooms, lodgings, and accommodations are taxed at 7%, while other charges for room service, laundering and dry cleaning services, in-room movies, telephone service, and the rental of meeting rooms, when over and above the services customarily provided with the room, are taxed at 6% as an "additional guest charge." However, if an "additional guest charge" would be taxed under other provisions of the sales and use tax law (Chapter 36 of Title 12), then such charges are not taxed as an "additional guest charge."

The sales tax upon charges for rooms, lodgings, and accommodations applies to the gross proceeds from the rental or charges for any rooms, lodgings, or accommodations furnished to transients by any hotel, inn, tourist court, motel, residence, or any place in which rooms, lodgings, or accommodations are furnished to transients for a consideration, except where such facilities consist of less than six sleeping rooms, contained on the same premises, which is used as the place of abode of the owner or operator of such facilities.

The gross proceeds derived from the lease or rental of accommodations supplied to the same person for a period of 90 continuous days are not considered proceeds from a transient and therefore are not subject to the sales tax on accommodations.

The sales tax upon "additional guest charges"[41] applies to:

- room service,
- laundering and dry cleaning services,
- in-room movies,
- telephone service, and
- rentals of meeting rooms.

For a more detailed discussion on the sales tax as it applies to accommodations and "additional guest charges," see Chapter 11 of this manual.

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[39] S.C. Code Ann. §§ 12-36-2645 and 12-36-1110.
[40] S.C. Code Ann. § 12-36-920; S.C. Regulation 117-307. *See* also S.C. Revenue Ruling #14-5.
[41] S.C. Code Ann. § 12-36-920(B); S.C. Regulation 117-307. *See* also S.C. Revenue Ruling #14-5.

Motor Vehicles Sold to Nonresidents[42]

The sales tax applies to sales to nonresidents of motor vehicles, trailers, semitrailers, or pole trailers that are to be registered and licensed in the nonresident purchaser's state of residence. This tax is the lesser of:

a) the sales tax that would be imposed on the sale in the purchaser's state of residence;

or

b) the tax that would be imposed under Chapter 36 of the South Carolina Code of Laws.[43]

However, no sales tax is due in South Carolina if a nonresident purchaser cannot receive a credit in his state of residence for sales tax paid to South Carolina or if his state of residence does not impose a sales tax on sales of motor vehicles, trailers, semitrailers, or pole trailers.

Since the amount of tax imposed on a nonresident purchaser of a motor vehicle depends, in part, on the tax rate and type of tax imposed in the nonresident's home state, information concerning the sales tax imposed on sales of motor vehicles by other states is needed to calculate the tax due, if any.

The state sales tax information for motor vehicles for South Carolina's two neighboring states, as of the date of this publication, is:

Georgia	no sales tax is due since Georgia does not impose a sales tax on the sale or lease of a motor vehicle.
North Carolina	no sales tax is due since North Carolina does not impose a sales tax on the sale of a motor vehicle.

E. Sales through a Marketplace Facilitator[44]

A marketplace facilitator is any person engaged in the business of facilitating a retail sale of tangible personal property by:

a. listing or advertising, or allowing the listing or advertising of, the products of another person in any marketplace where sales at retail occur; **and**

b. collecting or processing payments from the purchaser, either directly or indirectly through an agreement or arrangement with a third party.

[42] S.C. Code Ann. § 12-36-930.

[43] For information on vehicles that qualify for the $500 maximum tax, see Chapter 10 of this manual.

[44] *See* S.C. Revenue Ruling #19-6 and S.C. Information Letter #19-14.

A marketplace facilitator also includes any related entities assisting the marketplace facilitator in sales, storage, distribution, payment collection or processing, or in any other manner, with respect to the marketplace. See Code Section 12-36-71 for a complete definition of a marketplace facilitator.

A “marketplace” includes, but is not limited to, any space, store, booth, catalog, website, television or radio broadcast, or similar place, medium, or forum. A marketplace may be physical or electronic.

A marketplace facilitator is the retailer and is responsible for remitting state and local sales and use tax for <u>all</u> products sold via its marketplace (i.e., products owned by the marketplace facilitator, products owned by third parties, and any other products sold via its marketplace) unless otherwise exempt or excluded from the tax.[45] The responsibility for remitting the sales and use tax applies regardless of whether the marketplace facilitator or a third party delivers the products.

F. Sales to Individuals 85 Years of Age and Older[46]

An individual[47] who is 85 years of age or older is entitled to a lower state sales tax rate, sometimes referred to as the “1% exclusion,” for items that individual purchases for his or her own personal use.[48] In other words, a person who is 85 years of age or older would pay a state sales tax of 5% instead of 6% (any local sales and use taxes would still apply) on:

(1) purchases of tangible personal property (prepared food,[49] clothing, furniture, appliances, etc.); and

(2) purchases of communications services, such as phone service (long distance calls are already exempt), cable television service, satellite programming services (radio, emergency, television), as well as other communication services.

An individual who is 85 years of age or older would pay a state sales tax of 6% instead of 7% (any local sales and use taxes would still apply) on purchases of accommodations services (the rental charge for a hotel room or condominium) and would pay a state sales tax of 5% instead of 6% on any additional guest charges (charges for room service, laundering and dry cleaning services, in-room movies, telephone services, and the rental of meeting rooms) charged by the place providing the accommodations.

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[45] *See*, e.g., S.C. Private Letter Ruling #20-2, “Peer-to-Peer Motor Vehicle Rentals Through a Marketplace Facilitator.”

[46] S.C. Code Ann. §§ 12-36-2620 and 12-36-2630. *See* also S.C. Revenue Ruling #18-10.

[47] S.C. Commission Decision S-D-173 held that the lower rate allowed for persons 85 years of age and older only applied to sales to individuals, and did not apply to sales to partnerships, corporations, and other legal entities.

[48] S.C. Code Ann. §§ 12-36-2620 and 12-36-2630.

[49] Sales of unprepared food that lawfully may be purchased with United States Department of Agriculture food coupons are exempt from the 6% state sales and use tax. This exemption does not apply to local taxes unless the local tax specifically exempts the sale of such food. *See* S.C. Code Ann. § 12-36-2120(75) and S.C. Regulation 117-337. The federal Food, Conservation, and Energy Act of 2008, Pub. L. No. 110-234, tit. IV, § 4001, 122 Stat. 1092 (2008), renamed the federal food stamp program to the Supplemental Nutrition Assistance Program (“SNAP”).

The law granting this exclusion for individuals 85 years of age or older does not require the purchaser to complete any form with the Department of Revenue. It only requires that (1) the individual purchases the tangible personal property himself or herself, (2) that the tangible personal property is purchased for his or her own personal use, (3) that the purchaser requests the exclusion at the time of the sale, and (4) that the purchaser provides the retailer with proof of age.

Finally, purchases by an individual who is 85 years of age or older are not entitled to the lower state sales and use tax rate if the purchase is not for their personal use. For example, purchases by someone 85 years of age or older for a business use or as a gift for another individual are not entitled to the lower state sales and use tax rate.