

Chapter 5

Sales or Purchases at Retail

For the sales tax or use tax to apply to a transaction, there must be a “sale at retail” or a “purchase at retail.”

The determination of what is a sale or purchase at retail must first begin with what is a “sale.” A sale¹ is any transfer, exchange, or barter, conditional or otherwise, of tangible personal property for a consideration.² It includes:

- (1) a transaction in which possession of tangible personal property is transferred but the seller retains title as security for payment, including installment and credit sales;
- (2) a rental, lease, or other form of agreement;³
- (3) a license to use or consume; and
- (4) a transfer of title or possession, or both.

Notably, the fact that the two parties in a sale are related entities is irrelevant.⁴ For example, a sale can occur between a parent corporation and a wholly owned subsidiary corporation.

A “sale at retail” or “purchase at retail” is any sale of tangible personal property not defined as a wholesale sale.⁵

A “wholesale sale” is essentially a sale to a licensed retailer or a wholesaler for resale and not for use or consumption.⁶

In summary, a retail sale is a sale to the end user or consumer.

However, the statute specifically establishes certain other sales as either wholesale or retail sales.

¹ S.C. Code Ann. § 12-36-100.

² The sales tax and the use tax are transaction taxes in which the transfer by a retailer of tangible personal property to the end user for a consideration is subject to the tax. Consideration includes, but is not limited to, money, realty, personal property, stocks, bonds, partnership interests, and other intangible property, the forgiveness or cancellation of a debt, the assumption of a debt, and the surrendering of a right. For example, depending on the facts and circumstances of the transaction, the sales tax or the use tax may apply to such transactions as the formation of partnerships or corporations, the reorganization of corporations, and any other similar structural change in business entities, unless the transaction is otherwise exempt under the law (e.g., S.C. Code Ann. § 12-36-2120(42)).

³ See also, *Edisto Fleets, Inc. v. South Carolina Tax Commission*, 256 S.C. 350, 182 S.E.2d 713 (1971).

⁴ See *Edisto Fleets, Inc. v. South Carolina Tax Commission*, 256 S.C. 350, 182 S.E.2d 713 (1971) and S.C. Private Letter Ruling #04-3.

⁵ S.C. Code Ann. § 12-36-110.

⁶ S.C. Code Ann. § 12-36-120. See also, *Stanton Quilting Co., Inc. v. South Carolina Tax Commission*, 281 S.C. 133, 314 S.E.2d 844 (1984).

Specific retail sales include:

(1) Manufacturers, Processors, Compounders, Quarry Operators, or Mine Operators

Sales of tangible personal property to manufacturers, processors, compounders, quarry operators, or mine operators, which are used or consumed by them, and do not become an ingredient or component part of the tangible personal property manufactured, processed, or compounded for sale.⁷

(2) Construction Contractors

Sales of building materials to construction contractors, builders, or landowners for resale or use in the form of real estate.⁸

Sales to contractors for use in the performance of construction contracts.⁹

The use within this State of tangible personal property by its manufacturer as building materials in the performance of a construction contract. The manufacturer must pay the sales tax based on the fair market value at the time and place where the tangible personal property is used or consumed.¹⁰

(3) Vending Machine Operators

Sales of tangible personal property, other than cigarettes and soft drinks in closed containers, to vendors who sell the property through vending machines.¹¹ The vendors are deemed to be the users or consumers of the property.¹²

(4) Medical Institutions, Medical Professionals, and Other Medical Transactions

Sales of prepared meals, or unprepared food products used to prepare meals to hospitals, infirmaries, sanitariums, nursing homes, and similar institutions, educational institutions, boarding houses, and transportation companies, if furnished as part of the service rendered. These institutions and companies are deemed to be the users or consumers of the property.¹³

Sales of drugs, prosthetic devices, and other supplies to hospitals, infirmaries, sanitariums, nursing homes, and similar institutions, medical doctors, dentists, optometrists, and veterinarians, if furnished to their patients as a part of the service rendered. These institutions, companies, and professionals are deemed to be the users or consumers of the property.¹⁴

⁷ S.C. Code Ann. § 12-36-110(1)(b).

⁸ S.C. Code Ann. § 12-36-110(1)(a).

⁹ S.C. Code Ann. § 12-36-110(1)(e).

¹⁰ S.C. Code Ann. § 12-36-110(1)(d). *See also*, S.C. Revenue Ruling #94-2.

¹¹ An “honor box” is not a vending machine or its functional equivalent. *See Anonymous Taxpayer v. South Carolina Department of Revenue*, 00-ALJ-17-0137-CC (2001).

¹² S.C. Code Ann. § 12-36-110(1)(g).

¹³ S.C. Code Ann. § 12-36-110(1)(h).

¹⁴ S.C. Code Ann. § 12-36-110(1)(i). *See also* S.C. Regulations 117-305.1, 117-305.2, 117-305.3, and 117-305.4.

Sales of tangible personal property to veterinarians. The veterinarians are deemed to be the users or consumers of the property whether used in the rendering of professional services or sold outright as part of the veterinarian practice and not furnished as a part of professional services rendered.¹⁵

Sales of tangible personal property used incidental to the performance of services by licensed medical doctors, dentists, doctors of veterinary medicine, oculists, optometrists,¹⁶ and other licensed professionals. Note however, that these professionals may, in addition to rendering a service, also be in the business of making sales of tangible personal property. For instance, a doctor may sell medicines. In those cases when professionals are regularly engaged in the business of selling tangible personal property at retail, they must obtain a retail license and remit the taxes due on such sales.¹⁷

Sales of tangible personal property, such as equipment, supplies, and medicines, to dentists for use in rendering professional services. Note: Sales of dental prosthetic devices to dentists are exempt from the tax.¹⁸

Sales of tangible personal property, such as supplies, medicines, office furniture and fixtures, and special tools and equipment, to doctors for use in the practice of their profession. Only when a doctor has a stock of drugs from which the doctor makes numerous and substantial retail sales, is the doctor required to have a retail license and to remit sales tax directly to the Department.¹⁹

Sales, not otherwise exempted, when reimbursed or paid in whole or in part by Medicare or Medicaid. However, only the net amount reimbursed by Medicare and Medicaid is subject to the tax if the vendor is prohibited by law from charging the purchaser the difference between the retail sale and the amount reimbursed.²⁰

(5) Other Professionals

Sales of tangible personal property used incidental to the performance of services by lawyers, accountants, civil engineers, and other licensed professionals. Note however, these professionals may, in addition to rendering a service, also be in the business of making sales of tangible personal property. In those cases when professionals are regularly engaged in the business of selling tangible personal property at retail, they must obtain a retail license and remit the taxes due on such sales.²¹

¹⁵ S.C. Code Ann. § 12-36-110(1)(l).

¹⁶ See S.C. Revenue Ruling #21-14 concerning oculist, optometrist, ophthalmologists, and opticians.

¹⁷ S.C. Regulation 117-308.1.

¹⁸ S.C. Regulation 117-308.2.

¹⁹ S.C. Regulation 117-308.3.

²⁰ S.C. Code Ann. § 12-36-110(1)(j).

²¹ S.C. Regulation 117-308.1.

Sales of tangible personal property, such as law books, supplies, and equipment, to lawyers.²²

Sales of tangible personal property to architects. Architects are not considered engaged in the business of selling tangible personal property when they render professional services in the forming of original plans, designs, and specifications. Charges for the sale of original design concepts changed as a result of elevation and/or other architectural modifications to a customer's specific requirements also are not considered renditions of professional services. However, sales by architects of all reproductions of such plans, designs, or specifications, unaltered or unmodified in any way, are deemed to be subject to the sales or use tax.²³

(6) Other Service Businesses

Sales of tangible personal property to persons engaged in the business of binding books, magazines or other printed matter belonging to another. Sales of tangible personal property to such persons for use or consumption in the performance of these services are taxable. However, if bookbinders bind their own printed matter and sell the finished products to users or consumers, or make and sell at retail loose-leaf binders or other articles, bookbinders must remit the tax on the entire receipts from such sales.²⁴

Sales of tangible personal property to a person engaged in the business of paper-cutting, folding, gathering, padding or punching circulars, office forms, or other printed matter belonging to others. Sales of tangible personal property to such persons for use or consumption in the performance of these services are taxable.²⁵

Sales of tangible personal property to persons practicing the art of taxidermy for use in the performance of such services.²⁶

Sales of paint, supplies, etc. to persons engaged in the business of painting automobiles.²⁷

(7) Gift Transactions

Sales of tangible personal property to a person who will give that tangible personal property to another person as a gift or who will award that tangible personal property to another person as a prize.²⁸

²² S.C. Regulation 117-308.4.

²³ S.C. Regulation 117-308.6.

²⁴ S.C. Regulation 117-308.10.

²⁵ S.C. Regulation 117-308.10.

²⁶ S.C. Regulation 117-308.14.

²⁷ S.C. Regulation 117-308.15.

²⁸ S.C. Regulation 117-333. *See also*, S.C. Revenue Ruling #03-3.

(8) Coin-Operated Telephone Providers

Sales of all local telecommunications services by local exchange companies (LECs) to customer owned coin-operated telephone (COCOT) providers, as those terms are defined by the South Carolina Public Service Commission. The COCOT providers that purchase these services in order to provide payphone services to their customers are considered to be the users and consumers of the services and are not subject to sales tax for their subsequent sale of local telecommunications services to their COCOT customers.²⁹

(9) Withdrawals for Use³⁰

The withdrawal, use, or consumption of tangible personal property by anyone who purchases it at wholesale,³¹ except:

- (i) withdrawal of tangible personal property previously withdrawn and taxed by such business or person;
- (ii) tangible personal property that becomes an ingredient or component part of tangible personal property manufactured or compounded for sale;
- (iii) tangible personal property used directly in manufacturing, compounding, or processing tangible personal property for sale;
- (iv) materials, containers, cores, labels, sacks, or bags used incident to the sale and delivery of tangible personal property; and
- (v) a motor vehicle operated with a dealer, transporter, manufacturer, or education license plate and used in accordance with the provisions of South Carolina Code §§56-3-2320 or 56-3-2330.

(10) Marketplace Facilitators³²

Sales of tangible personal property through a marketplace by a marketplace facilitator. A marketplace facilitator is the retailer and is responsible for remitting state and local sales and use tax for all 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. The responsibility for remitting the sales and use tax applies regardless of whether the marketplace facilitator or a third party delivers the products. For more information on marketplace facilitators, see Code Section 12-36-71; S.C. Information Letter #19-14, “Marketplace Facilitator – New Law Effective April 26, 2019;” and Exhibit A, S.C. Revenue Ruling #19-6, “Marketplace Facilitators and Third Parties Whose Products are Sold Via a Marketplace – Guidance and Tax Obligations.”

²⁹ S.C. Code Ann. § 12-36-110(1)(k).

³⁰ See S.C. Revenue Ruling #25-3.

³¹ S.C. Code Ann. § 12-36-110(1)(c). See also S.C. Revenue Ruling #08-11.

³² S.C. Code Ann. § 12-36-71; S.C. Information Letter #19-14; S.C. Revenue Ruling #19-6.

The law establishes certain other sales as “wholesale sales.” As such, these sales are not retail sales and are therefore not taxable. These additional “wholesale sales” are sales of:

- (1) tangible personal property to a manufacturer or compounder as an ingredient or component part of the tangible personal property or products manufactured or compounded for sale.³³
- (2) tangible personal property used directly in manufacturing, compounding, or processing tangible personal property into products for sale.³⁴
- (3) materials, containers, cores, labels, sacks, or bags used incident to the sale and delivery of tangible personal property, or used by manufacturers, processors, and compounders in shipping tangible personal property.³⁵
- (4) food or drink products to licensed retail merchants for use as ingredients in preparing ready-to-eat food or drink sold at retail. These products include cooking oil used as an ingredient. However, items used or consumed by licensed retail merchants to prepare ready-to-eat food or drink, such as hickory chips, barbecue briquettes, gas, or electricity are subject to tax.³⁶
- (5) tangible personal property to a manufacturer or construction contractor when the tangible personal property is subsequently processed, partially or completely fabricated, or manufactured in this State by the manufacturer or contractor, for use in the performance of a construction contract if the property is transported to, assembled, installed, or erected at a job site outside the State and thereafter used solely outside the State.³⁷

Finally, operators of businesses who are both making retail sales and withdrawing for use from the same stock of goods are to purchase at wholesale all of the goods so sold or used and report both retail sales and withdrawals for use under the sales tax law. This applies only to those who actually operate a retail business having a substantial number of retail sales and does not apply to contractors, plumbers, repairmen, and others who make isolated or accommodation sales and who have not set themselves up as being engaged in selling. When only isolated sales are made, tax should be paid on all of the taxable property purchased with no sales tax return required of the seller making such isolated or “accommodation” sales.³⁸

³³ S.C. Code Ann. § 12-36-120(2).

³⁴ S.C. Code Ann. § 12-36-120(3).

³⁵ S.C. Code Ann. § 12-36-120(4).

³⁶ S.C. Code Ann. § 12-36-120(5).

³⁷ S.C. Code Ann. § 12-36-110(2).

³⁸ S.C. Regulation 117-324.

Exhibit A

S.C. Revenue Ruling #19-6: Marketplace Facilitators and Third Parties Whose Products are Sold Via a Marketplace – Guidance and Tax Obligations



STATE OF SOUTH CAROLINA
DEPARTMENT OF REVENUE

300A Outlet Pointe Blvd., Columbia, South Carolina 29210
P.O. Box 125, Columbia, South Carolina 29214-0575

SC REVENUE RULING #19-6

SUBJECT: Marketplace Facilitators and Third Parties Whose Products are Sold Via a Marketplace – Guidance and Tax Obligations (Sales and Use Tax)

EFFECTIVE DATE: April 26, 2019

REFERENCES: S.C. Code Ann. Section 12-36-70 (2014) (Act No. 21 of 2019)
S.C. Code Ann. Section 12-36-71 (Act No. 21 of 2019)
S.C. Code Ann. Section 12-36-90 (2014) (Act No. 21 of 2019)
S.C. Code Ann. Section 12-36-130 (2014) (Act No. 21 of 2019)
S.C. Code Ann. Section 12-36-910 (2014)
S.C. Code Ann. Section 12-36-1310 (2014)
S.C. Code Ann. Section 12-36-1340 (2014) (Act No. 21 of 2019)

AUTHORITY: S.C. Code Ann. Section 12-4-320 (2014)
S.C. Code Ann. Section 1-23-10(4) (2005)
SC Revenue Procedure #09-3

SCOPE: The purpose of a Revenue Ruling is to provide guidance to the public. It is an advisory opinion issued to apply principles of tax law to a set of facts or general category of taxpayers. It is the Department's position until superseded or modified by a change in statute, regulation, court decision, or another Department advisory opinion.

PURPOSE

The purpose of this advisory opinion is to provide sales and use tax guidance to persons operating as a marketplace facilitator who operate a marketplace where tangible personal property is sold in or into South Carolina in light of the enactment of Act No. 21 of 2019, effective April 26, 2019.¹ In addition, this advisory opinion provides guidance to third parties whose products are sold through these marketplaces.

¹ The enactment of Code Section 12-36-71 in 2019 does not represent a change in tax policy relating to South Carolina sales and use taxes. Its purpose is to further set forth and clarify South Carolina's longstanding requirement that any person engaged in business as a retailer must remit sales and use tax on every retail sale of tangible personal property by the retailer, whether the tangible personal property is owned by the retailer or another person (e.g., on consignment, by auction, or in any other manner).

LAW

Code Section 12-36-910 imposes the sales tax and reads, in part:

(A) A sales tax, equal to [six]² percent of the gross proceeds of sales, is imposed upon every person engaged or continuing within this State in the business of selling tangible personal property at retail.

Code Section 12-36-1310 imposes the use tax and reads, in part:

(A) A use tax is imposed on the storage, use, or other consumption in this State of tangible personal property purchased at retail for storage, use, or other consumption in this State, at the rate of [six]³ percent of the sales price of the property, regardless of whether the retailer is or is not engaged in business in this State.

Code Section 12-36-1340 describes who is required to collect use tax and reads, in part:

Each seller making retail sales of tangible personal property for storage, use, or other consumption in this State shall collect and remit the tax in accordance with this chapter and shall obtain from the department a retail license as provided in this chapter, if the retail seller:

* * *

(3) solicits and receives purchases or orders by an agent, an independent contractor, a representative, an Internet website, or any other means;

* * *

(5) operates as a marketplace facilitator; or

(6) meets constitutional standards for economic nexus with South Carolina for purposes of the sales and use tax.

Code Section 12-36-70 defines “retailer” and “seller,” in part, as follows:

“Retailer” and “seller” include every person:

(1)(a) selling or auctioning tangible personal property whether owned by the person or others;

* * *

(2)(a) maintaining a place of business or qualifying to do business in this State; or

* * *

(3) operating as a marketplace facilitator, as defined in Section 12-36-71.

² See Code Section 12-36-1110 which increased the sales tax rate to 6% from 5%.

³ See Code Section 12-36-1110 which increased the use tax rate to 6% from 5%.

Code Section 12-36-71 defines “marketplace facilitator” as follows:

(A)(1) “Marketplace facilitator” means 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.

(2) If a person meets the criteria set forth in item (1), then that person is a marketplace facilitator regardless of whether the person receives compensation or other consideration in exchange for his services.

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

(C) For purposes of subsection (A), a marketplace facilitator includes any related entities assisting the marketplace facilitator in sales, storage, distribution, payment collection, or in any other manner, with respect to the marketplace.

(D) When a marketplace facilitator is comprised of multiple entities, the entity that lists or advertises, or allows the listing or advertising of, the products sold at retail in the marketplace is the entity responsible for remitting the sales and use tax to the State.

QUESTIONS AND ANSWERS

OVERVIEW OF MARKETPLACE FACILITATOR

1. Q. Is a “marketplace facilitator” a retailer under South Carolina sales and use tax law?

A. Yes.

2. Q. What is a marketplace facilitator?

A. 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.

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.

3. Q. What is a “marketplace”?

A. 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.

4. Q. What are examples of “marketplace facilitators”?

A. The following businesses who list or advertise, or allow the listing or advertising of, the products of another person and collect or process payments from the purchaser, either directly or indirectly through an agreement or arrangement with a third party, are examples of “marketplace facilitators.” A marketplace facilitator can sell or lease any type of product subject to sales and use tax, including sales of meals, clothing, lodging, vehicles, machinery, and equipment.

- Brick and Mortar Retailer without an Online Presence - An antique mall in South Carolina that allows third parties to display their products for sale.
- Brick and Mortar Retailer with an Online Presence - A retailer with brick and mortar locations in South Carolina that also sells its products and products owned by third parties via its website.
- Online Only Retailer - An online retailer that sells its products and products owned by third parties via its website or an online retailer that sells only products owned by third parties via its website. (See Example 1 at the end of this advisory opinion).
- Online Food Ordering, Payment, and Delivery Retailer - An online retailer that sells meals prepared by independent restaurants via its website and mobile app and delivers the meals through its independent contractors or employees. (See Example 2 at the end of this advisory opinion that illustrates the sales and use tax responsibilities of the marketplace facilitator and the third party).

5. Q. Is a marketplace facilitator responsible for remitting state and local sales and use tax for products sold via its marketplace?

A. Yes. A marketplace facilitator is the retailer and is responsible for remitting state and local sales and use tax for all 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. The responsibility for remitting the sales and use tax applies regardless of whether the marketplace facilitator or a third party delivers the products.

SALES AND USE TAX OBLIGATIONS OF A MARKETPLACE FACILITATOR AND A THIRD PARTY WHOSE PRODUCTS ARE SOLD VIA A MARKETPLACE⁴

6. Q. What are the sales and use tax obligations of a marketplace facilitator?

- A. Since a marketplace facilitator is a retailer, a marketplace facilitator must comply with all sales and use tax obligations under South Carolina's sales and use tax law for a retailer. These obligations include obtaining a retail license, filing a return, and remitting the proper sales and use tax with respect to all products sold through its marketplace.

A marketplace facilitator, as the retailer under South Carolina's sales and use tax law, may accept from a customer an exemption certificate, a resale certificate, or other documentation claiming or substantiating a sales and use tax exemption or exclusion in the same manner as any retailer. See Code Section 12-36-2510(C) for the sellers responsibilities for acceptance of such documentation.

7. Q. Is a third party whose products are sold only through a marketplace operated by a marketplace facilitator required to obtain a retail license and remit the sales and use tax?

- A. No. Since the third party's products are sold only through a marketplace operated by a marketplace facilitator, the third party is not a retailer and, therefore, is not required to obtain a retail license or remit sales and use tax on such sales.

Note: A third party whose products are sold only through a marketplace operated by a marketplace facilitator and who currently has a South Carolina retail license does not need a retail license and should close its retail license account. See Form C-278, "Account Closing Form," for additional information. For current MyDORWAY users, the C-278 can be completed online.

8. Q. Is a third party whose products are sold through a marketplace operated by a marketplace facilitator and via its own website or retail brick and mortar store required to obtain a retail license and remit the sales and use tax?

- A. Yes. Since some of the third party's products are sold via its own website or retail brick and mortar store, the third party is a retailer and is required to obtain a retail license and remit sales and use tax with respect to sales made through its own website or retail brick and mortar store. However, the third party is not responsible for remitting the sales and use tax on its products sold through a marketplace operated by a marketplace facilitator.

Example: X sells \$250,000 of its products in South Carolina via its own website and its retail brick and mortar store. In addition, \$100,000 of its products are sold in South Carolina on a marketplace operated by a marketplace facilitator.

⁴ For purposes of sales and use tax obligations, the questions assume the marketplace facilitator or the third party have nexus with South Carolina.

X is a retailer only for the sales made through its own website and its retail brick and mortar store. X is, therefore, responsible for remitting sales and use tax on the \$250,000 of products sold through its website and its retail brick and mortar store. The marketplace facilitator is the retailer of all of the products sold through its marketplace and, therefore, is responsible for remitting sales and use tax on the \$100,000 of products sold through its marketplace that are owned by X.

MARKETPLACE FACILITATOR WITHOUT A PHYSICAL PRESENCE IN SOUTH CAROLINA

9. Q. Is a marketplace facilitator without a physical presence in South Carolina (i.e., a “remote seller”) required to obtain a retail license and remit sales and use tax?
- A. Yes, provided such marketplace facilitator has economic nexus with South Carolina.
10. Q. When does a marketplace facilitator have economic nexus with South Carolina for purposes of sales and use tax?
- A. A marketplace facilitator whose gross revenue from sales of tangible personal property⁵ (whether such property is owned by the marketplace facilitator or others), products transferred electronically, and services delivered into South Carolina exceeds \$100,000 in the previous calendar year or the current calendar year has economic nexus (i.e., substantial nexus) with South Carolina.

The \$100,000 economic nexus standard includes:

- the total gross revenue from all sales of tangible personal property delivered into South Carolina, including all taxable retail sales, exempt retail sales, and wholesale sales of tangible personal property;
- the total gross revenue from all sales of products transferred electronically into South Carolina, whether or not the transfer of such product is subject to the South Carolina sales and use tax; and,
- the total gross revenue from all services delivered into South Carolina, whether or not the service is subject to the South Carolina sales and use tax.

See Code Section 12-36-70, *South Dakota v. Wayfair, Inc.*, 585 U.S.____, 138 S.Ct. 2080 (2018), and SC Revenue Ruling #18-14.

⁵ Code Section 12-36-60 defines “tangible personal property,” in part, as “personal property which may be seen, weighed, measured, felt, touched, or which is in any other manner perceptible to the senses. It also includes services and intangibles, including communications, laundry and related services, furnishing of accommodations and sales of electricity, the sale or use of which is subject to tax under [the South Carolina sales and use tax law].” For services that are specifically subject to the sales and use tax, and therefore by definition are “tangible personal property,” see Code Sections 12-36-910(B), 12-36-1310(B), 12-36-920, and 12-36-2645.

COMPREHENSIVE EXAMPLES

The following examples address the responsibilities of the marketplace facilitator, the third party, and the calculation upon which the sales and use tax (state and local) is measured. In each example, each party has either economic nexus with South Carolina or a physical presence in South Carolina. The products are sold at retail and are not subject to any sales and use tax exemption or exclusion.

EXAMPLE 1 - Online Retailer

Facts:

Company A is an online retailer who operates a website where the products it owns, and the products owned by third parties, are listed for sale at retail to customers. In some instances, once an order is placed and payment is received through Company A's website, Company A will pack the item and ship it to the customer. In other instances, once an order is placed and payment is received through Company A's website, Company A will send shipping instructions to the third party who will pull the product from its inventory and ship the product to the customer as instructed by Company A. Company A processes payments for all sales taking place through its website and remits payments to third parties for sales of their products, less a fee retained for its services.

Explanation of Sales and Use Tax Responsibilities:

Company A – A Marketplace Facilitator. Because Company A is a marketplace facilitator (i.e., it advertises the products of many individuals and businesses for sale on its marketplace and collects or processes payments for such products), it is responsible for obtaining a retail license, filing a sales and use tax return, and remitting the sales and use tax with respect to all taxable retail sales of products sold through its marketplace (including all taxable retail sales of items owned by third parties), regardless of whether the product is shipped by Company A or the third party.

Note: Because the sales and use tax law specifically imposes the responsibility for the tax on marketplace facilitators for all products sold through their marketplace, the legal obligation to remit the tax in this example remains with Company A, regardless of any contract provisions between Company A and the third party sellers.

Third Party 1 – Sales on Own Website and Via a Marketplace: Assume Third Party 1 is a South Carolina seller (whether an individual or a company) that makes sales of his products on his own website. He also lists his products for sale on a marketplace (Company A). Third Party 1 is only responsible for reporting and remitting South Carolina sales and use tax on sales he made via his own website. Company A, the marketplace facilitator, is responsible for reporting and remitting sales and use tax on sales of Third Party 1's products sold via the marketplace.

Third Party 2 – Sales Only Via a Marketplace: Assume Third Party 2 is a retailer located outside of South Carolina (whether an individual or a company). Sales of Third Party 2’s products in, or into, South Carolina are only made through a marketplace facilitator (Company A.) Third Party 2 is not making any retail sales in, or into, South Carolina under South Carolina law and is not a retailer. Third Party 2 is not required to obtain a retail license or collect sales and use tax. Company A, the marketplace facilitator, is responsible for reporting and remitting sales and use tax on sales of Third Party 2’s products sold via the marketplace.

EXAMPLE 2 - Online Food Ordering, Payment, and Delivery Retailer

Facts:

Company X is a national online meal ordering, payment, and delivery company. It contracts with a variety of South Carolina restaurants to sell their meals through its website and mobile app. Customers use Company X’s website or mobile app to view menu items from various restaurants and to order and pay for meals. Company X’s employees or independent contractors pick up and deliver the meals to customers. Company X collects the customer’s payment for the entire order through its website, including the cost of the meal, a delivery fee, and a service charge. Company X remits the sales price of the meal to the restaurant, less its commission on the sale, and retains the delivery fee and service charge paid. In addition to the meals sold via Company X’s marketplace, these restaurants sell meals themselves at their retail locations.

Assume in this example that Customer A orders a BBQ meal and sweet tea through Company X’s mobile app. Customer A pays the full cost of the meal (\$15), a delivery fee (\$4) and a service charge (\$1) to Company X via its mobile app. Customer B visits the same restaurant and purchases take-out meals for \$50.

Explanation of Sales and Use Tax Responsibilities:

Company X – A Marketplace Facilitator. Since Company X is a marketplace facilitator (i.e., it advertises the meals of various restaurants for sale on its marketplace and collects or processes payments for such meals), it is responsible for obtaining a retail license, filing a sales and use tax return, and remitting the sales and use tax with respect to all meals sold through its marketplace.

The price of the meal sold, delivery fee, and service charge are included in “gross proceeds of sales”⁶ (for sales tax) or “sales price”⁷ (for use tax). As such, Company X must remit sales and use tax based on the entire amount paid by Customer A (\$20 in this example) since this meal was sold through Company X’s marketplace.

⁶ “Gross proceeds of sales” is defined in Code Section 12-36-90. Generally, “gross proceeds of sales” is the value proceeding or accruing from the sale, lease, or rental of tangible personal property and, therefore, is the total amount charged in conjunction with the sale or rental of tangible personal property, without any deduction for the cost of the property sold, the cost of the materials used, labor or service cost, interest paid, losses, or any other expenses.

⁷ “Sales price” is defined in Code Section 12-36-130. Generally, “sales price” is the total amount for which tangible personal property is sold, without any deduction for the cost of the property sold, the cost of the materials used, labor or service cost, interest paid, losses, or any other expenses.

Note: Since the sales and use tax law specifically imposes the responsibility for the tax on marketplace facilitators for all products sold through their marketplace, the legal obligation to remit the tax in this example remains with Company X, regardless of any contract provisions between Company X and the restaurant.

Restaurant - Third Party. Company X has no sales and use tax responsibility for the sale of the take-out meals sold directly by the restaurant to Customer B (\$50 in this example). While the restaurant is not responsible for the remittance of the sales and use tax on any meal sold through the marketplace operated by Company X (\$20 in this example), it is responsible for the sales and use tax of meals sold by the restaurant to customers at its retail location. The restaurant is, therefore, a retailer and is required to obtain a retail license and remit sales and use tax with respect to sales made by it at its retail location (\$50 sale to Customer B in this example).⁸

SOUTH CAROLINA DEPARTMENT OF REVENUE

s/W. Hartley Powell

W. Hartley Powell, Director

August 26 _____, 2019
Columbia, South Carolina

⁸ See Code Section 12-36-2570(B) for information required on each monthly sales and use tax return.

Exhibit B

S.C. Information Letter #19-14: Marketplace Facilitator – New Law Effective April 26, 2019



STATE OF SOUTH CAROLINA
DEPARTMENT OF REVENUE

300A Outlet Pointe Blvd., Columbia, South Carolina 29210
P.O. Box 12265, Columbia, South Carolina 29211

SC INFORMATION LETTER #19-14

SUBJECT: Marketplace Facilitator – New Law Effective April 26, 2019
(Sales and Use Tax)

DATE: May 7, 2019

REFERENCE: Act No. 21 (Enacted April 26, 2019)

AUTHORITY: S.C. Code Ann. Section 12-4-320 (2014)
SC Revenue Procedure #09-3

SCOPE: An Information Letter is a written statement issued to the public to announce general information useful in complying with the laws administered by the Department. An Information Letter has no precedential value.

NOTICE TO PERSONS OPERATING AS A MARKETPLACE FACILITATOR

Purpose:

The purpose of this notice is to inform persons operating as a marketplace facilitator who sell tangible personal property in or into South Carolina of the requirements of the South Carolina sales and use tax law in light of the enactment by the South Carolina General Assembly of Act No. 21 of 2019, effective April 26, 2019.

Overview and Requirements of the New Marketplace Facilitator Law:

Any person who has nexus¹ with South Carolina and is engaged in business as a retailer must remit the sales and use tax on all retail sales of tangible personal property, unless otherwise excluded or exempted from the tax. This requirement applies to all retail sales of tangible personal property by the retailer, whether the tangible personal property is owned by the retailer or another person. Retailers selling tangible personal property at retail on consignment, by auction, or in any other manner must remit the sales and use tax on such retail sales.

¹ Economic nexus exists when a person's gross revenue from sales delivered into South Carolina exceeds \$100,000 in the previous calendar year or the current calendar year. See SC Revenue Ruling #18-14 for guidance on economic nexus, registration, and tax remittance.

Furthermore, all internet marketplaces where a person sells tangible personal property at retail by listing or advertising, or allowing the listing or advertising of, another person's products on an online marketplace and collects or processes the payment from the customer are retailers required to remit the sales and use tax on such retail sales under the provisions of South Carolina sales and use tax law.

In enacting the new law, the General Assembly found that retailers selling another person's tangible personal property on the Internet must clearly understand and be informed of their requirements to remit the sales and use tax in the same manner as retailers selling another person's tangible personal property in a brick and mortar store.

Effective April 26, 2019, this law reinforces that a person operating as a marketplace facilitator² is a “retailer” or “seller”³ under the South Carolina sales and use tax law and is responsible for remitting sales and use tax on all retail sales made via its marketplace, unless otherwise excluded or exempted from the tax. 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.⁴ The person may or may not receive compensation or other consideration for his services.

As a retailer, a marketplace facilitator must have a South Carolina retail license and remit the South Carolina sales and use tax on all products sold through its marketplace, whether the product is owned by the marketplace facilitator or the product is owned by another person. A marketplace may be physical (e.g., a brick and mortar marketplace) or electronic (e.g., an online marketplace). It includes any space, store, booth, catalog, website, television or radio broadcast, or similar place, medium, or forum.

Additional Information:

A marketplace facilitator may obtain additional information concerning the South Carolina sales and use tax laws on the Department's website (dor.sc.gov) and may obtain a retail license via the Department's online portal (MyDORWAY.dor.sc.gov). A marketplace facilitator without a physical presence in South Carolina should review South Carolina's economic nexus standards outlined in SC Revenue Ruling #18-14, “Retailers Without a Physical Presence (‘Remote Sellers’) – Economic Nexus,” and the Department's remote seller webpage (dor.sc.gov/remotesellers).

A complete copy of the marketplace facilitator law (Act No. 21 of 2019) may be obtained from the South Carolina Legislature's website (scstatehouse.gov).

² See new Code Section 12-36-71 for the definition of “marketplace facilitator.”

³ See Code Section 12-36-70 (as amended by Act No. 21 of 2019) for the definition of “retailer” and “seller.” Please note a person whose products are sold exclusively through a marketplace facilitator is not a South Carolina retailer, regardless of whether the person has nexus with South Carolina. This person is not required to obtain a retail license since the marketplace facilitator is the retailer required to remit South Carolina sales and use tax.

⁴ A marketplace facilitator includes any related entities assisting the marketplace facilitator in sales, storage, distribution, payment collection, or in any other manner, with respect to the marketplace. When a marketplace facilitator is comprised of multiple entities, the entity that lists or advertises, or allows the listing or advertising of, the products sold at retail in the marketplace is the entity responsible for remitting the sales and use tax to the State.