



SALES AND USE TAX GUIDE FOR AUTOMOBILE AND TRUCK DEALERS

2026 EDITION (THROUGH THE 2025 SESSION OF THE GENERAL ASSEMBLY)

SOUTH CAROLINA DEPARTMENT OF REVENUE

TAX POLICY SERVICES DIVISION

Henry D. McMaster, Governor

W. Hartley Powell, Director

DECEMBER 2025

DISCLAIMER

This guide is written in general terms for widest possible use and may not contain all the specific requirements or provisions of authority. It is intended as a guide only, and the application of its contents to specific situations will depend on the particular circumstances involved. This guide does not constitute tax, legal, or other advice and may not be relied on as a substitute for obtaining professional advice or for researching up-to-date original sources of authority. Nothing in this guide supersedes, alters, or otherwise changes provisions of the South Carolina code, regulations, or Department advisory opinions. This guide does not represent official Department policy.

This guide is a publication of the Policy Division of the South Carolina Department of Revenue. As such, it does not represent the position of the Department of Motor Vehicles. And while it is intended to provide guidance to automobile and truck dealers with respect to sales and use tax issues under the authority of the Department of Revenue, it will, in order to provide a more complete overview, include a brief discussion of matters that are under the authority of the Department of Motor Vehicles. Questions concerning the application of the infrastructure maintenance fee should be directed to the South Carolina Department of Motor Vehicles.

TABLE OF CONTENTS

<u>Topic</u>	<u>Page</u>
I. Introduction	1
II. Sales and Leases of Motor Vehicles, Trailers, and Semitrailers	1
A. Sales and Leases by Retailers of Motor Vehicles to Residents and Nonresidents for Registration or Titling in South Carolina	1
B. Sales and Leases by Retailers of Motor Vehicles to Nonresidents for Registration in their State of Resident.....	2
C. Sales and Leases by Retailers of Trailers and Semitrailers to Residents and Nonresidents for Registration or Titling in South Carolina	2
D. Sales and Leases by a Retailer of Trailers and Semitrailers to Nonresidents for Registration in their State of Residence	3
E. Sales and Leases by Retailers of Utility Trailers, Boat Trailers under 2,500 pounds, and Farm Trailers to Residents and Nonresidents to be Privately Owned and Not for Hire.....	4
F. Sales or Leases by a Retailer of Farm Trailers for Use in Farming Crops for Sale.....	4
G. Credit for Sales and Use Taxes Paid in Another State Upon Registering or Titling a Vehicle in South Carolina.....	5
H. Additional Information on Specific Types of Sales or Leases and Exemptions	5
III. Sales of Extended Warranties and Guaranteed Asset Protection Waivers	5
A. Extended Warranties.....	5
B. Guaranteed Asset Protection Waivers.....	7
IV. Loaner Cars	7
V. Motor Vehicle Leases – Options to Extend or Buy	11
VI. Short-Term Rentals of Motor Vehicles, Trailers, and Semitrailers	12
VII. Motor Vehicle and Specialized Attached Equipment	12
VIII. Repairs of Motor Vehicles, Trailers, and Semitrailers	14
A. Sales at Retail by the Automobile Dealer’s Service Department (Repairs and Other Services).....	14
B. Purchases at Retail by an Automobile Dealership for Use by the Automobile Dealer’s Service Department (i.e., Not for Resale).....	14
C. Purchases at Retail – Materials which Pass to the Customer	15
D. Purchases at Retail – Materials which Do Not Pass to the Customers	15
E. Purchases at Retail – Materials which Are Otherwise Used by the Service Department.....	15
F. Materials Withdrawn from Inventory to Repair a Motor Vehicle under Warranty	16

<u>Topic</u>	<u>Page</u>
IX. Sales for Resale (Wholesale Sale) of Parts and Other Materials by an Automobile Dealership to Auto Auctions, Repair Shops, and other Automobile Dealers.....	16
A. Sales for Repairs.....	16
B. Sales to Recondition a Motor Vehicle for Sale.....	16
X. Shop Fees Charged to Customers.....	17
XI. Withdrawals for Use.....	19
XII. Additional Information.....	19
XIII. Exhibits	
A. Exhibit A – SC Information Letter #25-5	22
B. Exhibit B – SC Revenue Ruling #23-3	45
C. Exhibit C – SC Revenue Ruling #18-1	48
D. Exhibit D – SC Revenue Ruling #93-1	66
E. Exhibit E – SC Revenue Ruling #99-3	71

I. INTRODUCTION

The purpose of this guide is to provide sales and use tax information specific to automobile and truck dealers, including issues involving sales and leases of motor vehicles¹, short-term rentals, loaner cars, repairs, and other issues.

South Carolina imposes a sales and use tax on persons engaged in the business of selling tangible personal property at retail. The sales and use tax, except in limited circumstances as discussed in this guide, is administered and collected by the Department of Revenue.

South Carolina also imposes an infrastructure maintenance fee on certain motor vehicles, motorcycles, trailers, semitrailers, pole trailers, and other items (e.g., certain utility trailers or boat trailers) registered or titled with the Department of Motor Vehicles. Sales and leases that are subject to the infrastructure maintenance fee are exempt from state and local sales and use taxes.² Sales and leases of items that are specifically exempted from the sales and use tax under Code Section 12-36-2120, and items where the sales or use tax has been paid on the transaction necessitating the transfer, are not subject to the infrastructure maintenance fee.³

The infrastructure maintenance fee is administered and collected by the Department of Motor Vehicles. In order to provide a complete overview, this guide will include a brief discussion of the infrastructure maintenance fee. However, automobile and truck dealers with questions concerning the infrastructure maintenance fee should contact the Department of Motor Vehicles.

For more information about the infrastructure maintenance fee and applicable exemptions, see the Exhibits at the end of this guide.

II. SALES AND LEASES OF MOTOR VEHICLES, TRAILERS, AND SEMITRAILERS

A. Sales and Leases by Retailers of Motor Vehicles to Residents and Nonresidents for Registering or Titling in South Carolina

Sales and leases of motor vehicles to residents and nonresidents for registering or titling in South Carolina are exempt from the sales and use tax under Code Section 12-36-2120(83) since such sales and leases are subject to an infrastructure maintenance fee (also referred to as “IMF”) upon registering or titling the motor vehicle at the Department of Motor Vehicles. The infrastructure maintenance fee is imposed at a rate of 5%, but no more than \$500, and is remitted by the dealer to the Department of Motor Vehicles.

Sales and leases of motor vehicles (i.e., all-terrain vehicles, utility task vehicles, golf carts, and legend race cars), which are not for registering or titling in South Carolina, do not qualify for the exemption under Code Section 12-36-2120(83) since such sales and leases are not subject to the

¹ Per *Jack’s Custom Cycles, Inc. v. S.C. Dep’t of Revenue*, 439 S.C. 35, 885 S.E.2d 433 (Ct. App. 2023), reh’g denied (Apr. 26, 2023), the term “motor vehicle” includes all-terrain vehicles, utility task vehicles, golf carts, legend race cars, and any motorized, self-propelled, and wheeled vehicle that does not run on rails.

² See Code Section 12-36-2120(83).

³ See Code Section 56-3-627.

infrastructure maintenance fee. The maximum sales or use tax is imposed at a rate of 5%, but no more than \$500, and is remitted by the retailer to the Department of Revenue.

B. Sales and Leases by Retailers of Motor Vehicles to Nonresidents for Registration in their State of Residence

Sales and leases by a retailer of motor vehicles to nonresidents for registration in their state of residence are not subject to an infrastructure maintenance fee, but are subject to the sales tax. However, if the purchaser's or lessee's state of residence does not impose a sales tax on the purchase or lease of a motor vehicle (e.g., Georgia, North Carolina) or does not allow the purchaser or lessee a credit against its use tax for a sales tax paid on the motor vehicle in South Carolina, then the sale of the motor vehicle is not subject to the South Carolina sales tax.

The calculation of the sales tax depends on the purchaser's or lessee's state of residence. Sales and leases of motor vehicles to nonresidents who will register the motor vehicle in their state of residence are subject to the sales tax at the lesser of the sales tax due in the purchaser's or lessee's state of residence or 5%, but no more than \$500.⁴ **When purchased or leased from a Department of Motor Vehicles licensed dealer, this sales tax is paid to the Department of Motor Vehicles.**⁵

Note: If the retailer delivers the motor vehicle to the nonresident at a point outside of South Carolina, or delivers the vehicle to a common carrier who will deliver the motor vehicle to the nonresident at a point outside South Carolina, then the sale or lease is exempt from the sales tax under Code Section 12-36-2120(36).

C. Sales and Leases by Retailers of Trailers and Semitrailers to Residents and Nonresidents for Registering or Titling in South Carolina

Sales and leases by a retailer of trailers and semitrailers, not exempt under Code Section 56-3-130, to residents and nonresidents for registering or titling in South Carolina listed below are exempt from the sales and use tax under Code Section 12-36-2120(83) since such sales and leases are subject to an infrastructure maintenance fee (also referred to as "IMF") upon registering or titling the trailer or semitrailer at the Department of Motor Vehicles. These trailers and semitrailers are subject to an IMF at the rate of 5%, but no more than \$500, upon registering or titling at the Department of Motor Vehicles.

- Trailers and semitrailers that can only be pulled by a truck tractor;
- Pole trailers;
- Utility trailers not exempt under Code Section 56-3-130;
- Horse trailers not exempt under Code Section 56-3-130;
- Boat trailers not exempt under Code Section 56-3-130; and
- Recreational vehicles that are pulled by a motor vehicle (e.g., tent campers, travel trailers, park models, park trailers, and fifth wheels).

⁴ See Code Section 12-36-930.

⁵ See Code Section 12-36-2110(A)(5).

D. Sales and Leases by a Retailer of Trailers and Semitrailers to Nonresidents for Registration in their State of Residence

Sales and leases by a retailer of the following trailers and semitrailers to nonresidents for registration in their state of residence are not subject to an infrastructure maintenance fee, but are subject to the sales tax:

- Trailers and semitrailers that can only be pulled by a truck tractor;
- Pole trailers;
- Utility trailers⁶;
- Horse trailers⁷;
- Boat trailers⁸; and
- Recreational vehicles that are pulled by a motor vehicle (e.g., tent campers, travel trailers, park models, park trailers, and fifth wheels).

However, the calculation of the tax and to whom the tax is remitted depends on the purchaser's or lessee's state of residence and whether the trailer or semitrailer is subject to the maximum sales and use tax in Code Section 12-36-2110.

(a) If the trailer or semitrailer can only be pulled by a truck tractor, is a recreational vehicle that is pulled by a motor vehicle, or is a horse trailer (i.e., a trailer or semitrailer subject to the maximum tax of \$500 under Code Section 12-36-2110), then the sale is subject to the sales tax at the lesser of the sales tax due in the purchaser's or lessee's state of residence or 5%, but no more than \$500.⁹ **When purchased or leased from a licensed Department of Motor Vehicles dealer, this sales tax is paid to the Department of Motor Vehicles.**¹⁰

(b) If the trailer or semitrailer is a pole trailer, utility trailer not exempt under Code Section 56-3-130, or boat trailer under 2,500 pounds which is privately owned and not for hire (i.e., a trailer or semitrailer not subject to the maximum tax of \$500 under Code Section 12-36-2110), then the sale or lease is subject to the sales tax at the lesser of the sales tax due in the purchaser's state of residence or 6% plus any applicable local sales tax. **This sales tax is paid to the Department of Revenue.**

If the purchaser's or lessee's state of residence does not impose a sales tax on the purchase or lease of a trailer or semitrailer of a type required to be registered or does not allow the purchaser or lessee a credit against its use tax for a sales tax paid on the trailer or semitrailer in South Carolina, then the sale or lease of the trailer or semitrailer is not subject to the South Carolina sales tax. For additional information on sales to nonresidents of trailers and semitrailers of a type required to be registered, see SC Information Letter #14-2.

⁶ Utility trailers which are privately owned and not for hire are subject to state and local sales or use tax.

⁷ Horse trailers not exempt under Code Section 56-3-130 are subject to state and local sales or use tax.

⁸ Boat trailers under 2,500 pounds which are privately owned and not for hire are subject to state and local sales or use tax.

⁹ See Code Section 12-36-930.

¹⁰ See Code Section 12-36-2110(A)(5).

Note: If the retailer delivers the trailer or semitrailer to the nonresident at a point outside of South Carolina, or delivers the vehicle to a common carrier who will deliver the trailer or semitrailer to the nonresident at a point outside South Carolina, then the sale is exempt from the sales tax under Code Section 12-36-2120(36).

E. Sales and Leases by Retailers of Utility Trailers, Boat Trailers under 2,500 pounds, and Farm Trailers to Residents and Nonresidents to be Privately Owned and Not for Hire

Sales and leases by a retailer of utility trailers, boat trailers under 2,500 pounds, and farm trailers that are privately owned and not for hire to residents and nonresidents are not subject to an infrastructure maintenance fee, but are subject to the sales and use tax at a rate of 6%, plus any applicable local sales and use tax.¹¹

This sales and use tax is paid to the Department of Revenue.

Note: If the retailer delivers the utility trailer, boat trailer under 2,500 pounds, or farm trailer to the nonresident at a point outside of South Carolina, or delivers the trailer to a common carrier who will deliver it to the nonresident at a point outside South Carolina, then the sale is exempt from the sales tax under Code Section 12-36-2120(36).

F. Sales or Leases by a Retailer of Farm Trailers for Use in Farming Crops for Sale

Sales or leases of flatbed trailers or stock trailers for use in farming in hauling farm crops (e.g., hay, corn, peaches) are exempt under Code Section 12-36-2120(16) from both the infrastructure maintenance fee and the sales and use tax if the flatbed trailer or stock trailer will be used solely in the “planting, cultivating, or harvesting” of farm crops for sale in their “original state of production or preparation for sale.”

Sales or leases of flatbed trailers or stock trailers are not exempt under Code Section 12-36-2120(16) from either the infrastructure maintenance fee or the sales and use tax if the flatbed trailer or stock trailer will be used solely for a purpose other than the “planting, cultivating, or harvesting” of farm crops (e.g., hay, corn, peaches) for sale in their “original state of production or preparation for sale.” For example, sales of flatbed or stock trailers for use solely in: (a) hauling tractors, harvesting equipment, or cattle; or (b) hauling farm crops (e.g., hay, corn, peaches) from a storage area to market or to a buyer are not exempt under Code Section 12-36-2120(16) from either the infrastructure maintenance fee or the sales and use tax. **For the calculation of the tax and to whom the tax is remitted, see Sections C and D above, as applicable.**

Sales or leases of flatbed trailers or stock trailers that will be used for both exempt and nonexempt purposes are exempt under Code Section 12-36-2120(16) from both the infrastructure maintenance fee and the sales and use tax if used substantially (not merely incidentally) in the “planting, cultivating, or harvesting” of farm crops (i.e., hay, corn, peaches) for sale in their “original state of production or preparation for sale.”

For more information about this exemption under Code Section 12-36-2120(16) see Exhibit D - SC Revenue Ruling #99-3, “Farm Trailers.”

¹¹ See S.C. Revenue Ruling #25-2.

G. Credit for Sales and Use Taxes Paid in Another State Upon Registering or Titling a Vehicle in South Carolina

South Carolina allows a credit against the state and local use tax due in South Carolina for the state and local sales or use tax due and paid in another state on the purchase of tangible personal property.¹² The allowance for a credit for sales and use taxes due and paid in another state may apply to the infrastructure maintenance fee.

For example, assume a South Carolina resident buys a vehicle from a dealer outside of South Carolina. The resident pays that state's sales tax and brings the vehicle into South Carolina for first registration or titling in South Carolina. The South Carolina resident may be allowed credit for the amount of sales and use tax paid to the other state. If the amount paid to the other state exceeds the infrastructure maintenance fee due in South Carolina upon first registering or titling in South Carolina, then no infrastructure maintenance fee is due. If the amount paid to the other state does not exceed the infrastructure maintenance fee due in South Carolina upon first registering or titling in South Carolina, then the resident must pay an infrastructure maintenance fee only for the difference.

For guidance on whether a credit will be allowed against the infrastructure maintenance fee due in South Carolina upon first registering or titling in South Carolina, please contact the Department of Motor Vehicles at cartaxes@scdmv.net.

H. Additional Information on Specific Types of Sales or Leases and Exemptions

For more detailed information as to the application of the infrastructure maintenance fee; whether the sales tax or the infrastructure maintenance fee applies to a specific sale or lease of a motor vehicle, trailer, or semitrailer; and the exemptions that may apply, see Exhibit A – SC Information Letter #25-5; Exhibit B – SC Revenue Ruling #23-3; Exhibit C – SC Revenue Ruling #18-1; and Exhibit D – SC Revenue Ruling #99-3.

III. SALES OF EXTENDED WARRANTIES AND GUARANTEED ASSET PROTECTION WAIVERS

A. Extended Warranties

Charges for extended warranties (whether optional or mandatory) sold in conjunction with, or as part of, the sale of tangible personal property are includable in the measure of the sales or use tax and therefore subject to the tax, except for motor vehicle extended service contracts and motor vehicle extended warranty contracts. Motor vehicle extended service contracts and motor vehicle extended warranty contracts are exempt under Code Section 12-36-2120(52).

Charges for extended warranties that are not sold in conjunction with, or a part of, the sale of tangible personal property (e.g., contracts sold at a later date) are not subject to the sales or use tax.

¹² See Code Section 12-36-1310(C).

For example:

Extended Warranty or Service Contract Sold in Conjunction with the Sale of a Motor Vehicle: If a retailer sells a motor vehicle for \$20,000 and, as part of the sale, sells an extended warranty contract for the motor vehicle for an additional \$1,000, the \$1,000 charge for the extended warranty contract is not subject to the sales tax or the infrastructure maintenance fee (whichever is applicable) under Code Section 12-36-2120(53). In addition, since sales of motor vehicles are subject to a maximum sales tax or a maximum infrastructure maintenance fee (whichever is applicable), the total tax or fee due on the sale of the motor vehicle would be \$500.

Extended Warranty or Service Contract Not Sold in Conjunction with the Sale of a Motor Vehicle: If a retailer sells a motor vehicle for \$20,000, the total sales tax due or infrastructure maintenance fee due (whichever is applicable) on the sale of the motor vehicle would be \$500 since sales of motor vehicles are subject to the \$500 maximum sales tax or a \$500 maximum infrastructure maintenance fee (whichever is applicable). If the customer returned to the dealer at a later date to purchase an extended warranty contract for the previously purchased motor vehicle for \$1,000, the \$1,000 charge for the extended warranty contract would not be subject to the sales tax or the infrastructure maintenance fee since it was not sold in conjunction with, or as part of, the sale of the motor vehicle.

The exemption for motor vehicle extended service contracts and motor vehicle extended warranty contracts under Code Section 12-36-2120(53) only applies to contracts that cover the entire motor vehicle or that cover a major part or component that is integral and necessary to the functioning of the motor vehicle as a motor vehicle and where such contract was originally sold in conjunction with the sale of the motor vehicle.

For example:

Extended Warranty or Service Contract for a Major Part or Component Integral and Necessary to the Functioning of the Motor Vehicle as a Motor Vehicle: The engine of a motor vehicle is a major part or component integral and necessary to the functioning of the motor vehicle as a motor vehicle; therefore, the sale of a warranty or extended service contract that only covers the engine of the motor vehicle is exempt from the sales tax or the infrastructure maintenance fee if the contract was originally sold in conjunction with the sale of the motor vehicle. If the warranty or extended service contract that covers the engine was not sold in conjunction with the sale of the motor vehicle (e.g., the owner of the motor vehicle purchases a replacement engine for the motor vehicle), the contract is not a motor vehicle warranty or motor vehicle extended service contract and is not exempt from the sales tax when sold in conjunction with the sale of the engine. (Note: The infrastructure maintenance fee does not apply to the sale of only an engine.)

Extended Warranty or Service Contract for a Part or Component Not Integral and Necessary to the Functioning of the Motor Vehicle as a Motor Vehicle: The radio in a motor vehicle is not a major part or component integral and necessary to the functioning of the motor vehicle as a motor vehicle; therefore, the sale of a warranty or extended service contract that only

covers the radio in the motor vehicle is not exempt from the sales and use tax when sold in conjunction with the sale of the radio. (Note: The infrastructure maintenance fee does not apply to the sale of only a radio.)

B. Guaranteed Asset Protection Waivers

A Guaranteed Asset Protection waiver, or “GAP waiver,” is defined in Code Section 37-30-110(5), as “a contractual agreement in which a creditor agrees for a separate charge to cancel or waive all or part of amounts due on a borrower’s finance agreement in the event of a total physical damage loss or unrecovered theft of the motor vehicle, which agreement must be part of, or a separate addendum to, the finance agreement.”

Under Title 37, Chapter 30, the GAP waiver charge is a part of the financing agreement and is therefore only available to the buyer of the motor vehicle if the buyer obtains financing through the auto dealer.

SC Regulation 117-318.2, concerning “Carrying and Finance Charges,” states:

When the seller has an established price for the goods he sells, that price is the amount to be included in gross proceeds of sales even though the established price may include an amount to cover a carrying charge. Where they [sic] seller has an established cash price and when selling on an extended payment basis, adds a separate charge for financing, the additional charge is not to be included in gross proceeds of sales.

In no event may finance or carrying charges be deducted from gross proceeds of sales when not shown as a separate item in the seller’s billing to his customer.

Based on the provisions of Title 37, Chapter 30, and SC Regulation 117-318.2, a GAP waiver charge by an auto dealer is not subject to the sales tax or the infrastructure maintenance fee as long as it is only provided as part of a financing agreement and the finance charge (including the GAP charge associated with the finance charge) is separately stated from the sales price (“gross proceeds”) of the motor vehicle.

IV. LOANER CARS

A loaner car is a motor vehicle provided by a dealer to a customer for a short period of time while the customer’s motor vehicle is being serviced or repaired. The application of the sales tax or the infrastructure maintenance fee with respect to loaner cars will depend on the facts and circumstances.

The following examples illustrate the purchase or use of a vehicle as a loaner car and the application of the sales tax or infrastructure maintenance fee to that purchase or use.

Example 1 - Motor Vehicle Purchased as a Loaner from the Manufacturer

Purchase. The motor vehicle is purchased by the dealer from the manufacturer as a loaner car. The dealer pays the finance company a monthly payment which includes a monthly curtailment of principal on the current liability, insurance, and interest. The dealer will title the loaner car in its name and obtain a regular motor vehicle license tag for it (sometimes referred to as a “hard” tag by dealers). The dealer will not use a dealer tag on the loaner car. The dealer provides the motor vehicle to customers as courtesy transportation for no consideration.

Application of the Infrastructure Maintenance Fee. Since the dealer registers and titles the motor vehicle in its name with the Department of Motor Vehicles, the sale by the manufacturer to the dealer is a retail sale exempt from the sales and use tax since the registration or titling the loaner vehicle by the dealer with the Department of Motor Vehicles is subject to the infrastructure maintenance fee.¹³

Subsequent Sale of Loaner Car. At a later date, the motor vehicle is moved out of “loaner status” and sold by the dealer. This subsequent sale is subject to the infrastructure maintenance fee¹⁴ (unless otherwise exempt) if the motor vehicle will be registered or titled with the Department of Motor Vehicles or the sales tax (unless otherwise exempt) if the motor vehicle is sold to a nonresident who will register the motor vehicle in his state of residence.¹⁵

Application of the Infrastructure Maintenance Fee. If the infrastructure maintenance fee applies because the vehicle will be registered or titled with the Department of Motor Vehicles, the fee is imposed at a rate of 5% of the gross proceeds of the sale, not to exceed \$500.

Application of the Sales Tax. If the sales tax is imposed because it is a sale to a nonresident who will register the motor vehicle in his state of residence, then the calculation of the tax depends on the purchaser’s state of residence. Sales of motor vehicles to nonresidents who will register the motor vehicle in their state of residence are subject to the sales tax at the lesser of the sales tax due in the purchaser’s state of residence or 5%, but no more than \$500. **When purchased from a Department of Motor Vehicles licensed dealer, this sales tax is paid to Department of Motor Vehicles.** However, if the purchaser’s state of residence does not impose a sales tax on the purchase of a motor vehicle (e.g., Georgia, North Carolina) or does not allow the purchaser a credit against its use tax for a sales tax paid on the motor vehicle in South Carolina, then the sale of the motor vehicle to the nonresident is not subject to the South Carolina sales tax.

Example 2 - Motor Vehicle Purchased as a Loaner from the Manufacturer with Reimbursement from the Manufacturer

Purchase. The motor vehicle is purchased by the dealer from the manufacturer as a loaner car.

¹³ See Code Section 56-3-627.

¹⁴ See Code Section 56-3-627.

¹⁵ See Code Section 12-36-930.

The dealer pays the finance company a monthly payment which includes a monthly curtailment of principal on the current liability, insurance, and interest. The dealer will title the loaner car in its name and obtain a regular motor vehicle license tag for it (sometimes referred to as a “hard” tag by dealers). The dealer will not use a dealer tag on the loaner car. The dealer in turn provides the motor vehicle to customers as courtesy transportation, but in this circumstance the manufacturer on occasion will reimburse the dealer for providing the loaner. This is typically done when there is a manufacturing problem with the customer’s motor vehicle and it is a problem affecting many customers.

In considering the tax consequences of this situation, it must be understood that there are three possible sales tax or infrastructure maintenance fee transactions that may occur.

Transaction #1: Since the dealer registers and titles the motor vehicle in its name with the Department of Motor Vehicles, the sale by the manufacturer to the dealer is a retail sale exempt from the sales and use tax since the registration or titling of the loaner vehicle by the dealer with the Department of Motor Vehicles is subject to the infrastructure maintenance fee.¹⁶

Transaction #2: From time to time, the dealer may be reimbursed by the manufacturer for providing the same motor vehicle to another customer when the problem with the car is a manufacturing problem. Therefore, when the dealer is reimbursed by the manufacturer for the customer’s use of the vehicle as described above, that reimbursement from the manufacturer is a retail rental transaction subject to the sales tax, paid by the dealer to the Department of Revenue, at a rate of 6% plus the applicable local sales tax rate.¹⁷

Transaction #3: At some later date, the motor vehicle is moved out of “loaner status” and sold by the dealer. This subsequent sale is subject to the infrastructure maintenance fee (unless otherwise exempt) if the motor vehicle is registered or titled with the Department of Motor Vehicles or the sales tax (unless otherwise exempt) if the motor vehicle is sold to a nonresident who will register the motor vehicle in his state of residence.

Application of the Infrastructure Maintenance Fee. If the infrastructure maintenance fee applies because the vehicle will be registered or titled with the Department of Motor Vehicles, the fee is imposed at a rate of 5% of the gross proceeds of the sale, not to exceed \$500.¹⁸

¹⁶ See Code Sections 56-3-627 and 12-36-2120(83)

¹⁷ Since the dealer registers the motor vehicle in its name with the Department of Motor Vehicles, the sale by the manufacturer to the dealer is a retail sale exempt from the sales and use tax since the registration of the loaner vehicle by the dealer with the Department of Motor Vehicles will be subject to the infrastructure maintenance fee. When the dealer is subsequently paid by the manufacturer to provide this same vehicle to another customer, the dealer has now rented the vehicle. This transaction is another retail transaction (the transfer of the motor vehicle for a consideration – the rental payment by the manufacturer) and is subject to the sales tax. Both transactions are subject to either the sales tax or the infrastructure maintenance fee because they are both retail transactions: (a) retail purchase of the motor vehicle by the dealer subject to the infrastructure maintenance fee upon registration with the Department of Motor Vehicles and (b) a subsequent retail sale (rental) of the same motor vehicle by the dealer subject to the sales tax and due with the dealer’s sales and use tax return filed with the Department of Revenue.

¹⁸ See Code Section 56-3-627.

Application of the Sales Tax. If the sales tax is imposed because it is a sale to a nonresident who will register the motor vehicle in his state of residence, then the calculation of the tax depends on the purchaser's state of residence. Sales of motor vehicles to nonresidents who will register the motor vehicle in their state of residence are subject to the sales tax at the lesser of the sales tax due in the purchaser's state of residence or 5%, but no more than \$500.¹⁹ **When purchased from a Department of Motor Vehicles licensed dealer, this sales tax is paid to the Department of Motor Vehicles.**²⁰

However, if the purchaser's state of residence does not impose a sales tax on the purchase of a motor vehicle (e.g., Georgia, North Carolina) or does not allow the purchaser a credit against its use tax for a sales tax paid on the motor vehicle in South Carolina, then the sale of the motor vehicle to the nonresident is not subject to the South Carolina sales tax.²¹

Example 3 - Motor Vehicle Purchased from the Manufacturer as Inventory but placed in Loaner Status

The dealer purchases from the manufacturer its regular inventory of motor vehicles for resale with a resale certificate, but places some in a loaner status (similar to demo status). The motor vehicle may be loaned to the customer under a "demo slip,"²² a "drive out form," or a rental agreement, but in all cases there is no consideration charged or paid for the use by the customer of the motor vehicle. These vehicles are available for sale during the time used as a loaner.

In considering the tax consequences of this situation, it must be understood that there are several possible sales tax or infrastructure maintenance fee transactions that may occur.

Transaction #1: The purchase of these vehicles from the manufacturer is a wholesale purchase not subject to the sales and use tax.

Transaction #2: Since the motor vehicles were purchased at wholesale, the withdrawal, use, or consumption of any such motor vehicle as a loaner would be subject to the sales tax (and not subject to the infrastructure maintenance fee), **paid by the dealer to the Department of Revenue**, as a "withdrawal for use"²³ at the lesser of (a) 5% of the motor vehicle's fair market value, allowing for all customary discounts in accordance with SC Regulation 117-309.17, or (b) \$500, unless the "motor vehicle [is] operated with a dealer ... license plate and [is] used in accordance with the provisions of Section 56-3-2320 ...". If the "motor vehicle [is] operated with a dealer ... license plate and [is] used in accordance with the provisions of Section 56-3-2320," then no sales tax is due on the "withdrawal for use."

¹⁹ See Code Section 12-36-930.

²⁰ See Code Section 12-36-2110(A)(5).

²¹ See Code Section 12-36-930.

²² Since the motor vehicle is being withdrawn as a "loaner," the exemption from the withdrawals for use provisions under Code Section 12-36-90(1)(c)(v) does not apply.

²³ For more information on the application of the sales tax on "withdrawals for use," see Chapter 6 of the Department's *Sales and Use Tax Manual* and SC Revenue Ruling #25-3.

However, where the dealer is trading a used loaner for a new loaner, then the dealer may deduct the value of the used loaner from the value of the new loaner in arriving at the measure of the tax. In no event can the value placed on the used loaner for trade-in purposes exceed the amount realized on the sale of the used loaner. When the dealer's books and records of account are not sufficiently adequate to establish the actual amount realized on the sale of the used loaner, the trade-in allowance shall not exceed the value of the used loaner as listed in the .A.D.A. Official Used Car Guide for this region of the country in use during the taxable period in which the exchange is made.

Note: If the motor vehicles were purchased at wholesale for rental, the withdrawal, use, or consumption of any such motor vehicle as a loaner would be subject to the sales tax based on the motor vehicle's fair market rental value in accordance with SC Regulation 117-318.4.

V. MOTOR VEHICLE LEASES - OPTIONS TO EXTEND OR BUY

Leases of motor vehicles for registering or titling in South Carolina are exempt from the sales and use tax under Code Section 12-36-2120(83) since such leases are subject to an infrastructure maintenance fee. A lease may include a provision that allows the extension of a lease or an option to buy the vehicle during the lease. Below illustrates the application of the sales tax when the lease of a motor vehicle is extended or the customer (lessee) exercises an option to buy the motor vehicle.

Example 1 - Extension of the Lease

Facts: The motor vehicle is leased to a resident of South Carolina by a Department of Motor Vehicles licensed dealer. The lease is for a term of three years. The lessee, at the end of the three-year initial term, has the option under the contract to extend the lease for an additional year. Since the motor vehicle was registered with the Department of Motor Vehicles upon the execution of the initial three-year term, the infrastructure maintenance fee was paid to the Department of Motor Vehicles.

The question arises as to the application of the sales tax if the lessee exercises his option and extends the lease for an additional year.

Conclusion: Since the motor vehicle was first registered upon the initial execution of the lease and will not be re-registered upon the extension of the lease, the extension is directly related to the first registration of the motor vehicle upon its lease and is not subject to the sales tax. Code Section 12-36-2120(83) exempts the gross proceeds of sales of any item subject to the infrastructure maintenance fee.

Example 2 - Exercise Option to Buy

Facts: The motor vehicle is leased to a resident of South Carolina by a Department of Motor Vehicles licensed dealer. The lease is for a term of three years. The lessee, at the end of the three-year initial term, has the option under the contract to buy the motor vehicle. Since the motor vehicle was registered with the Department of Motor Vehicles upon the execution of the initial three-year term, the infrastructure maintenance fee was paid to the Department of Motor Vehicles.

The question arises as to the application of the sales tax if the lessee exercises his option and buys the motor vehicle at the end of the three-year lease term.

Conclusion: Since the motor vehicle was first registered upon the initial execution of the lease and will not be re-registered upon the purchase under the option to buy, neither the initial lease nor the purchase of the motor vehicle is subject to the sales tax. Code Section 12-36-2120(83) exempts the gross proceeds of sales of any item subject to the infrastructure maintenance fee.

For information concerning the application of the infrastructure maintenance fee to the exercise of the option to buy under a lease, contact the Department of Motor Vehicles.

VI. SHORT-TERM RENTALS OF MOTOR VEHICLES, TRAILERS, AND SEMITRAILERS

Short-term rentals (e.g., daily, weekly) of motor vehicles, trailers, and semitrailers are subject to the sales tax.²⁴ The sales tax on short-term rentals (e.g., daily, weekly) is remitted to the Department of Revenue.

For example, if a person rents a motor vehicle for a week while in South Carolina on business, or a person rents a truck to move furniture from one location to another, then the gross proceeds from the rental of the truck (e.g., rental payment, property damage waiver fees) are subject to the sales tax.

Note: For information on what is included in “gross proceeds” (the basis or measure of the sales tax) for purposes of short-term motor vehicle rentals, see Exhibit D - SC Revenue Ruling #93-1.

VII. MOTOR VEHICLE AND SPECIALIZED ATTACHED EQUIPMENT

The sales tax and use tax are “transaction taxes.” Each sale of a motor vehicle and any special equipment that is or will be a part of the motor vehicle when attached must be reviewed. This review takes into consideration the maximum tax provisions and the exemption for any item subject to the infrastructure maintenance fee.

The below scenarios use the example of the attachment of a garbage compactor to a truck to create a garbage truck that will be first registered or titled with the Department of Motor Vehicles for use on the highways. The application of the sales and use tax also applies to similar examples involving the attachment to a truck of other specialized equipment, such as the attachment of well-drilling equipment, water tanks, and cranes to a truck.

Example 1 - Vehicle and Equipment Sold as a Single Unit

Facts: A truck and a garbage compactor are sold in one transaction as a single unit (i.e., attached) at the time of the sale (i.e., delivery). The single unit is first registered or titled in South Carolina with the Department of Motor Vehicles.

²⁴ See Code Section 12-36-910 and SC Revenue Ruling #18-1, Question 24.

Conclusion: Since the truck and garbage compactor were registered as a single unit with the Department of Motor Vehicles, the infrastructure maintenance fee is paid to the Department of Motor Vehicles. In addition, since Code Section 12-36-2120(83) exempts the gross proceeds of sales of any item subject to the infrastructure maintenance fee, both the truck and the garbage compactor sold as a single unit in this transaction are exempt from the sales tax.

Example 2 - Vehicle and Equipment Sold Separately; Attached Prior to Registration

Facts: A truck and garbage compactor are sold in two separate transactions (i.e., two separate sales transactions), and the truck with the compactor are attached prior to the first registration in South Carolina with the Department of Motor Vehicles.

Conclusion: Since the truck and garbage compactor were registered as a single unit with the Department of Motor Vehicles, the infrastructure maintenance fee is paid to the Department of Motor Vehicles. In addition, since Code Section 12-36-2120(83) exempts the gross proceeds of sales of any item subject to the infrastructure maintenance fee, both the truck and the garbage compactor sold, even though sold in two separate sales transactions, are exempt from the sales tax.

Example 3 - Vehicle and Equipment Sold Separately; Attached After Registration

Facts: A truck and garbage compactor are sold in two separate transactions (i.e., two separate sales transactions), and the truck without the compactor attached is first registered in South Carolina with the Department of Motor Vehicles. The compactor is attached to the truck after registration of the truck.

Conclusion: Since the truck was registered with the Department of Motor Vehicles without the compactor, the infrastructure maintenance fee that is paid to the Department of Motor Vehicles only applies to the truck. In addition, since Code Section 12-36-2120(83) exempts the gross proceeds of sales of any item subject to the infrastructure maintenance fee, only the truck is exempt from the sales tax. The truck is subject to the infrastructure maintenance fee at a rate of 5% but no more than \$500. The purchase of the compactor is subject to the sales tax at a rate of 6% plus any applicable local sales tax.

Example 4 - Replacement of Equipment

Facts: After the first registration of the garbage truck the compactor is replaced with a new garbage compactor.

Conclusion: The purchase of the new compactor for the truck is subject to the sales tax at a rate of 6% plus any applicable local sales tax since the purchase of the replacement compactor is not part of a transaction subject to the infrastructure maintenance fee. The infrastructure maintenance fee only applies to the first registration or titling of the truck by the owner with the Department of Motor Vehicles. Therefore, the exemption in Code Section 12-36-2120(83) for the gross proceeds of sales of any item subject to the infrastructure maintenance fee is not applicable to the purchase of the replacement compactor.

VIII. REPAIRS OF MOTOR VEHICLES, TRAILERS, AND SEMITRAILERS²⁵

South Carolina imposes a sales and use tax on persons engaged in the business of selling tangible personal property at retail. The sales and use tax is imposed at a rate of 6% plus applicable local sales and use taxes. The sales and use tax is administered and collected by the Department of Revenue. In addition to being engaged in the business of selling motor vehicles, trailers, and semitrailers, automobile dealerships are also engaged in the business of selling other tangible personal property, such as sales of parts directly to the customer or as part of the repair or service of a motor vehicle, trailer, or semitrailer.

The purpose of this part of the guide is to provide guidance to automobile dealerships with respect to their sale or use of repair parts and their purchase of supplies used by them in servicing or repairing vehicles. This part of the guide also provides guidance with respect to what is included in the measure or basis for the sales tax (i.e., gross proceeds of sales”).²⁶

A. Sales at Retail by the Automobile Dealer’s Service Department (Repairs and Other Services)

Materials which (a) pass to the service department’s customer, (b) do not lose their identity when used by the service department, and (c) are a substantial part of the repair or service are sold at retail by the service department to the customer and are taxable when sold.

Examples of such sales include:

- automobile parts;
- tires;
- batteries;
- hoses; and
- fan belts.

B. Purchases at Retail by an Automobile Dealership for Use by the Automobile Dealer’s Service Department (i.e., Not for Resale)

Purchases by automobile dealerships for use by the dealership are subject to the sales and use tax at the time of purchase. In addition, tangible personal property purchased at wholesale for resale to customers but instead “withdrawn for use” from the dealership’s inventory or supplies is subject to the sales tax based upon its fair market value when it is (1) withdrawn from the business or stock and (2) used or consumed in connection with the business or used or consumed by the person withdrawing it.²⁷

This section concerns the following four types of “purchases at retail” or “withdrawals for use:”

1. Materials which pass to the customer, and either lose their identity or are inconsequential in amount;

²⁵ See SC Regulations 117-306; 117-306.2.

²⁶ See Code Section 12-36-90.

²⁷ See Code Sections 12-36-110; Section 12-36-90. See also, SC Revenue Ruling #25-3.

2. Materials which do not pass to the customer and are used and consumed with respect to the customer's vehicle;
3. Materials which are otherwise used and consumed by the dealership; and
4. Materials withdrawn from inventory to repair a motor vehicle under warranty.

C. Purchases at Retail - Materials which Pass to the Customer

Materials which (a) pass to the service department's customer and (b) either lose their identity or are inconsequential in amount are considered to have been used or consumed by the service department and are taxable when sold to the service department or withdrawn for use by the service department.

Examples of such taxable purchases are:

- paint;²⁸
- window tinting film;
- solder;
- upholstery tacks;
- disposable protective seat covers;
- disposable protective paper floor mats;
- paper key tags;
- stickers or labels indicating when the next service is due; and
- dispatch number tags (tags that hang from the rear-view mirror).

D. Purchases at Retail - Materials which Do Not Pass to the Customer

Materials which (a) do not pass on to the service department's customer and (b) are used and consumed by the service department are taxable when sold to the service department or withdrawn for use by the service department.

Examples of such taxable purchases are:

- tools;
- rags;
- equipment;
- office supplies; and
- cleaners.

E. Purchases at Retail - Materials which Are Otherwise Used by the Service Department

Materials which are otherwise used and consumed by the repair shop are taxable when sold to the repair shop.

²⁸ See Section IX below, "Sales for Resale (Wholesale Sale) of Parts and Other Materials by an Automobile Dealership to Auto Auctions, Repair Shops, and Other Automobile Dealers."

Examples of such taxable purchases are:

- work order quote forms;
- repair order invoices;
- business cards; and
- thank you cards and after-service postcards.

F. Materials Withdrawn from Inventory to Repair a Motor Vehicle under Warranty²⁹

Tangible personal property purchased at wholesale is subject to the sales tax based upon its fair market value when it is (1) withdrawn from the business or stock and (2) used or consumed in connection with the business or used or consumed by the person withdrawing it.³⁰ Parts used to repair a motor vehicle under warranty are considered withdrawn for use by the business and subject to the sales tax based upon the part's fair market value.

However, the tax will not apply to a withdrawal for use to repair a motor vehicle under warranty when:

- a. the written warranty contract was given without charge at the time of purchase of the defective part;
- b. the tax was paid at the time of purchase; and
- c. the warrantee is not charged for any labor or materials.

Note: If the customer is charged a deductible, the sales tax will apply to the withdrawal for use of the replacement part based on the fair market value of the replacement part.

IX. SALES FOR RESALE (WHOLESALE SALE) OF PARTS AND OTHER MATERIALS BY AN AUTOMOBILE DEALERSHIP TO AUTO AUCTIONS, REPAIR SHOPS, AND OTHER AUTOMOBILE DEALERS

A. Sales for Repairs

Sales of identifiable parts by an automobile dealer to an auto auction, a repair shop, another automobile dealer, or a body shop in order to repair an automobile for their customer are wholesale sales not subject to the tax.

B. Sales to Recondition a Motor Vehicle for Sale

Sales of materials and parts by an automobile dealer to an auto auction, a repair shop, another automobile dealer, a rental car company, or a body shop to be incorporated into an automobile in order to sell or rent the automobile are wholesale sales not subject to the tax.³¹ For example:

²⁹ See Code Section 12-36-90(1)(c)(iii).

³⁰ See Code Sections 12-36-110 and 12-36-90.

³¹ See SC Regulation 117-309.16.

1. the sale of a fabric protectant to an auto auction that will be used by that auto auction on the seats of an automobile that is being prepared or reconditioned for sale is a wholesale not subject to the tax; and
2. the sale of paint to an auto auction that will be used by that auto auction to paint an automobile that is being prepared or reconditioned for sale is a wholesale not subject to the tax.³²

For example:

Sale by Automobile Dealer to Independent Repair Shop: An independent repair shop determines that the radiator of a customer's motor vehicle must be replaced. The independent repair shop purchases the radiator for the repair from an automobile dealership.

Since the independent repair shop is a retailer making a retail sale of a radiator to its customer, the independent repair shop may extend a resale certificate to the automobile dealership in order to purchase the radiator at wholesale (tax-free). The independent repair shop is liable for state and local sales taxes on its retail sale of the radiator to its customer.

Sub-Contract Repair by Specialized Repair Shop for an Automobile Dealership: An automobile dealership determines the air conditioner of a customer's motor vehicle needs a new compressor. However, instead of replacing the compressor itself, the general automobile dealership sub-contracts with specialized auto repair shop (air conditioning repair) to replace the compressor.

Since the sale of the compressor by the specialized air conditioning shop to the automobile dealership is a wholesale sale, the automobile dealership may extend a resale certificate to the specialized auto repair shop that installed the compressor in order to purchase the compressor at wholesale (tax-free). The automobile dealership that is dealing directly with the customer is liable for state and local sales taxes on its retail sale of the compressor to its customer.

X. SHOP FEES CHARGED TO CUSTOMERS

“Gross proceeds of sales”³³ is the measure or basis for the sales tax. Essentially, it is the total amount for which tangible personal property is sold. The following are examples of various issues involving charges by automobile dealerships for shop fees to their customers with respect to the sale of repair parts and the sale of services. These examples address the inclusion of such shop fees in gross proceeds of sales - the measure or basis for the sales tax.

³² If paint is purchased by an automobile dealer to both repair automobiles for customers and to recondition automobiles for sale, then the automobile dealer should purchase the paint tax free and keep and maintain proper records to account for the amount of paint used for both purposes. The automobile dealer would remit the tax on paint used to repair the customer's automobile. The automobile dealer would not remit the tax on paint used to recondition an automobile for sale, but would remit tax on the automobile when it is sold based on 5% of the gross proceeds of the automobile, or \$500, whichever is less.

³³ See Code Section 12-36-90.

Shop fees charged by automobile dealers typically cover items used or consumed by a dealer in repairing a motor vehicle, such as rags, a squirt of oil or grease, cleaning supplies, invoicing paper, disposable protective seat covers, disposable paper floor mats, dispatch number tags (tags that hang from the rear view mirror), charges for disposing of used oil, repair order invoices, and paper key tags.

Shop fees charged to a customer are only subject to the tax if the shop fees are charged as part of the retail sale of tangible personal property. If shop fees are charged as part of a service where no tangible personal property is sold to the customer, the shop fees are not subject to the tax.

Example 1 - Shop Fees Charged as Part of the Sale of Tangible Personal Property – New Alternator

If shop fees are charged by the dealer as part of the sale of tangible personal property, such as a new alternator, windshield, or other identifiable part, then the shop fees are a part of the “gross proceeds of sales” and subject to the tax. In addition, these items (e.g., rags, a squirt of oil or grease, cleaning supplies, etc.) are expenses of the dealers and cannot be deducted from the gross proceeds of sales of the tangible personal property sold to the customer.

For example, if a dealer replaces a customer’s alternator and charges \$125 for the new alternator, \$75 for installation (separately stated on the bill to the customer), and \$25 for shop fees, the shop fees are a part of the “gross proceeds of sales” of the new alternator and the tax is based on \$150 ($\$125 + \$25 = \150). The installation charge, since it is separately stated on the bill to the customer and it is reasonable based on the dealer’s books and records, is not subject to the sales tax.³⁴

Example 2 - Shop Fees Charged as Part of a Service – Painting

If shop fees are charged by the dealer as part of a service that does not involve the sale of an identifiable part to the customer, such as the painting of a part of an automobile, the service is not subject to the tax since tangible personal property has not been sold to the customer. As such, the gross proceeds of sales of such service, including any associated shop fees, are not subject to the sales tax.

Example 3 - Shop Fees Charged as Part of a Service – Car Detailing

If a dealer performs “detailing” work and charges a customer \$125 to clean and detail the customer’s car and \$25 for shop fees, the shop fees are a part of the “gross proceeds of sales” of a nontaxable service (cleaning and detailing a car is a service and is not the sale of tangible personal property). Therefore, since the dealer is only providing a nontaxable service, the \$150 ($\$125 + \$25 = \150) is not subject to the sales tax.

Note: See above Section VIII “Repairs of Motor Vehicles, Trailers, and Semitrailers” for information on the taxability of shop supplies at the time of purchase.

³⁴ See SC Regulation 117-313.3 concerning “Installation Charges.”

XI. WITHDRAWALS FOR USE

Tangible personal property purchased at wholesale is subject to the sales tax based upon its fair market value when it is (1) withdrawn from the business or stock and (2) used or consumed in connection with the business or used or consumed by the person withdrawing it.³⁵

Tangible personal property withdrawn from inventory and used or consumed in connection with the business or used or consumed by the person withdrawing it includes, but is not limited to, tangible personal property used by the business, given to employees for their personal use, or given to employees to give away to customers or potential customers as a promotion or for purposes of goodwill.

For example, when a customer is not satisfied with the service, the dealer may provide the customer a free oil change to ensure he retains that person as a customer. Since the oil and oil filter were purchased at wholesale (for resale), but instead of being sold the oil and oil filter are withdrawn for use to provide the free oil change, the withdrawal of the oil and oil filter from inventory is subject to the sales tax based on their fair market value.³⁶

Note: See above Section VIII. B. “Purchases at Retail by an Automobile Dealership for Use by the Automobile Dealer’s Service Department (i.e., Not for Resale)” for other examples of withdrawing tangible personal property from inventory for use.

XII. ADDITIONAL INFORMATION

For more information concerning the sales and use tax, such as information on impositions, retail sales, the measure or basis for the tax, exclusions, and exemptions, see the Department of Revenue’s *Sales and Use Tax Manual*.

If you have questions regarding sales and use tax matters, please contact the Department of Revenue at (803) 898-5000 or salestax@dor.sc.gov.

If you have questions regarding the infrastructure maintenance fee remitted to the Department of Motor Vehicles, or sales taxes remitted by the Department of Motor Vehicles licensed dealers to the Department of Motor Vehicles on sales to nonresidents, please contact the Department of Motor Vehicles at cartaxes@scdmv.net.

³⁵ See Code Section 12-36-110 and 12-36-90.

³⁶ SC Regulation 117-309.17, concerning withdrawals from stock by merchants, states:

To be included in gross proceeds of sales is the money value of property purchased at wholesale for resale purposes and subsequently withdrawn from stock for use or consumption by the purchaser.

The value to be placed upon such goods is the price at which these goods are offered for sale by the person withdrawing them. All cash or other customary discounts which he would allow to his customers may be deducted; however, in no event can the amount used as gross proceeds of sales be less than the amount paid for the goods by the person making the withdrawal.

XIII. EXHIBITS

- A. SC Information Letter #25-5. This Information Letter provides general guidance as to when the infrastructure maintenance fee applies and when the sales tax applies. It also contains three charts that provide information as to the applicable tax or fee, the tax or fee rate, and the agency (the Department of Revenue or the Department of Motor Vehicles) to which the tax or fee should be submitted.
- B. SC Revenue Ruling #23-3. This Revenue Ruling provides general guidance as to what is considered a motor vehicle and when the sales tax applies to sales or purchases of certain motor vehicles.
- C. SC Revenue Ruling #18-1. This Revenue Ruling provides general guidance as to when the infrastructure maintenance fee applies and when the sales tax applies. It also provides specific guidance in a question and answer format concerning sales of vehicles to residents of South Carolina, sales of vehicles to a nonresident, sales of farm trailers, sales of vehicles by a non-retailer, lease and short term rentals of motor vehicles, sales of motor vehicles and motorcycles to members of the military, the filing of the sales and use tax return by a dealer, and sales of low-speed vehicles, dirt bikes, all-terrain vehicles, golf carts, and go-carts.
- D. SC Revenue Ruling #92-1. This Revenue Ruling concerns short-term rentals of motor vehicles and specifically addresses application of the sales tax to various fees charged by motor vehicle rental companies to their customers.
- E. SC Revenue Ruling #99-3. This Revenue Ruling concerns the sales and use tax exemption of farm trailers used in planting, cultivating, or harvesting farm crops

EXHIBITS

Exhibit A

SC Information Letter #25-5

South Carolina Infrastructure and Economic
Development Reform Act



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 INFORMATION LETTER #25-5

SUBJECT: South Carolina Infrastructure and Economic Development Reform Act

EFFECTIVE DATE: May 10, 2021, for IMF Titling and Lessee Issues; July 1, 2022, for Sales and Use Tax and Casual Excise Tax Issues Involving Boat Motors; April 26, 2023, for Motor Vehicles; and July 1, 2017, for All Other Issues Except as Noted for Mopeds

SUPERSEDES: SC Information Letter #22-17 and all previous advisory opinions and any oral directives in conflict herewith.

REFERENCE: S.C. Code Ann. Section 56-1-10 (Supp. 2023)
S.C. Code Ann. Section 56-3-20 (Supp. 2023)
S.C. Code Ann. Section 56-3-130 (Supp. 2023)
S.C. Code Ann. Section 56-3-627 (Supp. 2023)
Chapter 36 of Title 12 (Supp. 2023)

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.

PURPOSE

The purpose of this Information Letter is to update South Carolina Department of Revenue's (SCDOR's) guidance provided in S.C. Information Letter #22-17 concerning boat trailers under 2,500 pounds, farm trailers, and other utility trailers to reflect the policy revisions in S.C. Revenue Ruling #25-2.¹ Specifically, the following trailers, if they belong to a "person", as defined in

¹ Previously, SCDOR advised the following regarding the sale of "boat trailers," "farm trailers," and "utility trailers": 1) such trailers purchased for "Personal Use" were subject to sales/use tax when purchased from a licensed retailer, and 2) such trailers purchased for "Business Use" are subject to the IMF and exempt from sales/use tax per Code § 12-36-2120(83).

Section 56-1-10(22) of the South Carolina Code, and are not used to transport persons or property for a consideration are subject to state and local sales or use tax, rather than the Infrastructure Maintenance Fee (“IMF”):

- boat trailers under twenty-five hundred pounds;
- trailers, as defined in Code Section 56-3-20(13), used substantially in the planting, cultivating, or harvesting of farm crops for sale in their original state of production; and
- trailers, as defined in Code Section 56-3-20(13) that are not recreational vehicles, fire safety education trailers, horse trailers, or boat trailers.

OVERVIEW OF NEW INFRASTRUCTURE MAINTENANCE FEE

In 2017, the General Assembly enacted the South Carolina Infrastructure and Economic Development Reform Act to address the needs of South Carolina’s transportation infrastructure system and to set the state on the path towards a first-class road network.² As part of its effort to improve the state’s transportation infrastructure network, the General Assembly imposed the IMF, which became effective July 1, 2017.

In 2021, the General Assembly amended Code Section 56-3-627, effective May 10, 2021, to also impose the IMF on the first titling of each vehicle, trailer, semitrailer, or other item required to be registered pursuant to Chapter 3 of Title 56. Previously, the IMF only applied to the first registration of a vehicle, trailer, semitrailer, or other item with South Carolina Department of Motor Vehicles (“SCDMV”). The General Assembly also amended IMF statute to apply, in addition to an owner, to a lessee first titling or registering a vehicle, trailer, semitrailer, or other item with SCDMV.

In 2022, the General Assembly amended Code Section 12-36-2110(A), effective July 1, 2022, subjecting watercraft motors (e.g., boat motors) to a maximum sales and use tax and maximum casual excise tax. Sales of watercraft motors are subject to the sales and use tax and the casual excise tax at a rate of 5%, but no more than \$500. With this amendment, sales of watercraft motors are exempt from all local sales and use taxes administered and collected by SCDOR.

Registration in South Carolina upon Purchase or Lease: The owner or lessee of each vehicle, trailer, semitrailer, or other item required to be registered pursuant to Chapter 3 of Title 56 must pay the IMF upon first titling or registering the vehicle, trailer, semitrailer, or other item with SCDMV. The IMF is remitted to SCDMV and is imposed at a rate of 5% of the gross proceeds of the sale, not to exceed \$500, for a sale by a licensed SCDMV dealer or 5% of the vehicle’s fair market value, not to exceed \$500, for a sale by a person who is not a SCDMV licensed dealer.

Sales subject to the IMF are exempt from the state and local sales and use taxes.

If a dealer has a South Carolina retail license or offers to license, title, or register the item, then the dealer must collect the IMF and remit it to SCDMV. Generally, based on information from

² See Act No. 40 of 2017.

SCDMV, a dealer is a person in the business of selling motor vehicles (e.g., cars, trucks, motorcycles, and motor homes) that is licensed with SCDMV. A dealer also includes, a person licensed with SCDMV in the business of selling mopeds.

Registration in South Carolina after First Registration in Another State: When a vehicle, trailer, semi-trailer, or other item required to be registered under Chapter 3 of Title 56 was first registered in another state by the owner and is subsequently registered for the first time in South Carolina by the same owner, payment of the IMF is required. Under these circumstances the IMF rate is \$250.

CHARTS FOR DEALERS, OTHER RETAILERS, AND NONRETAILERS

SCDOR, in coordination with SCDMV, is updating the charts issued in S.C. Information Letter #22-17 to assist dealers and other retailers in determining: (1) whether the sale is subject to the IMF or the sales and use tax; (2) whether to remit the IMF to SCDMV or remit the sales and use tax on sales to nonresidents to SCDMV or SCDOR; and (3) the rate of the IMF or the sales and use tax.

Attached are the three updated charts that address the following categories of sales, with each chart providing information concerning the type of vehicle, the fee or tax that applies to the transaction, the fee or tax rate, and the maximum fee or tax (if applicable):

- Chart 1: Motor Vehicles and Other Items Purchased and Registered or Titled in South Carolina by a South Carolina Resident and Other Items Purchased by a South Carolina Resident
- Chart 2: Motor Vehicles and Other Items Purchased in South Carolina by a Nonresident to be Registered, Titled, or Used Outside of South Carolina
- Chart 3: Motor Vehicles and Other Items Previously Registered Outside of South Carolina

Chart 1 and Chart 2 address three types of transactions – (1) purchases from licensed SCDOR retailers who are also licensed SCDMV dealers (e.g., a motor vehicle dealership); (2) purchases from licensed SCDOR retailers who are not licensed SCDMV dealers (e.g., a retailer selling motor vehicles from its delivery fleet); and (3) purchases from nonretailers (e.g., a casual sale by an individual).

GENERAL SUMMARY

While these charts provide information about many different types of vehicles and other items, it is not an all-inclusive list of transactions. The application of the IMF or the sales and use tax can generally be summarized as follows (unless the transaction is otherwise exempt):

General Rule

- If the vehicle is required to be registered and is registered or titled with SCDMV, the IMF applies and is remitted to SCDMV.

- If the vehicle is of a type that is not required to be registered or titled with SCDMV, then the sales tax would apply and is remitted to SCDOR (e.g., a utility trailer that belongs to a person and is not used to transport persons or property for consideration).

Sales to Nonresidents

- Vehicles that would be required to be registered in South Carolina and therefore, subject to the maximum tax provisions in Code Section 12-36-2110(A)(1) are subject to sales tax when they are sold to a nonresident who must register the vehicle in his home state. If the vehicle is sold by a SCDMV licensed dealer, the nonresident must remit the sales tax to SCDMV. If the vehicle is sold by a person who is not a licensed SCDMV dealer, the sales tax is remitted to SCDOR.

However, based on Code Sections 12-36-930 and 12-36-2120, the sales tax is not due if (1) the purchaser's state of residence does not impose a sales tax on motor vehicles, trailers, semitrailers, or pole trailers, (2) the purchaser's state of residence does not allow a credit against his use tax for sales tax paid on such items in South Carolina, or (3) the sale is otherwise exempt from the sales tax.

- If the vehicle is not subject to the maximum tax provisions of Code Section 12-36-2110(A)(1) and is sold to a nonresident who will register it in his home state, then the sales tax applies, and it is remitted to SCDOR.

Casual Excise Tax

- The casual excise tax no longer applies to motor vehicles and motorcycles. The casual excise tax only applies to aircraft, boats, and boat motors. The IMF, however, is paid at the time of registration.

The attached charts provide the applicable rate for the IMF or the sales and use tax for each of the above scenarios and also provide general information, including information on exemptions for active duty military members.

ADDITIONAL INFORMATION

If you have questions regarding the IMF remitted to SCDMV, or sales taxes remitted by licensed SCDMV dealers to SCDMV on sales to nonresidents, please contact SCDMV at cartaxes@scdmv.net.

If you have questions regarding all other sales and use tax matters, please contact SCDOR at (803) 898-5000 or salestax@dor.sc.gov.

**ITEMS SUBJECT TO SALES/USE TAX
OR INFRASTRUCTURE MAINTENANCE FEE (IMF)
EFFECTIVE MAY 10, 2021, FOR IMF Titling/Lessee Issues
Effective July 1, 2022, for Boat Motor Sales Tax Issues
Effective April 26, 2023, for Motor Vehicles, Motorcycles, Recreational Vehicles,
and Self-Propelled Light Construction Equipment
Effective July 1, 2017, for All Other Issues, Except as Noted for Mopeds**

CHART 1: MOTOR VEHICLES AND OTHER ITEMS PURCHASED AND TITLED OR REGISTERED IN SOUTH CAROLINA BY A SOUTH CAROLINA RESIDENT AND OTHER ITEMS PURCHASED BY A SOUTH CAROLINA RESIDENT			
ITEM PURCHASED	PURCHASED FROM A LICENSED RETAILER WITH SCDOR WHO IS A LICENSED DEALER WITH SCDMV	PURCHASED FROM A LICENSED RETAILER WITH SCDOR WHO IS NOT A LICENSED DEALER WITH SCDMV	PURCHASED FROM A NONRETAILER (A person not in the business of selling tangible personal property at retail - e.g., a casual sale by an individual)
Motor Vehicle (Including Low Speed Vehicles & State/County/Local Government Vehicles with a plate class of SG, CG, MG, or RG) (Maximum Sales Tax Item)	IMF Remitted by Dealer to DMV 5% up to \$500	No Sales Tax Due Since Transaction is Exempt Under S.C. Code § 12-36-2120(83) No IMF Collected by Retailer IMF Remitted by Buyer to DMV Upon Registration 5% up to \$500 (However, if Payment of a Sales Tax can be Documented, No IMF is Due)	No Sales Tax or Casual Excise Tax Due on Transaction and No IMF Collected by Seller IMF Remitted by Buyer to DMV Upon Registration 5% up to \$500
Motorcycle (Maximum Sales Tax Item)	IMF Remitted by Dealer to DMV 5% up to \$500	No Sales Tax Due Since Transaction is Exempt Under S.C. Code § 12-36-2120(83) No IMF Collected by Retailer IMF Remitted by Buyer to DMV Upon Registration 5% up to \$500 (However, if Payment of a Sales Tax can be Documented, No IMF is Due)	No Sales Tax or Casual Excise Tax Due on Transaction and No IMF Collected by Seller IMF Remitted by Buyer to DMV Upon Registration 5% up to \$500
US Government Vehicle	Exempt	Exempt (See S.C. Code § 12-36-2120(2))	

CHART 1: MOTOR VEHICLES AND OTHER ITEMS PURCHASED AND TITLED OR REGISTERED IN SOUTH CAROLINA BY A SOUTH CAROLINA RESIDENT AND OTHER ITEMS PURCHASED BY A SOUTH CAROLINA RESIDENT			
ITEM PURCHASED	PURCHASED FROM A LICENSED RETAILER WITH SCDOR WHO IS A LICENSED DEALER WITH SCDMV	PURCHASED FROM A LICENSED RETAILER WITH SCDOR WHO IS NOT A LICENSED DEALER WITH SCDMV	PURCHASED FROM A NONRETAILER (A person not in the business of selling tangible personal property at retail - e.g., a casual sale by an individual)
Motor Homes (Maximum Sales Tax Item)	IMF Remitted by Dealer to DMV 5% up to \$500	No Sales Tax Due Since Transaction is Exempt Under S.C. Code § 12-36-2120(83) No IMF Collected by Retailer IMF Remitted by Buyer to DMV Upon Registration 5% up to \$500 (However, if Payment of a Sales Tax can be Documented, No IMF is Due)	No Sales Tax or Casual Excise Tax Due on Transaction and No IMF Collected by Seller IMF Remitted by Buyer to DMV Upon Registration 5% up to \$500
Moped (Purchased on or after November 19, 2018 – See 2017 S.C. Acts 89) (Maximum Sales Tax Item)	IMF Remitted by Dealer to DMV 5% up to \$500	No Sales Tax Due Since Transaction is Exempt Under S.C. Code § 12-36-2120(83) No IMF Collected by Retailer IMF Remitted by Buyer to DMV Upon Registration 5% up to \$500 (However, if Payment of a Sales Tax can be Documented, No IMF is Due)	No Sales Tax or Casual Excise Tax Due on Transaction and No IMF Collected by Seller IMF Remitted by Buyer to DMV Upon Registration 5% up to \$500

MOTOR VEHICLES AND OTHER ITEMS PURCHASED AND TITLED OR REGISTERED IN SOUTH CAROLINA BY A SOUTH CAROLINA RESIDENT AND OTHER ITEMS PURCHASED BY A SOUTH CAROLINA RESIDENT

CHART 1:

ITEM PURCHASED	PURCHASED FROM A LICENSED RETAILER WITH SCDOR WHO IS A LICENSED DEALER WITH SCDMV	PURCHASED FROM A LICENSED RETAILER WITH SCDOR WHO IS NOT A LICENSED DEALER WITH SCDMV	PURCHASED FROM A NONRETAILER (A person not in the business of selling tangible personal property at retail - e.g., a casual sale by an individual)
Trailer or Semitrailer, Pulled by a Truck Tractor (Maximum Sales Tax Item)	<p>No Sales Tax Due Since Transaction is Exempt Under S.C. Code § 12-36-2120(83)</p> <p>No IMF Collected by Retailer</p> <p>IMF Remitted by Buyer to DMV Upon Registration 5% up to \$500 (However, if Payment of a Sales Tax can be Documented, No IMF is Due)</p>	<p>No Sales Tax or Casual Excise Tax Due on Transaction and No IMF Collected by Seller</p> <p>IMF Remitted by Buyer to DMV Upon Registration 5% up to \$500</p>	<p>No Sales Tax or Casual Excise Tax Due on Transaction and No IMF Collected by Seller</p> <p>IMF Remitted by Buyer to DMV Upon Registration 5% up to \$500</p>
Pole Trailer	<p>No Sales Tax Due Since Transaction is Exempt Under S.C. Code § 12-36-2120(83)</p> <p>No IMF Collected by Retailer</p> <p>IMF Remitted by Buyer to DMV Upon Registration 5% up to \$500 (However, if Payment of a Sales Tax can be Documented, No IMF is Due)</p>	<p>No Sales Tax or Casual Excise Tax Due on Transaction and No IMF Collected by Seller</p> <p>IMF Remitted by Buyer to DMV Upon Registration 5% up to \$500</p>	<p>No Sales Tax or Casual Excise Tax Due on Transaction and No IMF Collected by Seller</p> <p>IMF Remitted by Buyer to DMV Upon Registration 5% up to \$500</p>
Boat Trailers under 2,500 pounds, Farm Trailers, and Utility Trailers Not Privately Owned and For Hire	<p>No Sales Tax Due Since Transaction is Exempt Under S.C. Code § 12-36-2120(83) or S.C. Code § 12-36-2120(16)</p> <p>No IMF Collected by Retailer</p> <p>IMF Remitted by Buyer to DMV Upon Registration 5% up to \$500 (However, if Payment of a Sales Tax can be Documented, No IMF is Due)</p>	<p>No Sales Tax or Casual Excise Tax Due on Transaction and No IMF Collected by Seller</p> <p>IMF Remitted by Buyer to DMV Upon Registration 5% up to \$500</p>	<p>No Sales Tax or Casual Excise Tax Due on Transaction and No IMF Collected by Seller</p> <p>IMF Remitted by Buyer to DMV Upon Registration 5% up to \$500</p>

MOTOR VEHICLES AND OTHER ITEMS PURCHASED AND TITLED OR REGISTERED IN SOUTH CAROLINA BY A SOUTH CAROLINA RESIDENT AND OTHER ITEMS PURCHASED BY A SOUTH CAROLINA RESIDENT

CHART 1:

ITEM PURCHASED	PURCHASED FROM A LICENSED RETAILER WITH SCDOR WHO IS A LICENSED DEALER WITH SCDMV	PURCHASED FROM A LICENSED RETAILER WITH SCDOR WHO IS NOT A LICENSED DEALER WITH SCDMV	PURCHASED FROM A NONRETAILER (A person not in the business of selling tangible personal property at retail - e.g., a casual sale by an individual)
Boat Trailers under 2,500 pounds, Farm Trailers, and Utility Trailers - Privately Owned and Not For Hire	Sales Tax Remitted by Retailer to DOR 6% + Local (Unless Exempt Under S.C. Code § 12-36-2120(16))	Sales Tax Remitted by Retailer to DOR 6% + Local (Unless Exempt Under S.C. Code § 12-36-2120(16))	No Sales Tax, Casual Excise Tax, or IMF Due on Transaction
Boat Trailers under 2,500 pounds, Farm Trailers, and Utility Trailers - Not Privately Owned and Not For Hire	No Sales Tax Due Since Transaction is Exempt Under S.C. Code § 12-36-2120(83) or S.C. Code § 12-36-2120(16) No IMF Collected by Retailer	No Sales Tax Due Since Transaction is Exempt Under S.C. Code § 12-36-2120(83) or S.C. Code § 12-36-2120(16) No IMF Collected by Retailer	No Sales Tax or Casual Excise Tax Due on Transaction and No IMF Collected by Seller IMF Remitted by Buyer to DMV Upon Registration 5% up to \$500
Boat Trailers under 2,500 pounds, Farm Trailers, and Utility Trailers - Privately Owned and For Hire	No Sales Tax Due Since Transaction is Exempt Under S.C. Code § 12-36-2120(83) or S.C. Code § 12-36-2120(16) No IMF Collected by Retailer	IMF Remitted by Buyer to DMV Upon Registration 5% up to \$500 (However, if Payment of a Sales Tax can be Documented, No IMF is Due)	No Sales Tax or Casual Excise Tax Due on Transaction and No IMF Collected by Seller IMF Remitted by Buyer to DMV Upon Registration 5% up to \$500

MOTOR VEHICLES AND OTHER ITEMS PURCHASED AND TITLED OR REGISTERED IN SOUTH CAROLINA BY A SOUTH CAROLINA RESIDENT AND OTHER ITEMS PURCHASED BY A SOUTH CAROLINA RESIDENT

CHART 1:

ITEM PURCHASED	PURCHASED FROM A LICENSED RETAILER WITH SCDOR WHO IS A LICENSED DEALER WITH SCDMV	PURCHASED FROM A LICENSED RETAILER WITH SCDOR WHO IS NOT A LICENSED DEALER WITH SCDMV	PURCHASED FROM A NONRETAILER (A person not in the business of selling tangible personal property at retail - e.g., a casual sale by an individual)
Horse Trailer (Maximum Sales Tax Item)	Sales Tax Remitted by Retailer to DOR 5% up to \$500	Sales Tax Remitted by Retailer to DOR 5% up to \$500	No Sales Tax, Casual Excise Tax, or IMF Due on Transaction
Recreational Vehicles Pulled by a Motor Vehicle (Tent Campers, Travel Trailers, Park Models, Park Trailers, and Fifth Wheels) (Maximum Sales Tax Item)	No Sales Tax Due Since Transaction is Exempt Under S.C. Code § 12-36-2120(83) or S.C. Code § 12-36-2120(16) No IMF Collected by Retailer IMF Remitted by Buyer to DMV Upon Registration 5% up to \$500 (However, if Payment of a Sales Tax can be Documented, No IMF is Due)		No Sales Tax or Casual Excise Tax Due on Transaction and No IMF Collected by Seller IMF Remitted by Buyer to DMV Upon Registration 5% up to \$500
Dirt Bikes (Off Road) (Maximum Sales Tax Item)	Sales Tax Remitted by Retailer to DOR 5% up to \$500		No Sales Tax, Casual Excise Tax, or IMF Due on Transaction
Aircraft (Maximum Sales Tax Item)	Sales Tax Remitted by Retailer to DOR 5% up to \$500		No Sales Tax Collected by Seller No Casual Excise Tax Due (Casual Excise Tax Only Applies to Airplanes; and Airplanes are Not Registered, Titled, or Licensed by South Carolina)
Boat or Boat with Motor Permanently Attached At Time of Sales (Maximum Sales Tax Item)	Sales Tax Remitted by Retailer to DOR 5% up to \$500		No Sales Tax Collected by Seller Buyer Remits Casual Excise Tax to DOR or DNR Upon Issuance of Certificate of Title, or Other Proof of Ownership 5% up to \$500

MOTOR VEHICLES AND OTHER ITEMS PURCHASED AND TITLED OR REGISTERED IN SOUTH CAROLINA BY A SOUTH CAROLINA RESIDENT AND OTHER ITEMS PURCHASED BY A SOUTH CAROLINA RESIDENT			
CHART 1:	PURCHASED FROM A LICENSED RETAILER WITH SCDOR WHO IS A LICENSED DEALER WITH SCDMV	PURCHASED FROM A LICENSED RETAILER WITH SCDOR WHO IS NOT A LICENSED DEALER WITH SCDMV	PURCHASED FROM A NONRETAILER (A person not in the business of selling tangible personal property at retail - e.g., a casual sale by an individual)
ITEM PURCHASED			
Boat Motor (Not permanently attached to boat at time of sale) (Maximum Sales Tax Item)	Sales Tax Remitted by Retailer to DOR 5% up to \$500		No Sales Tax Collected by Seller Buyer Remits Casual Excise Tax to DOR or DNR Upon Issuance of Certificate of Title, or Other Proof of Ownership 5% up to \$500
Golf Carts, ATVs, and Go-Carts (Maximum Sales Tax Item)	Sales Tax Remitted by Retailer to DOR 5% up to \$500		No Sales Tax, Casual Excise Tax, or IMF Due on Transaction
Professional Race Cars Towed to or from a Race Track (Maximum Sales Tax Item)	Sales Tax Remitted by Retailer to DOR 5% up to \$500		No Sales Tax, Casual Excise Tax, or IMF Due on Transaction
Single Family Modular Home (Ch. 43, Title 23)	Sales Tax Remitted by Retailer to DOR 6% + Local		No Sales Tax, Casual Excise Tax, or IMF Due on Transaction
Musical Instrument/Office Equipment Purchased by IRC § 501(c)(3) Religious Organization (Maximum Sales Tax Intern)	Sales Tax Remitted by Retailer to DOR 5% up to \$300 (See S.C. Code § 12-36-2110(C))		No Sales or Casual Excise Tax Due on Transaction
Manufactured Home (Maximum Sales Tax Item)	Sales Tax Remitted by Retailer to DOR (See S.C. Code § 12-36-2110(B))		No Sales or Casual Excise Tax Due on Transaction

(See General Information for Chart 1 on the Following Page)

CHART 1 GENERAL INFORMATION

Maximum Tax Items (5% up to \$500) under S.C. Code § 12-36-2110(A)s

- Motor Vehicle¹
- Motorcycle
- Trailer or Semitrailer, capable of being pulled only by a truck tractor
- Recreational Vehicles including Tent Campers, Travel Trailers, Park Models, Park Trailers, Motor Homes, and Fifth Wheels
- Horse Trailer
- Livestock trailer
- Fire Safety Education Trailer
- Self-Propelled Light Construction equipment with compatible attachments limited to a maximum of 160 net engine horsepower
- Boat; Boat Motor
- Aircraft, including unassembled aircraft to be assembled by the purchaser, but not items to be added to the unassembled aircraft

Sales and Use Tax Exemptions

Chart 1 provides the tax rate for various sales and use tax transactions. Notwithstanding the above, some sales may be exempt under S.C. Code § 12-36-2120 (e.g., farm trailers used in planting, cultivating, and harvesting of farm crops).

Purchases by Nonresidents for First Registration or Use in South Carolina

§§ Chart 1 concerns motor vehicles and other items purchased and registered in South Carolina by South Carolina residents. However, Chart 1 also applies to motor vehicles and other items purchased by nonresidents first registered in South Carolina with the South Carolina Department of Motor Vehicles (i.e., subject to the Infrastructure Maintenance Fee) or are purchased by nonresidents for use in South Carolina (sales or use tax), unless otherwise exempt.

Out-of-State - Delivery by a Retailer or by a Common Carrier on Behalf of a Retailer

Notwithstanding the above, a sale is exempt from state and local sales and use tax if the seller, by contract of sale, is obligated either (1) to deliver the item to the buyer (or an agent or donee of the buyer) at a point outside of South Carolina or (2) to deliver the item to a common carrier or the U.S. mail for transportation to the buyer (or an agent or donee of the buyer) at a point outside of South Carolina. See S.C. Code § 12-36-2120(36).

Active Duty Military Members

See Chart 2 and 3 for information on the taxes and fees imposed on active duty military members, if any.

¹ “Motor vehicle” includes all-terrain vehicles (ATVs), utility task vehicles (UTVs), golf carts, and legend race cars. See S.C. Revenue Ruling #23-3.

**ITEMS SUBJECT TO SALES/USE TAX
OR INFRASTRUCTURE MAINTENANCE FEE (IMF)
-Effective July 1, 2017-**

CHART 2: MOTOR VEHICLES AND OTHER ITEMS PURCHASED IN SOUTH CAROLINA BY A NONRESIDENT TO BE TITLED OR REGISTERED OR USED OUTSIDE OF SOUTH CAROLINA			
ITEM PURCHASED	PURCHASED FROM A LICENSED RETAILER WITH SCDOR WHO IS NOT A LICENSED DEALER WITH SCDMV	PURCHASED FROM A LICENSED RETAILER WITH SCDOR WHO IS NOT A LICENSED DEALER WITH SCDMV	PURCHASED FROM A NONRETAILER (e.g., a casual sale by an individual)
Motor Vehicle (Maximum Sales Tax Item)	<p>Sales Tax Remitted by Dealer to DMV</p> <p>Lesser of sales tax imposed in the Purchaser's state of residence or 5% sales tax, but no more than \$500</p> <p>See Notes 1 and 2 for exceptions</p>	<p>Sales Tax Remitted by Dealer to DOR</p> <p>Lesser of sales tax imposed in the Purchaser's state of residence or 5% sales tax, but no more than \$500</p> <p>See Note 1 for exceptions</p>	<p>No Sales Tax, Casual Excise Tax, or IMF Due on Transaction</p>
Motor Homes (Maximum Sales Tax Item)	<p>Sales Tax Remitted by Dealer to DMV</p> <p>Lesser of sales tax imposed in the Purchaser's state of residence or 5% sales tax, but no more than \$500</p> <p>See Notes 1 and 2 for exceptions</p>	<p>Sales Tax Remitted by Dealer to DOR</p> <p>Lesser of sales tax imposed in the Purchaser's state of residence or 5% sales tax, but no more than \$500</p> <p>See Note 1 for exceptions</p>	<p>No Sales Tax, Casual Excise Tax, or IMF Due on Transaction</p>
Motorcycle (Maximum Sales Tax Item)	<p>Sales Tax Remitted by Dealer to DMV</p> <p>Lesser of sales tax imposed in the Purchaser's state of residence or 5% sales tax, but no more than \$500</p> <p>See Notes 1 and 2 for exceptions</p>	<p>Sales Tax Remitted by Dealer to DOR</p> <p>Lesser of sales tax imposed in the Purchaser's state of residence or 5% sales tax, but no more than \$500</p> <p>See Note 1 for exceptions</p>	<p>No Sales Tax, Casual Excise Tax, or IMF Due on Transaction</p>

**MOTOR VEHICLES AND OTHER ITEMS PURCHASED IN
SOUTH CAROLINA BY A NONRESIDENT TO BE TITLED OR
REGISTERED OR USED OUTSIDE OF SOUTH CAROLINA**

CHART 2:

ITEM PURCHASED	PURCHASED FROM A LICENSED RETAILER WITH SCDOR WHO IS A LICENSED DEALER WITH SCDMV	PURCHASED FROM A LICENSED RETAILER WITH SCDOR WHO IS NOT A LICENSED DEALER WITH SCDMV	PURCHASED FROM A NONRETAILER (e.g., a casual sale by an individual)
Dirt Bikes (Off Road) (Maximum Sales Tax Item) (Not of a Type Subject to Registration under S.C. Code § 56-3-627)	Sales Tax Remitted by Dealer to DOR 5% up to \$500		No Sales Tax, Casual Excise Tax, or IMF Due on Transaction
Moped (Purchased on or after November 19, 2018 – See 2017 Act No. 89) (Maximum Sales Tax Item)	Sales Tax Remitted by Dealer to DMV Lesser of sales tax imposed in the purchaser's state of residence or 5% sales tax, but no more than \$500 See Notes 1 and 2 for exceptions	Sales Tax Remitted by Dealer to DOR Lesser of sales tax imposed in the Purchaser's state of residence or 5% sales tax, but no more than \$500 See Note 1 for exceptions	No Sales Tax, Casual Excise Tax, or IMF Due on Transaction
Recreational Vehicles Pulled by a Motor Vehicle (Tent Campers, Travel Trailers, Park Models, Park Trailers, and Fifth Wheels) (Maximum Sales Tax Item)	Sales Tax Remitted by Dealer to DOR Lesser of sales tax imposed in the Purchaser's state of residence or 5% sales tax, but no more than \$500 See Note 1 for exceptions		No Sales Tax, Casual Excise Tax, or IMF Due on Transaction
Trailer or Semitrailer of a Type Required to be Licensed and Registered (Maximum Sales Tax Item)	Sales Tax Remitted by Retailer to DOR Lesser of sales tax imposed in the purchaser's state of residence or 5% sales tax, but no more than \$500 See Notes 1 and 2 for exemptions		No Sales Tax, Casual Excise Tax, or IMF Due on Transaction

CHART 2: MOTOR VEHICLES AND OTHER ITEMS PURCHASED IN SOUTH CAROLINA BY A NONRESIDENT TO BE TITLED OR REGISTERED OR USED OUTSIDE OF SOUTH CAROLINA			
ITEM PURCHASED	PURCHASED FROM A LICENSED RETAILER WITH SCDOR WHO IS A LICENSED DEALER WITH SCDMV	PURCHASED FROM A LICENSED RETAILER WITH SCDOR WHO IS NOT A LICENSED DEALER WITH SCDMV	PURCHASED FROM A NONRETAILER (e.g., a casual sale by an individual)
Trailer or Semitrailer of a Type Required to be Licensed and Registered (Maximum Sales Tax Item)	Sales Tax Remitted by Retailer to DOR Lesser of sales tax imposed in the purchaser's state of residence or 5% sales tax, but no more than \$500 See Notes 1 and 2 for exemptions		No Sales Tax, Casual Excise Tax, or IMF Due on Transaction
Trailer, Semitrailer, or Pole Trailer of a Type Required to be Licensed and Registered (Not a Maximum Sales Tax Item)	Sales Tax Remitted by Retailer to DOR Lesser of sales tax imposed in the purchaser's state of residence or 6% + Local See Notes 1 and 2 for exemptions		No Sales Tax, Casual Excise Tax, or IMF Due on Transaction
Trailer or Semitrailer of a Type Not Required to be Licensed and Registered (Maximum Sales Tax Item)	Sales Tax Remitted by Retailer to DOR 5% up to \$500		No Sales Tax, Casual Excise Tax, or IMF Due on Transaction
Trailer or Semitrailer of a Type Not Required to be Licensed and Registered (Not a Maximum Sales Tax Item)	Sales Tax Remitted by Retailer to DOR 6% + Local		No Sales Tax, Casual Excise Tax, or IMF Due on Transaction

MOTOR VEHICLES AND OTHER ITEMS PURCHASED IN SOUTH CAROLINA BY A NONRESIDENT TO BE TITLED OR REGISTERED OR USED OUTSIDE OF SOUTH CAROLINA			
CHART 2:			
ITEM PURCHASED	PURCHASED FROM A LICENSED RETAILER WHO IS A LICENSED DEALER WITH SCDMV	PURCHASED FROM A LICENSED RETAILER WITH SCDOR WHO IS NOT A LICENSED DEALER WITH SCDMV	PURCHASED FROM A NONRETAILER (e.g., a casual sale by an individual)
Boat Trailers under 2,500 pounds	<p>Sales Tax Remitted by Retailer to DOR</p> <p>Lesser of sales tax imposed in the purchaser's state of residence or 6% + Local</p> <p>See Notes 1 and 2 for exemptions</p>		No Sales Tax, Casual Excise Tax, or IMF Due on Transaction
Utility Trailers	<p>Sales Tax Remitted by Retailer to DOR</p> <p>Lesser of sales tax imposed in the purchaser's state of residence or 6% + Local</p> <p>See Notes 1 and 2 for exemptions</p>		No Sales Tax, Casual Excise Tax, or IMF Due on Transaction
Farm Trailers	<p>Sales Tax Remitted by Retailer to DOR</p> <p>Lesser of sales tax imposed in the purchaser's state of residence or 6% + Local</p> <p>See Notes 1 and 2 for exemptions</p>		No Sales Tax, Casual Excise Tax, or IMF Due on Transaction

**MOTOR VEHICLES AND OTHER ITEMS PURCHASED IN
SOUTH CAROLINA BY A NONRESIDENT TO BE TITLED OR
REGISTERED OR USED OUTSIDE OF SOUTH CAROLINA**

CHART 2:

ITEM PURCHASED	PURCHASED FROM A LICENSED RETAILER WITH SCDOR WHO IS A LICENSED DEALER WITH SCDMV	PURCHASED FROM A LICENSED RETAILER WITH SCDOR WHO IS NOT A LICENSED DEALER WITH SCDMV	PURCHASED FROM A NONRETAILER (e.g., a casual sale by an individual)
<p><i>Nonresident Military</i> Motor Vehicles (excluding trucks) and Motorcycles Purchased by a Non-Resident Member of the Military Located in South Carolina by Reason of Orders of the US Armed Forces (e.g., car, minivan, SUV, motorcycle) (Personal Use Only)</p>	<p>No IMF or Sales Tax Remitted on Transaction Exempt under S.C. Code §§ 12-36-2120(25) & 56-3-627(H) regardless of state of registration</p>		<p>No Sales Tax, Casual Excise Tax, or IMF Due on Transaction</p>
<p><i>Nonresident Military and Spouse</i> Motor Vehicles (including trucks), Motorcycles, Trailers and Semitrailers Purchased by a Non-Resident Member of the Military (including Spouse) Located in South Carolina by Reason of Orders of the US Armed Forces (e.g., car, motor home, recreational trailer, truck, minivan, SUV, motorcycle) (Personal Use Only)</p>	<p>No IMF or Sales Tax Remitted on Transaction if the license, fee, or excise is paid by the servicemember in the servicemember's state of domicile or residence. Exempt Under Servicemember Civil Relief Act See §§ 3911 (Definitions), 4001 (Exemption for Personal Property), and 49 U.S. Code § 30102 (Definition of Motor Vehicle)</p>		<p>No Sales Tax, Casual Excise Tax, or IMF Due on Transaction No IMF due on Transaction if The license, fee, or Excise is paid by the Servicemember in the Servicemember's State of Domicile or residence.</p>
<p>Aircraft (Maximum Sales Tax Item)</p>	<p>Sales Tax Remitted by Retailer to DOR 5% up to \$500</p>		<p>No Sales Tax or IMF Due on Transaction No Casual Excise Tax Due (Casual Excise Tax Only Applies to Airplanes, and Airplanes are Not Registered, Titled, or Licensed by South Carolina)</p>

MOTOR VEHICLES AND OTHER ITEMS PURCHASED IN SOUTH CAROLINA BY A NONRESIDENT TO BE TITLED OR REGISTERED OR USED OUTSIDE OF SOUTH CAROLINA RESIDENT			
CHART 2:			
ITEM PURCHASED	PURCHASED FROM A LICENSED RETAILER WITH SCDOR WHO IS A LICENSED DEALER WITH SCDMV	PURCHASED FROM A LICENSED RETAILER WITH SCDOR WHO IS NOT A LICENSED DEALER WITH SCDMV	PURCHASED FROM A NONRETAILER (e.g., a casual sale by an individual)
Boat or Boat with Motor Permanently Attached At Time of Sale (Maximum Sales Tax Item)	Sales Tax Remitted by Retailer to DOR 5% up to \$500	No Sales Tax or IMF Due on Transaction No Casual Excise Tax Due Unless Buyer Obtains a Certificate of Title or Other Proof of Ownership in South Carolina (if Casual Excise Tax Applies, 5% up to \$500)	No Sales Tax or IMF Due on Transaction No Casual Excise Tax Due Unless Buyer Obtains a Certificate of Title or Other Proof of Ownership in South Carolina (if Casual Excise Tax Applies, 5% up to \$500)
Boat Motor (Not permanently attached to boat at time of sale) (Maximum Sales Tax Item)	Sales Tax Remitted by Retailer to DOR 5% up to \$500	No Sales Tax or IMF Due on Transaction No Casual Excise Tax Due Unless Buyer Obtains a Certificate of Title or Other Proof of Ownership in South Carolina (if Casual Excise Tax Applies, 5% up to \$500)	No Sales Tax or IMF Due on Transaction No Casual Excise Tax Due Unless Buyer Obtains a Certificate of Title or Other Proof of Ownership in South Carolina (if Casual Excise Tax Applies, 5% up to \$500)

CHART 2: MOTOR VEHICLES AND OTHER ITEMS PURCHASED IN SOUTH CAROLINA BY A NONRESIDENT TO BE TITLED OR REGISTERED OR USED OUTSIDE OF SOUTH CAROLINA RESIDENT			
ITEM PURCHASED	PURCHASED FROM A LICENSED RETAILER WITH SCDOR WHO IS A LICENSED DEALER WITH SCDMV	PURCHASED FROM A LICENSED RETAILER WITH SCDOR WHO IS NOT A LICENSED DEALER WITH SCDMV	PURCHASED FROM A NONRETAILER (e.g., a casual sale by an individual)
Golf Carts, ATVs, and Go Carts (Maximum Sales Tax Item)	Sales Tax Remitted by Retailer to DOR 5% up to \$500		No Sales Tax or IMF Due on Transaction No Casual Excise Tax Due Unless Buyer Obtains a Certificate of Title or Other Proof of Ownership in South Carolina (if Casual Excise Tax Applies, 5% up to \$500)
Moped (Purchased prior to November 19, 2018)	Sales Tax Remitted by Retailer to DOR 6% + Local		No Sales Tax, Casual Excise Tax, or IMF Due on Transaction
Musical Instrument/Office Equipment Purchased by IRC § 501(c)(3) Religious Organization (Maximum Sales Tax Item)	Sales Tax Remitted by Retailer to DOR 5% up to \$300 See S.C. Code § 12-36-2110(C)		No Sales Tax, Casual Excise Tax, or IMF Due on Transaction
Manufactured Home (Maximum Sales Tax Items)	Sales Tax Remitted by Retailer to DOR See S.C. Code § 12-36-2110(B)		No Sales Tax, Casual Excise Tax, or IMF Due on Transaction

(See General Information and Notes for Chart 2 on the Following Pages)

CHART 2 GENERAL INFORMATION

Maximum Tax Items (5% up to \$500) under S.C. Code § 12-36-2110(A)

- Motor Vehicle²
- Motorcycle
- Trailer or Semitrailer, capable of being pulled only by a truck tractor
- Recreational Vehicles including Tent Campers, Travel Trailers, Park Models, Park Trailers, Motor Homes, and Fifth Wheels
- Horse Trailer
- Livestock trailer
- Fire Safety Education Trailer
- Self-Propelled Light Construction equipment with compatible attachments limited to a maximum of 160 net engine horsepower
- Boat; Boat Motor
- Aircraft, including unassembled aircraft to be assembled by the purchaser, but not items to be added to the unassembled aircraft

Sales and Use Tax Exemptions

Notwithstanding the above, some sales may be exempt under S.C. Code § 12-36-2120 (e.g., farm trailers used in planting, cultivating, and harvesting of farm crops - S.C. Code § 12-36-2120(16)) and therefore not subject to the tax.

Purchases by Nonresidents for First Registration or Use in South Carolina

Chart 1 concerns motor vehicles and other items that are purchased and registered in South Carolina by South Carolina residents. However, Chart 1 also applies to motor vehicles and other items purchased by nonresidents that are first registered in South Carolina with the SCDMV (i.e., subject to the Infrastructure Maintenance Fee) or are purchased by nonresidents for use in South Carolina (sales or use tax), unless otherwise exempt.

Information on Surrounding States

Certain surrounding states offer credit for any sales tax paid in South Carolina. To further assist, a list of the surrounding states' revenue and taxation departments are listed below:

² "Motor vehicle" includes all-terrain vehicles (ATVs), utility task vehicles (UTVs), golf carts, and legend race cars. See S.C. Revenue Ruling #23-3.

<u>State</u>	<u>Website</u>
Alabama	https://revenue.alabama.gov
Florida	https://floridarevenue.com
Georgia	https://dor.georgia.gov
North Carolina	https://www.ncdor.gov
Tennessee	https://www.tn.gov/revenue.html
Virginia	https://www.tax.virginia.gov/

Out-of-State - Delivery by a Retailer or by a Common Carrier on Behalf of a Retailer

Notwithstanding the above, a sale is exempt from state and local sales and use tax if the seller, by contract of sale, is obligated either (1) to deliver the item to the buyer (or an agent or donee of the buyer) at a point outside of South Carolina or (2) to deliver the item to a common carrier or the U.S. mail for transportation to the buyer (or an agent or donee of the buyer) at a point outside of South Carolina. See S.C. Code § 12-36-2120(36).

Active Duty Military Members

Resident Military Members: See Chart 1 for registration or purchases by military members who are residents of South Carolina.

↯ *Nonresident Military Members:* See also Chart 1 and 3 for more information on the taxes and fees imposed on active duty military members, if any.

CHART 2 NOTES

Note 1: Purchases by Nonresidents for Registration in the Purchaser’s State of Residence

Code Section 12-36-930 provides that the sales tax due on a sale to a nonresident of a motor vehicle, trailer, semitrailer, or pole trailer that is to be registered and licensed in the nonresident purchaser’s state of residence, is the lesser of (1) the sales tax which would be imposed on the sale in the purchaser’s state of residence or (2) the tax that would be imposed in South Carolina.

No sales tax is due in South Carolina if (1) a nonresident purchaser cannot receive a credit in his resident state for sales tax paid to South Carolina or (2) the nonresident’s state does not impose a sales tax on the sale of a motor vehicle, trailer, semitrailer, or pole trailer.

Note 2: Out-of-State Delivery by a Retailer or by a Common Carrier on Behalf of a Retailer

Notwithstanding the above, a sale is exempt from state and local sales and use tax if the seller, by contract of sale, is obligated either (1) to deliver the item to the buyer (or an agent or donee of the buyer) at a point outside of South Carolina or (2) to deliver the item to a common carrier or the U.S. mail for transportation to the buyer (or an agent or donee of the buyer) at a point outside of South Carolina. See S.C. Code § 12-36-2120(36).

**MOTOR VEHICLES AND OTHER ITEMS PREVIOUSLY
REGISTERED OUTSIDE OF SOUTH CAROLINA**

CHART 3:

	Infrastructure Maintenance Fee (IMF)
<p>Item Previously Registered Outside of South Carolina</p> <p>Vehicle Previously Registered Out-of-State by the Owner and Subsequently Registered in SC for the <u>first</u> time by the Same Owner</p>	<p>IMF Remitted by Owner to DMV \$250</p>
<p>Boat Trailers under 2,500 pounds, Farm Trailers, and Utility Trailers Previously Registered Out-of-State by the Owner and Subsequently Registered in SC for the first time by the Same Owner –</p> <p>Not Privately Owned and For Hire</p>	<p>IMF Remitted by Owner to DMV \$250</p>
<p>Boat Trailers under 2,500 pounds, Farm Trailers, and Utility Trailers Previously Registered Out-of-State by the Owner and Subsequently Registered in SC for the first time by the Same Owner –</p> <p>Privately Owned and Not For Hire</p>	<p>No IMF Due on Registration in South Carolina</p> <p>Exempt Under S.C. Code § 56-3-627(D)(1)</p>
<p>Boat Trailers under 2,500 pounds, Farm Trailers, and Utility Trailers Previously Registered Out-of-State by the Owner and Subsequently Registered in SC for the first time by the Same Owner –</p> <p>Not Privately Owned and Not For Hire</p>	<p>IMF Remitted by Owner to DMV \$250</p>

**MOTOR VEHICLES AND OTHER ITEMS PREVIOUSLY
REGISTERED OUTSIDE OF SOUTH CAROLINA**

CHART 3:

	Infrastructure Maintenance Fee (IMF)
<p style="text-align: center;">Item Previously Registered Outside of South Carolina</p> <p>Boat Trailers under 2,500 pounds, Farm Trailers, and Utility Trailers Previously Registered Out-of-State by the Owner and Subsequently Registered in SC for the first time by the Same Owner –</p> <p>Not Privately Owned and Not For Hire</p>	<p>IMF Remitted by Owner to DMV \$250</p>
<p><i>Active Duty Military Member and Family (Resident or Nonresident):</i> Vehicle Previously Registered Out-of-State by Active Duty Military or Spouse/Dependent and Subsequently Registered for the <u>first</u> time in SC by Same Owner</p>	<p>No IMF Due on Registration in South Carolina</p> <p>Exempt Under S.C. Code § 56-3-627(D)(2)</p>

Exhibit B

SC Revenue Ruling #23-3

Motor Vehicles,
Motorcycles,
Recreational Vehicles,
and
Self-Propelled
Light Construction
Equipment



STATE OF SOUTH CAROLINA
DEPARTMENT OF REVENUE

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

SC REVENUE RULING #23-3

SUBJECT: Motor Vehicles, Motorcycles, Recreational Vehicles, and Self-Propelled Light Construction Equipment
(Sales and Use Tax)

EFFECTIVE DATE: The Court of Appeals ruling was final on April 26, 2023. The change described in this Revenue Ruling applies to all periods open under the statute.

SUPERSEDES: SC Revenue Advisory Bulletin #00-03 and all previous advisory opinions, tax manuals, and any oral directives in conflict herewith.

MODIFIES: SC Revenue Ruling #18-1¹

REFERENCES: Title 12, Chapter 36 of the S.C. Code of Laws (2014, Supp. 2022)

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:

In *Jack's Custom Cycles, Inc. v. S.C. Dep't of Revenue*, 439 S.C. 35, 885 S.E.2d 433 (Ct. App. 2023), reh'g denied (Apr. 26, 2023), the South Carolina Court of Appeals held that the term "motor vehicle" includes certain vehicles that the Department of Revenue previously excluded from the maximum tax provisions in S.C. Code Ann. § 12-36-2110. The purpose of this advisory opinion is to update guidance concerning which vehicles are motor vehicles subject to the partial tax exemption pursuant to S.C. Code Ann. § 12-36-2110.²

¹ Supersedes Questions #4, 31, 32, and 33 of South Carolina Revenue Ruling #18-1.

² This updated guidance concerning the term "motor vehicle" is limited solely to the partial tax exemption under S.C. Code Ann. § 12-36-2110.

LAW AND DISCUSSION:

The sales and use taxes are transactional taxes imposed upon the privilege of the business of selling at retail, or using, storing, or consuming personal property in South Carolina. The sales and use tax is imposed at a rate of 6% of “gross proceeds of sales” or “sales price,” plus any applicable local sales and use tax.³

The sale of any means of transportation that is enumerated in S.C. Code Ann. § 12-36-2110(A)(1) is subject to a partial sales or use tax exemption, which limits the tax rate to 5% of “gross proceeds of sales” or “sales price,” not to exceed \$500.⁴ Local sales and use taxes do not apply.

A “motor vehicle” is one such means of transportation.⁵ Historically, the Department of Revenue restricted the term “motor vehicle” to only engine-powered vehicles capable of being driven upon the highway. To determine which vehicles were capable of being driven on the highway, the Department looked to those vehicles that were required to be licensed by the Department of Motor Vehicles. However, in its opinion in *Jack’s Custom Cycles*, the Court of Appeals held that the term “motor vehicle” does not “restrict or condition the exemption to motor vehicles that are used on highways.”⁶ Instead, the term includes “motorized, self-propelled, wheeled” vehicles that “do not run on rails.”⁷

CONCLUSION:

Effective April 26, 2023, for purposes of the maximum tax provisions of S.C. Code Ann. § 12-36-2110, the term “motor vehicle” includes any motorized, self-propelled, and wheeled vehicle that does not run on rails. Therefore, all-terrain vehicles, utility task vehicles, golf carts, and legend race cars are subject to the maximum tax provisions.

SOUTH CAROLINA DEPARTMENT OF REVENUE

s/W. Hartley Powell

W. Hartley Powell, Director

September 26 ____, 2023
Columbia, South Carolina

³ See S.C. Code §12-36-910(A) for the 5% sales tax, S.C. Code § 12-36-1310(A) for the 5% use tax, and S.C. Code § 12-36-1110 for the additional 1% sales and use tax rate.

⁴ Effective after June 30, 2017, the maximum sales and use tax imposed pursuant to Chapter 36 of Title 12 on the sale, lease, or registration of an item enumerated in S.C. Code Ann. § 12-36-2110(A)(1) is increased from \$300 to \$500. S.C. Code Ann. § 12-36-2110(A)(4).

⁵ S.C. Code Ann. § 12-36-2110(A)(1)(b).

⁶ *Jack’s Custom Cycles, Inc. v. S.C. Dep’t of Revenue*, 439 S.C. 35, 47, 885 S.E.2d 433, 440 (Ct. App. 2023), reh’g denied (Apr. 26, 2023).

⁷ *Id.* at 47, 885 S.E.2d at 440.

Exhibit C

SC Revenue Ruling #18-1

Motor Vehicles,
Motorcycles, Trailers,
Semitrailers, Pole
Trailers and Other
Vehicles



STATE OF SOUTH CAROLINA
DEPARTMENT OF REVENUE

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

SC REVENUE RULING #18-1

- SUBJECT:** Motor Vehicles, Motorcycles, Trailers, Semitrailers, Pole Trailers and Other Vehicles
(Sales and Use Tax)
- EFFECTIVE DATE:** July 1, 2017
- SUPERSEDES:** SC Revenue Ruling #10-6¹, SC Revenue Ruling #05-4, SC Revenue Advisory Bulletin #00-03², SC Revenue Ruling #97-5, and all previous advisory opinions and any oral directives in conflict herewith.
- REFERENCES:** Title 12, Chapter 36 of the S.C. Code of Laws (2014, Supp. 2016) Act 40 of 2017, Sections 5 and 7 (Enacted May 10, 2017)
- 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.

INTRODUCTION:

South Carolina imposes a sales and use tax on persons engaged in the business of selling tangible personal property at retail, including motor vehicles, motorcycles, trailers, semitrailers, and pole trailers. However, effective July 1, 2017, sales or purchases of most motor vehicles, motorcycles, trailers, semitrailers, and pole trailers are subject to a new Infrastructure Maintenance Fee instead of a sales and use tax or a casual excise tax.

¹ See Question #29 of this advisory opinion (SC Revenue Ruling #18-1).

² See Questions #31 and 33 of this advisory opinion (SC Revenue Ruling #18-1).

Infrastructure Maintenance Fee

The General Assembly recently enacted the South Carolina Infrastructure and Economic Development Reform Act to address the needs of South Carolina's transportation infrastructure system. As part of its effort to improve the State's transportation infrastructure network, a new infrastructure maintenance fee became effective July 1, 2017.

Registration in South Carolina upon Purchase or Lease: The owner of each vehicle, trailer, semitrailer or other item that must be registered pursuant to Chapter 3 of Title 56 must pay the infrastructure maintenance fee upon first registering the vehicle, trailer, semitrailer or other item with the SC Department of Motor Vehicles ("SCDMV"). The infrastructure maintenance fee is remitted to SCDMV and is imposed at a rate of 5% of the gross proceeds of the sale, not to exceed \$500, for a sale by a licensed SCDMV dealer, or 5% of the vehicle's fair market value, not to exceed \$500, for a sale by a person who is not a SCDMV licensed dealer.

Sales that are subject to the new infrastructure maintenance fee are exempt from state and local sales and use taxes (Code Section 12-36-2120(83)).

If a dealer has a South Carolina retail license or offers to license and register the item, then the dealer must collect the infrastructure maintenance fee and remit it to SCDMV. Generally, based on information from SCDMV, a dealer is a person in the business of selling motor vehicles (e.g., cars, trucks, motorcycles, and motor homes) that is licensed with SCDMV. A dealer also includes, effective November 19, 2018, a person licensed with SCDMV in the business of selling mopeds.

Registration in South Carolina after First Registration in Another State: The infrastructure maintenance fee is also imposed when a vehicle, trailer, semitrailer or other item required to be registered under Chapter 3 of Title 56 was first registered in another state by the owner and is subsequently registered for the first time in South Carolina by the same owner. This infrastructure maintenance fee is \$250, but it does not apply to active duty members of the military, their spouses, and their dependents.

Sales and Use Tax and Casual Excise Tax

Sales of vehicles by persons engaged in the business of selling tangible personal property at retail that are not required to be registered with SCDMV under Chapter 3 of Title 56 are subject to the sales and use tax. The tax due on such sales depends on whether the vehicle is subject to the maximum tax provisions of Code Section 12-36-2110 and whether the vehicle will be registered by the purchaser in his state of residence.

If the sale of a vehicle is subject to the maximum tax provisions of Code Section 12-36-2110, then the sales and use tax is imposed at a rate of 5% of "gross proceeds of sales" or "sales price," not to exceed \$500. Local sales and use taxes do not apply.

If the sale of a vehicle is not subject to the maximum tax provisions of Code Section 12-36-2110, then the sales and use tax is imposed at a rate of 6% of “gross proceeds of sales” or “sales price,” plus any applicable local sales and use tax.

However, if the vehicle is a motor vehicle, or a trailer, semitrailer, or pole trailer of a type to be registered and licensed, and is sold to a nonresident for registration in his state of residence, then the sales tax is imposed at the lesser of the sales tax due in the purchaser’s state of residence or the sales tax due in South Carolina, unless the sale is otherwise excluded or exempted from the South Carolina sales and use tax. However, no sales tax is due in South Carolina if the nonresident purchaser cannot receive a credit in his state of residence for sales tax paid to South Carolina.

The casual excise tax, which is imposed upon the issuance of a certificate of title or other proof of ownership for certain items, no longer applies to motor vehicles and motorcycles effective July 1, 2017.

GENERAL SUMMARY:

The application of the new infrastructure maintenance fee or the sales and use tax on the sale or purchase of a vehicle can generally be summarized as follows (unless the transaction is otherwise exempt):

General Rule:

- If the vehicle is required to be registered under Chapter 3 of Title 56 and is registered with the SCDMV, the infrastructure maintenance fee applies and is remitted to the SCDMV. The sale or purchase of a vehicle that is subject to the infrastructure maintenance fee is exempt from state and local sales and use taxes.
- If the vehicle is of a type that is not required to be registered with the SCDMV, then the sales and use tax would apply and is remitted to the Department of Revenue (e.g., a utility trailer purchased for personal use).

Sales to Nonresidents:

Maximum Tax Items

- If the vehicle is subject to the maximum tax provisions of Code Section 12-36-2110(A)(1) (e.g., motor vehicle, motorcycle, recreational vehicle), is of a type that would be registered in South Carolina if not for it being registered out-of-state, and is sold by an SCDMV licensed dealer to a nonresident who will register it in his home state, then the sales tax applies and is remitted to the SCDMV. (Note: The sales tax imposed on such sales to a nonresident by a person who is not a licensed SCDMV dealer are remitted to the Department of Revenue.)

However, based on Code Section 12-36-930 and Code Section 12-36-2120, the sales tax is not due if (1) the purchaser's state of residence does not impose a sales tax on the motor vehicle, trailer, semitrailer or pole trailer, (2) the purchaser's state of residence does not allow a credit for sales tax paid in South Carolina on the motor vehicle, trailer, semitrailer or pole trailer, or (3) the sale is otherwise exempt from the sales tax.

Items Not Subject to the Maximum Tax

- If the vehicle is a trailer, semitrailer or pole trailer that is not subject to the maximum tax provisions of Code Section 12-36-2120(A)(1), is of a type required to be licensed and registered, and is sold to a nonresident who will register it in his home state, then the sales tax applies and it is remitted to the Department of Revenue.

However, based on Code Section 12-36-930 and Code Section 12-36-2120, the sales tax is not due if (1) the purchaser's state of residence does not impose a sales tax on the trailer, semitrailer or pole trailer, (2) the purchaser's state of residence does not allow a credit for sales tax paid in South Carolina on the trailer, semitrailer or pole trailer, or (3) the sale is otherwise exempt from the sales tax.

- If the vehicle is a trailer, semitrailer or pole trailer that is not subject to the maximum tax provisions of Code Section 12-36-2110(A)(1), is of a type not required to be licensed and registered, and is sold to a nonresident, then the sales tax applies and it is remitted to the Department of Revenue, unless the sale is otherwise exempt from the sales tax.

Casual Excise Tax:

- The casual excise tax no longer applies to motor vehicles and motorcycles. Effective July 1, 2017, the casual excise tax only applies to aircraft, boats and boat motors. The infrastructure maintenance fee, however, is paid on motor vehicles and motorcycles at the time of registration with SCDMV under the above rules.

Note: SC Information Letter #17-10 provides charts that include the applicable rate for the infrastructure maintenance fee or the sales and use tax for each of the above scenarios and also provides general information, including information on exemptions for active duty military members.

PURPOSE:

The purpose of this advisory opinion is to provide additional guidance in a question and answer format with respect to the application of the sales and use tax to sales or purchases of motor vehicles, motorcycles, trailers, semitrailers and pole trailers on or after July 1, 2017. It will address issues involving sales to residents and nonresidents, sales of farm trailers, sales by nonretailers (i.e., casual sales), leases and short-term rentals of motor vehicles, and sales to resident and nonresident members of the military and their spouses.

DEFINITIONS:

For purposes of this document, the terms “dealer”, “retailer”, and “nonretailer” are defined as follows:

Dealer: A person in the business of selling motor vehicles (e.g., cars, trucks, motorcycles, and motor homes) that is licensed with SCDMV.

Retailer: A person engaged in the business of selling tangible personal property (including, but not limited to motor vehicles, motorcycles, and motor homes) at retail. A person engaged in the business of selling tangible personal property at retail in South Carolina must obtain a retail license from the Department of Revenue.

Nonretailer: A person not engaged in the business of selling tangible personal property at retail. However, a nonretailer may sell tangible personal property on a casual and isolated basis, such as an individual who may sell his 20-year-old car because he plans to purchase a new car from a dealer. For more information on casual and isolated sales, see SC Regulation 117-322.

QUESTIONS AND ANSWERS:

General Guidance

1. Are sales of motor vehicles by a retailer licensed as a “dealer” with the SCDMV subject to the sales and use tax?

For sales on or after July 1, 2017, the application of the sales and use tax on sales of motor vehicles by a retailer licensed as a “dealer” with the SCDMV is as follows:

- (a) Sales of motor vehicles to residents for registration in South Carolina are exempt from the sales and use tax under Code Section 12-36-2120(83) since such sales are subject to an infrastructure maintenance fee (“IMF”) upon registration of the motor vehicle at the SCDMV. The IMF is remitted by the dealer to the SCDMV.
- (b) Sales of motor vehicles to nonresidents who will register the motor vehicle in South Carolina with the SCDMV are exempt from the sales and use tax under Code Section 12-36-2120(83) since such sales are subject to an IMF upon registration of the motor vehicle at the SCDMV. The IMF is remitted by the dealer to the SCDMV.
- (c) Sales of motor vehicles to nonresidents who will register the motor vehicle in their state of residence are subject to the sales tax in South Carolina at the lesser of the sales tax due in the purchaser’s state of residence or 5% of the gross proceeds of sales, but no more than \$500. This sales tax is paid to the SCDMV.

Note: If the purchaser's state of residence does not impose a sales tax on the purchase of a motor vehicle or does not allow the purchaser a credit against its use tax for a sales tax paid on the motor vehicle in South Carolina, then the sale of the motor vehicle is not subject to the South Carolina sales tax. See SC Information Letter #14-2.

2. Are sales by a retailer of trailers, semitrailers, and pole trailers subject to the sales and use tax?

The application of the state sales and use tax on sales of trailers, semitrailers, and pole trailers by a retailer depends on the type and use of the trailer, semitrailer, and pole trailer. For information concerning specific trailers, semitrailers and pole trailers, see the questions below.

3. What is the rate of the IMF?

The IMF is calculated as follows:

- (a) For purchases or leases from a person licensed as a dealer with the SCDMV, the IMF is 5% of the "gross proceeds of sales" of the purchase or lease, but no more than \$500. The term "gross proceeds of sales" is defined in the same manner as in Code Section 12-36-90 of the sales and use tax law.³
- (b) For purchases or leases from a person not licensed as a dealer with the SCDMV, the IMF is 5% of the "fair market value" of the vehicle, but no more than \$500.⁴

The IMF is remitted to the SCDMV upon registration of the motor vehicle at the SCDMV.

Note: An IMF in the amount of \$250 is also due on motor vehicles and other items required to be registered with the SCDMV that were first registered in another state but which were subsequently registered in South Carolina by the same owner. For example, if a person is a resident of Virginia and his motor vehicle is registered with the State of Virginia, and that person later moves to South Carolina, the registration by that person of that same motor vehicle in South Carolina is subject to an IMF of \$250.

³ Generally, the term "gross proceeds of sales" is defined in Code Section 12-36-90 as the value proceeding or accruing from the sale of tangible personal property, without any deductions for the cost of goods sold; the cost of materials, labor, or service; interest paid; losses; transportation costs; manufacturers or importers excise taxes imposed by the United States; or any other expenses. It does not, however, include the value of any trade-in.

⁴ "Fair market value" is defined in Code Section 56-3-627(C)(4) to mean the total purchase price less any trade-in, or the valuation shown in a national publication of used values adopted by the Department, less any trade-in.

4. Are motor vehicles, motorcycles, trailers and semitrailers subject to a maximum sales and use tax?

The sales and use taxes are imposed at the rate of 5% for the sale or lease of certain tangible personal property subject to a maximum tax. Local taxes administered and collected by the Department on behalf of local jurisdictions do not apply to the sale or lease of tangible personal property subject to a maximum tax.

A \$500 maximum tax applies to each sale or each lease of the following items:

- motor vehicles;
- motorcycles (on-road or off-road);
- recreational vehicles, including tent campers, travel trailers, park trailers, motor homes and fifth wheels;
- boats;
- aircraft;
- trailers or semitrailers capable of being pulled only by a truck tractor;
- self-propelled light construction equipment with compatible attachments limited to a maximum of 160 net engine horsepower;
- fire safety education trailers; and
- horse trailers.

In order for the lease of any of the above items to qualify for the \$500 maximum tax, the lease must be in writing and must specifically state the term of, and remain in force for, a period in excess of 90 continuous days. In addition, the sales or use tax applies to each renewal of the lease, and the maximum tax for that renewal will apply only if (1) the lease renewal is in writing and (2) the lease renewal specifically states a term of, and remains in force for, a period in excess of 90 continuous days.

A maximum tax does not apply to the sale or lease of the following items:

- trailers or semitrailers capable of being pulled by a vehicle other than a truck tractor;
- pole trailers;
- boat trailers;
- self-propelled light construction equipment with compatible attachments with a net engine horsepower that exceeds 160; and
- all-terrain vehicles, legend race cars, golf carts and any other items not meeting the definition of a motor vehicle.

Sales or leases of these items not subject to the maximum tax are subject to a state tax rate of 6%, plus any applicable local sales and use tax.

Note: If an item subject to the maximum sales and use tax is required to be registered with the SCDMV under Chapter 3 of Title 56, then the sale on that item is exempt from the sales and use tax and is subject to the IMF.

Sales by a Retailer of Motor Vehicles, Motorcycles, Mopeds, Trailers, and Semitrailers to Residents of South Carolina

5. Are sales by a retailer of motor vehicles and motorcycles to residents of South Carolina for registration in South Carolina subject to the sales and use tax?

No. However, such motor vehicles and motorcycles are subject to an IMF upon registration at the SCDMV.

Note: See Question #30 concerning dirt bikes.

6. Are sales by a retailer of trailers and semitrailers that can only be pulled by a truck tractor to residents of South Carolina for registration in South Carolina subject to the sales and use tax?

No. However, the trailer or semitrailer is subject to an IMF upon registration at the SCDMV.

7. Are sales by a retailer of pole trailers to residents of South Carolina for registration in South Carolina subject to the sales and use tax?

No. However, the pole trailer is subject to an IMF upon registration at the SCDMV.

8. Are sales by a retailer of utility trailers and boat trailers that will be used for business purposes to residents of South Carolina subject to the sales and use tax?

No. However, utility trailers and boat trailers that will be used for business purposes in South Carolina must be registered with the SCDMV and are therefore subject to an IMF upon registration at the SCDMV.

9. Are sales by a retailer of utility trailers and boat trailers that will be used for personal purposes to residents of South Carolina subject to the sales and use tax?

Yes. Since utility trailers and boat trailers that will be used for personal purposes are not required to be registered with the SCDMV, such sales are subject to the sales and use tax and are not subject to an IMF. The sales and use tax is imposed on sales of utility trailers and boat trailers used for personal purposes at a rate of 6%, plus any applicable local sales and use tax.

10. Are sales by a retailer of recreational vehicles that are pulled by a motor vehicle (e.g., tent campers, travel trailers, park models, park trailers, and fifth wheels) to residents of South Carolina for registration in South Carolina subject to the sales and use tax?

No. However, recreational vehicles that are pulled by a motor vehicle, such as tent campers, travel trailers, park models, park trailers, and fifth wheels, are subject to an IMF upon registration at the SCDMV.

11. Are sales by a retailer of mopeds to residents of South Carolina for registration in South Carolina subject to the sales and use tax?

For sales of mopeds prior to November 19, 2018, the sale of a moped is subject to the sales and use tax. The tax is imposed at a rate of 6%, plus any applicable local sales and use tax.

For sales of mopeds on or after November 19, 2018, the sale of a moped is not subject to the sales and use tax. The sale of a moped on or after November 19, 2018 is subject to the IMF upon registration with the SCDMV.

Sales by a Retailer of Motor Vehicles, Motorcycles, Mopeds, Trailers, and Semitrailers to Nonresidents

12. Are sales by a retailer of motor vehicles for registration in South Carolina subject to the sales and use tax?

No. However, the motor vehicle is subject to an IMF upon registration at the SCDMV.

13. Are sales by a retailer of motor vehicles to nonresidents for registration in their state of residence subject to the sales and use tax?

Yes. However, the calculation of the tax depends on the purchaser's state of residence. Sales of motor vehicles to nonresidents who will register the motor vehicle in their state of residence are subject to the sales tax at the lesser of the sales tax due in the purchaser's state of residence or 5%, but no more than \$500. **When purchased from a licensed SCDMV dealer, this sales tax is paid to the SCDMV.**

If the purchaser's state of residence does not impose a sales tax on the purchase of a motor vehicle or does not allow the purchaser a credit against its use tax for a sales tax paid on the motor vehicle in South Carolina, then the sale of the motor vehicle is not subject to the South Carolina sales tax.

For additional information on sales to nonresidents of motor vehicles, see SC Information Letter #14-2.

Note: If the seller delivers the motor vehicle to the nonresident at a point outside of South Carolina, or delivers the vehicle to a common carrier who will deliver the motor vehicle to the nonresident at a point outside South Carolina, then the sale is exempt from the tax under Code Section 12-36-2120(36).

14. Are sales by a retailer to nonresidents of trailers and semitrailers of a type required to be registered for registration in their state of residence subject to the sales and use tax?

Yes. However, the calculation of the tax depends on the purchaser's state of residence and whether the trailer or semitrailer is subject to the maximum sales and use tax in Code Section 12-36-2110.

- (a) If the trailer or semitrailer is subject to the maximum tax of \$500 under Code Section 12-36-2110, then the sale is subject to the sales tax at the lesser of the sales tax due in the purchaser's state of residence or 5%, but no more than \$500. **When purchased from a licensed SCDMV dealer, this sales tax is paid to the SCDMV.**
- (b) If the trailer or semitrailer is not subject to the maximum tax of \$500 under Code Section 12-36-2110, then the sale is subject to the sales tax at the lesser of the sales tax due in the purchaser's state of residence or 6% plus any applicable local sales tax. **This sales tax is paid to the Department of Revenue.**

If the purchaser's state of residence does not impose a sales tax on the purchase of a trailer or semitrailer of a type required to be registered or does not allow the purchaser a credit against its use tax for a sales tax paid on the trailer or semitrailer in South Carolina, then the sale of the trailer or semitrailer is not subject to the South Carolina sales tax. For additional information on sales to nonresidents of trailers and semitrailers of a type required to be registered, see SC Information Letter #14-2.

Note: If the seller delivers the trailer or semitrailer to the nonresident at a point outside of South Carolina, or delivers the vehicle to a common carrier who will deliver the trailer or semitrailer to the nonresident at a point outside South Carolina, then the sale is exempt from the tax under Code Section 12-36-2120(36).

15. Are sales by a retailer to nonresidents of trailers and semitrailers of a type that are not required to be registered subject to the sales and use tax?

Yes. Sales to nonresidents of trailers and semitrailers of a type that are not required to be registered are subject to the sales and use tax at a rate of 6% plus any applicable local sales tax.

Note: If the seller delivers the trailer or semitrailer to the nonresident at a point outside of South Carolina, or delivers the vehicle to a common carrier who will deliver the trailer or semitrailer to the nonresident at a point outside South Carolina, then the sale is exempt from the tax under Code Section 12-36-2120(36).

16. Is the guidance provided in SC Information Letter #14-2 the most recent sales tax guidance available from the Department of Revenue regarding purchases by nonresidents from surrounding states?

Yes, as of the date of this advisory opinion, SC Information Letter #14-2 is the most recent sales tax guidance available from the Department of Revenue regarding purchases by nonresidents from surrounding states. However, sellers should monitor the “Law and Policy” section of the Department’s website from time to time to determine if a new information letter has been issued with respect to motor vehicles, and trailers, semitrailers, and pole trailers of a type to be licensed and registered, which are sold to nonresidents.

17. Can SC Form ST-385, the “Affidavit for Intent to License Motor Vehicle, Trailer, Semitrailer or Pole Trailer Purchased in South Carolina in Purchaser’s State of Residence,” still be used for sales to nonresidents by licensed SCDMV dealers of motor vehicles and trailers, semitrailers, and pole trailers of a type to be registered and licensed?

Yes, as of the date of this advisory opinion, SC Form ST-385 can still be used with respect to such sales to nonresidents.

Sales by a Retailer of Farm Trailers for Use in Farming Crops for Sale

18. Are sales by a retailer of farm trailers that will be used in farming crops for sale subject to the sales and use tax?

Sales of flatbed trailers or stock trailers for use in farming in hauling farm crops (e.g., hay, corn, peaches) are exempt under Code Section 12-36-2120(16) if the flatbed trailer or stock trailer will be used solely in the “planting, cultivating, or harvesting” of farm crops for sale in their “original state of production or preparation for sale.”

Sales of flatbed trailers or stock trailers are **not** exempt under Code Section 12-36-2120(16) if the flatbed trailer or stock trailer will be used solely for a purpose other than the “planting, cultivating, or harvesting” of farm crops (e.g., hay, corn, peaches) for sale in their “original state of production or preparation for sale.” For example, sales of flatbed or stock trailers for use solely in:

- (a) hauling tractors, harvesting equipment, or cattle; or
- (b) hauling farm crops (e.g., hay, corn, peaches) from a storage area to market or to a buyer

are **not** exempt from the sales and use tax under Code Section 12-36-2120(16).

Sales of flatbed trailers or stock trailers that will be used for both exempt and nonexempt purposes are exempt from the sales and use tax if used substantially (not merely incidentally) in the “planting, cultivating, or harvesting” of farm crops (i.e., hay, corn, peaches) for sale in their “original state of production or preparation for sale.”

For more detail regarding this exemption, see SC Revenue Ruling #99-3.

Note: If a farm trailer is exempt from the sales and use tax under Code Section 12-36-2120(16), then it is exempt from the IMF.

Sales by a Nonretailer of Motor Vehicles, Motorcycles, Mopeds, Trailers, and Semitrailers (Casual Sales)

19. Are sales by a nonretailer of motor vehicles and motorcycles subject to the sales and use tax or casual excise tax?⁵

No. However, such motor vehicles and motorcycles are subject to an IMF upon registration of the motor vehicle or motorcycle at the SCDMV.

20. Are sales by a nonretailer of mopeds subject to the sales and use tax or casual excise tax?

No. However, mopeds sold by a nonretailer on or after November 19, 2018 are subject to an IMF upon registration of the moped at the SCDMV.

21. Are sales by a nonretailer of trailers and semitrailers subject to the sales and use tax or casual excise tax?

No. However, trailers and semitrailers of a type required to be registered with the SCDMV under Chapter 3 of Title 56 are subject to an IMF upon registration of the trailer and semitrailer at the SCDMV.

Leases and Short-Term Rentals of Motor Vehicles

22. Are leases of motor vehicles by a retailer licensed as a “dealer” with the SCDMV, which upon leasing the motor vehicles must be registered with the SCDMV, subject to the sales and use tax?

For leases executed on or after July 1, 2017, the application of the state sales and use tax on the lease of a motor vehicle by a retailer licensed as a “dealer” with the SCDMV is as follows:

⁵ The casual excise tax is imposed under Code Section 12-36-1710 on the issuance of a certificate of title or other proof of ownership of a boat, boat motor, or airplane. It is intended to apply to the sale by a nonretailer of a boat, boat motor, or airplane. Prior to July 1, 2017, the casual excise tax also applied to the sale by a nonretailer of a motor vehicle or motorcycle. On or after July 1, 2017, the sale of a motor vehicle or a motorcycle for registration in South Carolina is subject to the IMF upon registration at the SCDMV.

- (a) Leases of motor vehicles to residents for registration in South Carolina are exempt from the state sales and use tax under Code Section 12-36-2120(83) since such leases are subject to the IMF upon registration of the motor vehicle at the SCDMV.
- (b) Leases of motor vehicles to nonresidents who will register the motor vehicle in South Carolina with the SCDMV are exempt from the state sales and use tax under Code Section 12-36-2120(83) since such leases are subject to an IMF upon registration of the motor vehicle at the SCDMV.
- (c) Leases of motor vehicles to nonresidents who will register the motor vehicle in their state of residence are subject to the sales tax at the lesser of the sales tax due in the purchaser's state of residence or 5%, but no more than \$500. **This sales tax is paid to the SCDMV.** (Local sales and use taxes do not apply to sales or lease of motor vehicles subject to the IMF or to the maximum sales tax.)

Note: If the lessee's state of residence does not impose a sales tax on the lease of a motor vehicle or does not allow the lessee a credit against its use tax for a sales tax paid on the motor vehicle in South Carolina, then the lease of the motor vehicle is not subject to the South Carolina sales tax. See SC Information Letter #14-2.

23. Are motor vehicle lease payments paid to a retailer after July 1, 2017 for a motor vehicle registered in South Carolina subject to the sales tax for leases executed prior to July 1, 2017?

Since the lease was executed prior to July 1, 2017, all lease payments are subject to the sales tax and the maximum sales tax remains at \$300 for the lease. If the \$300 maximum sales tax on the lease of the motor vehicle had not been paid in full prior to July 1, 2017, then the tax must be remitted by the retailer to the Department of Revenue with each lease payment until the maximum sales tax of \$300 has been paid in full for that lease. The lessor, however, has the option to remit the remainder of the tax due (up to \$300) in one payment.

Note: If the lease is renewed on or after July 1, 2017, then lease payments made as a result of the renewal of the lease are not subject to the sales tax.

24. Are short-term rentals (e.g., daily, weekly) of motor vehicles subject to the sales tax?

Yes. The exemption for sales of motor vehicles subject to an IMF upon registration of the motor vehicle at the SCDMV does not apply since short-term rentals are not registered by the customer and therefore are not subject to an IMF.

For example, if a person rents a motor vehicle for a week while in South Carolina on business, or a person rents a motor vehicle to move furniture from one location to another, then the rental payments are subject to the sales tax and not subject to the IMF.

Note: For information on what is included in “gross proceeds” (the basis or measure of the sales tax) for purposes of short-term motor vehicle rentals, see SC Revenue Ruling #93-1.

Sales of Motor Vehicles and Motorcycles to Members of the Military

25. Are sales of motor vehicles and motorcycles to members of the military, or to spouses of members of the military, who are residents of South Carolina for registration in South Carolina subject to the sales tax?

No. However, the motor vehicle is subject to an IMF upon registration at the SCDMV.

26. Are sales of motor vehicles (excluding trucks) and motorcycles to nonresident members of the military subject to the sales tax?

No, provided the nonresident member of the military is located in South Carolina by reason of orders of the U.S. Armed Forces. Under South Carolina law, sales of motor vehicles (excluding trucks) and motorcycles to nonresident members of the military located in South Carolina by reason of orders of the U.S. Armed Forces are exempt from the sales tax under Code Section 12-36-2120(25), regardless of the state in which the motor vehicle or motorcycle will be registered.

However, for this exemption under Code Section 12-36-2120(25) to apply, the purchaser must provide the vendor within ten days of the sale either:

- (a) a statement from a commissioned officer of the Armed Forces of a higher rank than the purchaser certifying that the buyer is a member of the Armed Forces on active duty and a resident of another state; or
- (b) a leave and earnings statement from the appropriate department of the armed forces which designates the state of residence of the purchaser.

This exemption does not apply to spouses of members of the military when the spouse purchases a motor vehicle or motorcycle in his or her name only. However, if the motor vehicle (excluding trucks) or motorcycle is purchased in the name of both spouses, the exemption in Code Section 12-36-2120(25) applies.

Note: See Question #27 below for information concerning sales of motor vehicles and motorcycles to spouses of nonresident members of the Armed Forces and sales of trailers and semitrailers to nonresident members of the military and their spouses.

27. Are sales of motor vehicles, motorcycles, trailers, and semitrailers to nonresident members of the military, or to spouses of nonresident members of the military, subject to the sales tax?

No. Under federal law known as the Servicemembers Civil Relief Act,⁶ sales of motor vehicles (including trucks), motorcycles, trailers, and semitrailers to nonresident members of the military, or to spouses of nonresident members of the military, who are in South Carolina by reasons of orders from the U.S. Armed Forces are not subject to the sales tax provided:

- (a) the motor vehicle or motorcycle will not be used in a trade or business; and,
- (b) a license, fee, or excise tax is paid by the servicemember or the servicemember's spouse in the servicemember's state of domicile or residence.

For purposes of the Servicemembers Civil Relief Act, a "motor vehicle" means a vehicle driven or drawn by mechanical power and manufactured primarily for use on public streets, roads and highways, but does not include a vehicle operated only on a rail line.⁷ Note: See Question #26 above for information on the South Carolina sales and use tax exemption for sales of motor vehicles (excluding trucks) and motorcycles to nonresident members of the military.

Dealers Filing of Sales Tax Returns

28. Are sales of motor vehicles and other items subject to the IMF required to be reported on the sales and use tax return filed with the Department of Revenue?

Yes. All sales of tangible personal property, whether or not exempt from the sales and use tax, are required to be reported on the sales and use tax return. The return includes a Worksheet on which the retailer reports all sales of tangible personal property and also reports as a deduction all sales exempt from the sales and use tax. By taking a deduction for exempt sales, such as sales of motor vehicles subject to the IMF, the retailer will not pay a sales tax on any exempt sales.

For example, if a retailer who is licensed as a dealer with the SCDMV sells \$1,000,000 in cars during the month and all sales were to residents for registration with the SCDMV, then the dealer would report the \$1,000,000 as part of his "gross proceeds of sales," but also take a deduction for the \$1,000,000 for exempt sales (sales of motor vehicles subject to the IMF). As such, no sales tax would be due with respect to these motor vehicle sales. Note, however, that the dealer would still owe sales tax on the sale of parts sold at retail, short-term rentals of motor vehicles, and other transactions not subject to the IMF and not otherwise exempt from the sales and use tax.

Note: The licensed SCDMV dealer is, however, responsible for collecting and remitting the IMF to the SCDMV.

⁶ 50 U.S.C. Section 3901 et.seq.

⁷ See 50 U.S.C. Section 3911(8); 49 U.S.C. Section 30102(a)(7).

Low-Speed Vehicles, Dirt Bikes, All-Terrain Vehicles, Golf Carts, and Go-Carts

29. Are sales by a retailer of low-speed vehicles subject to the sales and use tax?

Low-speed vehicles are subject to registration with the SCDMV in the same matter as a motor vehicle. Therefore, sales of low-speed vehicles are:

- (a) Subject to an IMF if sold to residents or nonresidents for registration in South Carolina; or
- (b) Subject to the sales tax if sold to nonresidents for registration in the purchaser's state of residence.

For sales to residents and nonresidents subject to the IMF, see Questions #5 and #12 of this advisory opinion. For sales to nonresidents subject to a sales tax, see Question #13.

30. Are sales by a retailer of dirt bikes subject to the sales and use tax?

Yes. Since a dirt bike cannot be used on the roads and highways, it is not subject to registration with the SCDMV and, therefore, not subject to an IMF. As such, sales of dirt bikes are subject to the sales and use tax at the rate of 5% of gross proceeds of sales, but no more than \$500.

31. Are sales by a retailer of all-terrain vehicles (“ATVs”) subject to the sales and use tax?

Yes. Since ATVs are not required to be registered with the SCDMV, sales of ATVs are subject to the sales and use tax at a rate of 6%, plus any applicable local sales and use taxes.

32. Are sales of golf carts and go-carts subject to the sales and use tax?

Yes. Since golf carts and go-carts are not required to be registered with the SCDMV, sales of golf carts and go-carts are subject to the sales and use tax at a rate of 6%, plus any applicable local sales and use taxes.

33. Are race cars⁸, including legend race cars⁹, subject to the sales and use tax?

Yes. Since a race car, including a legend race car, cannot be used on the roads and highways, it is not subject to registration with the SCDMV and, therefore, not subject to the IMF. As such, sales of race cars, including legend race cars, are subject to the sales and use tax at the rate of 6%, plus any applicable local sales and use taxes.

⁸ For purposes of this advisory opinion, a “race car” is an automobile or truck for use only on race tracks and speedways and that is not authorized for use on the highways of South Carolina.

⁹ For purposes of this advisory opinion, a “legend race car” is an automobile race car powered by a motorcycle engine for use only on race tracks and speedways and that is not authorized for use on the highways of South Carolina.

Additional Information:

The Department, in SC Information Letter #17-10, issued several charts to provide guidance regarding the application of either the sales and use tax or the IMF to sales of motor vehicles, motorcycles, and various types of trailers, semitrailers, pole trailers, and other items.

If you have questions regarding the new IMF remitted to the SCDMV, or sales taxes remitted by licensed SCDMV dealers to the SCDMV on certain sales to nonresidents, please contact the SCDMV at cartaxes@scdmv.net.

If you have questions regarding all other sales and use tax matters, please contact the SCDOR at (803) 898-5000 or salesandusetax@dor.sc.gov.

SOUTH CAROLINA DEPARTMENT OF REVENUE

s/W. Hartley Powell

W. Hartley Powell, Director

March 5 _____, 2018
Columbia, South Carolina

Exhibit D

SC Revenue Ruling #93-1

Charges by Automobile Rental Operation



301 Gervais Street, P.O. Box 125, Columbia, South Carolina 29214

SC REVENUE RULING #93-1

SUBJECT: Charges By Automobile Rental Operation
(Sales Tax)

TAX MANAGER: John P. McCormack

EFFECTIVE DATE: July 1, 1993

REFERENCE: S.C. Code Ann. Section 12-36-910 (Supp. 1991)
S.C. Code Ann. Section 12-36-90 (Supp. 1991)

AUTHORITY: S.C. Code Ann. Section 12-4-320 (Supp. 1991)

SCOPE: A Revenue Ruling is the Commission's official interpretation of how tax law is to be applied to a specific set of facts. A Revenue Ruling is public information and remains a permanent document until superseded by a Regulation or is rescinded by a subsequent Revenue Ruling.

Question:

Are certain charges by an automobile rental company, as listed in the facts, includable in "gross proceeds of sales" and therefore subject to the sales tax?

Facts:

An automobile rental company ("company") is engaged, in South Carolina, in the business of renting automobiles on a short term basis. In addition to its basic rental charge, the company charges the customer a "fueling charge". Also, if the customer chooses certain other services, additional charges are made. The following is a brief description and/or example of the charges in question:

Fueling Charges - The fueling charge is a mandatory charge; however, the company determines the fueling charge under one of two methods.

Method #1 - The customer may elect to either:

(a) pay a separately stated non-refundable charge for the gas provided with the car, with no credit given for the return of any unused gas; or,

(b) not pay the fuel charge at the time of the initial rental and pay a separately stated fuel charge only for gas used, if the car is returned with less than a full tank. The customer has the option of returning the car with a full tank and avoiding the fueling charge.

Method #2 - The customer must pay (an election is not allowed) a separately stated non-refundable charge for the gas provided with the car, with no credit given for the return of any unused gas.

Collision Damage Waiver (Optional) - The customer pays a fee for a release of financial responsibility to the company for any damages occurring to the car during use. For example, if the customer is involved in an accident, the customer will not be responsible to the company for repair costs if he or she purchased the collision damage waiver. The fee is separately stated from the rental price.

Personal Accident Coverage (Optional) - The customer pays a fee in order to be provided up to \$50,000 in coverage for any automobile related death or dismemberment which may occur to the customer or any passenger in the rental car.

Extended Protection (Optional) - The customer pays an additional fee in order to be provided up to \$1,000,000 for claims that may be made against the customer or other authorized drivers of the car for automobile related bodily injury, death, and property damage. Uninsured motorist benefits up to \$1,000,000 are also included in this protection package. The uninsured motorist benefits are paid if the insured is injured and the uninsured motorist is at fault.

Personal Effects Coverage (Optional) - The customer pays a fee to be protected against the loss, theft, or damage to the customer's personal property which is in the car during the rental period.

Personal Accident and Effects Coverage (Optional) - The customer pays a fee for a combination of the Personal Accident Coverage and the Personal Effects Coverage discussed above.

As with the fueling charge, all the other charges discussed above, except the collision damage waiver fee, are separately stated on the bill to the customer.

Discussion:

Code Section 12-36-910 imposes "a sales tax, equal to five percent of gross proceeds of sales, upon every person engaged ... within this State in the business of selling tangible personal property at retail."

Code Section 12-36-90 reads, in part:

Gross proceeds of sales, or any similar term, means the value proceeding or accruing from the sale, lease, or rental of tangible personal property.

(1) The term includes:

* * * *

(b) the proceeds from the sale of tangible personal property without any deduction for:

- (i) the cost of goods sold;
- (ii) the cost of materials, labor, or service;
- (iii) interest paid;
- (iv) losses;
- (v) transportation costs;
- (vi) manufacturers or importers excise taxes imposed by the United States; or
- (vii) any other expenses.

In Meyers Arnold v. South Carolina Tax Commission, 285 S.C. 303, 328 S.E. 2d. 920 (1985), the Court of Appeals, in interpreting the definition of "gross proceeds of sales" with respect to lay away fees paid in conjunction with lay away sales, held:

Section 12-35-30 [now Section 12-36-90] defines gross proceeds of sales as "the value proceeding or accruing from the sale of tangible personal property ... without any deduction for service costs." But for the lay away sales, Meyers Arnold would not receive the lay away fees. The fees are obviously rendered in making lay away sales.

For these reasons, this court holds the lay away fees are part of the gross proceeds of sales and subject to the sales tax.

In addition, the Commission, in Decision S-D-174, held a property damage waiver fee charged by a person engaged in the business of renting tangible personal property was subject to the sales tax. The Commission, in citing Meyers Arnold v. South Carolina Tax Commission, supra, stated:

Just as in Meyers Arnold, supra, the service fee here is taxable. But for the lease of tangible personal property, the taxpayer would not have received the fee. The fee is obviously charged for the additional service of providing a lease of property free from liability for damage. In the absence of such service, the lessee, under the taxpayer's lease agreements, would be "liable for any loss, theft, damage or destruction of leased property." We find and conclude the fee for the property damage waiver is part of gross proceeds of sale subject to tax.

In summary, the sales tax is imposed upon every person engaged in South Carolina in the business of selling tangible personal property at retail. The tax is based upon the gross proceeds of sales of the business, which is the value proceeding from the sale without any deductions for service costs and other expenses. Therefore, "[b]ut for [the rental of the car], the taxpayer would not have received the [fees for the various charges connected with the rental car, as described in the facts.]" [See also Regency Towers Association, Inc. v. South Carolina Tax Commission, Horry County Court of Common Pleas, Case No. 88-CP-26-1109 (1989) (maid service at a hotel) and Commission Decisions #90-38 and #91-64 (engraving charges as part of the sale of trophies).]

Conclusion:

The charges by an automobile rental company, as described in the facts, are all includable in "gross proceeds of sales" and therefore subject to the sales tax. These charges are:

1. Fueling Charges.
2. Charges for Collision Damage Waiver.
3. Personal Accident Coverage.
4. Extended Protection.
5. Personal Effects Coverage.
6. Personal Accident and Effects Coverage.

SOUTH CAROLINA TAX COMMISSION

s/A. Crawford Clarkson Jr.
A. Crawford Clarkson, Jr., Chairman

s/T. R. McConnell
T. R. McConnell, Commissioner

s/James M. Waddell Jr.
James M. Waddell, Jr., Commissioner

Columbia, South Carolina
January 14, 1993

Exhibit E

SC Revenue Ruling #99-3

Farm Trailers

State of South Carolina
Department of Revenue
301 Gervais Street, P.O. Box 125, Columbia, South Carolina 29214

SC REVENUE RULING #99-3

SUBJECT: Farm Trailers
(Tax)

EFFECTIVE DATE: Applies to all periods open under the statute.

SUPERSEDES: All previous documents and any oral directives in conflict herewith.

REFERENCES: S. C. Code Ann. Section 12-36-2120(16) (Supp. 1998)
S. C. Code Ann. Section 12-36-930 (Supp. 1998)
SC Regulation 117-174.243
SC Regulation 117-174.21

AUTHORITY: S. C. Code Ann. Section 12-4-320 (Supp. 1998)
SC Revenue Procedure #97-8

SCOPE: A Revenue Ruling is the Department of Revenue’s official advisory opinion of how laws administered by the Department are to be applied to a specific issue or a specific set of facts, and is provided as guidance for all persons or a particular group. It is valid and remains in effect until superseded or modified by a change in the statute or regulations or a subsequent court decision, Revenue Ruling or Revenue Procedure.

Questions:

1. How does the sales and use tax apply to the sale or purchase of a flatbed trailer for use by a farmer in hauling farm crops (i.e., hay, corn, peaches), tractors, or harvesting equipment on his farm, to the buyer, or to market or a stock trailer for use by a farmer in hauling farm crops (i.e., hay, corn, peaches) or cattle on his farm, to the buyer, or to market?
2. If the sale of a trailer, semitrailer, or pole trailer to a nonresident does not qualify for the sales and use tax exemption under Code Section 12-36-2120(16), then how is the sales and use tax determined?

Conclusion:

1. The sale or purchase of a flatbed trailer or a stock trailer for use in hauling farm crops (i.e., hay, corn, peaches) is exempt under Code Section 12-36-2120(16) if the flatbed trailer or stock trailer will be used solely in the “planting, cultivating, or harvesting” of such farm crops for sale in their “original state of production or preparation for sale.” See SC Regulation 117-174.243 for definitions of the terms “planting,” “cultivating,” and “harvesting.” (This exemption does not apply to automobiles and trucks.)

The sale or purchase of a flatbed trailer or a stock trailer is **not** exempt under Code Section 12-36-2120(16) if the flatbed trailer or stock trailer will be used solely for a purpose other than the “planting, cultivating, or harvesting” of farm crops (i.e., hay, corn, peaches) for sale in their “original state of production or preparation for sale.” For example, the sale or purchase of a flatbed or stock trailer for use solely in:

- (a) hauling tractors, harvesting equipment, or cattle; or
- (b) hauling farm crops (i.e., hay, corn, peaches) from a storage area to market or to a buyer

is **not** exempt from the sales and use tax under Code Section 12-36-2120(16).

If a flatbed trailer or a stock trailer is used for both exempt and nonexempt purposes, then the sale or purchase of the trailer is exempt from the sales and use tax if it is used substantially (not merely incidentally) in the “planting, cultivating, or harvesting” of farm crops (i.e., hay, corn, peaches) for sale in their “original state of production or preparation for sale.”

Note 1: While not an issue in this advisory opinion, it should be noted that the exemption also applies to “bulk coolers (farm dairy tanks) used in the production and preservation of milk on dairy farms, and [to] machines used in the production of poultry and poultry products on poultry farms, when such products are sold in the original state of production or preparation for sale.”

Note 2: The Department of Revenue provides an “Agricultural Exemption Certificate,” Form ST-8F, that can be used by purchasers to certify to the seller that the trailer will be used in the “planting, cultivating, or harvesting” of farm crops (i.e., hay, corn, peaches) for sale in their “original state of production or preparation for sale.” The use of this form shifts the liability for the tax from the seller to the purchaser.

2. The tax due on the sale of a trailer, semitrailer, or pole trailer (of a type required to be registered and licensed) to a nonresident, unless exempt under Code Section 12-36-2120(16) is the lesser of the “amount equal to the sales tax, which would be imposed in the purchaser’s state of residence or the tax that would be due under [the South Carolina Sales and Use Tax law.]”

The department periodically surveys other states to determine the “amount equal to the sales tax, which would be imposed in the purchaser’s state of residence.” The results of the most recent survey have been published by the department in SC Information Letter #98-17. In addition, the department has developed a form (Form ST-385) that may be used by retailers in obtaining, as required under Code Section 12-36-930, the purchaser’s “notarized statement of ... intent to license the vehicle, within ten days, in [his] state of residence.”¹

¹It should be noted that some trailers and semitrailers, while of a type to be registered and licensed in South Carolina, are not required to be registered and licensed in the purchaser’s state of residence. The provisions of Code Section 12-36-930 are still applicable to such trailers and semitrailers; however, the notarized statement required by the statute should be modified to state that, while the trailer or semitrailer is not required to be licensed to the purchaser’s state of residence, the situs of the trailer or semitrailer will be the purchaser’s state of residence and not in South Carolina.

Therefore, retailers should use the most recent published survey to determine the tax due on the sale of a trailer, semitrailer or pole trailer (of a type required to be registered and licensed) to a resident of another state. However, if a customer states that the sale of the trailer, semitrailer or pole trailer in question is exempt in his state, then the retailer may do one of the following to determine if the sale should be exempt from the tax under Code Section 12-36-930:

1. Request from the customer a copy of the exemption statute in his state of residence that indicates that the sale is exempt or a copy of an exemption certificate or some other evidence from his state of residence that indicates that the sale is exempt.
2. Contact the applicable state agency (Revenue Department or Department of Motor Vehicles) in the customer's state of residence to determine if the sale is exempt and request that they verify in writing whether the sale is exempt. Retain the name and telephone number of the person who provided you the information for your records.
3. Contact the Office Services Division of the South Carolina Department of Revenue at (803) 898-5788. In order to receive a prompt reply, the complete facts of the transaction and statutory authority from the nonresident's state and the name and phone number of the applicable state agency in the nonresident's state should be provided when calling the department at the above number.

Facts:

The first issue concerns the taxability of certain trailers used by farmers. The trailers in questions are:

Flatbed Trailers used by the farmer to haul farm crops (i.e., hay, corn, peaches) and to haul tractors and harvesting equipment, and,

Stock Trailers used to haul farm crops (i.e. hay, corn, peaches) and cattle.

The second issue concerns the sale of these same trailers to residents of other states that will immediately transport the trailer to their state of residence.

Discussion:

Farm Machinery: Code Section 12-36-2120(16) exempts from the sales and use tax:

farm machinery and their replacement parts and attachments, used in planting, cultivating, or harvesting farm crops, . . . when such products are sold in the original state of production or preparation for sale. This exemption does not include automobiles or trucks.

SC Regulation 117-174.243 defines the terms "planting," "cultivating," or "harvesting" as used in the above exemption statute, and reads in part:

In order to qualify for the exemption, the item must first constitute a machine; secondly, it must be animal or motor drawn or operated; and thirdly, it must be used in the planting, cultivating or harvesting of farm crops.

The word “planting” is construed to include all necessary steps in the preparation of the soil prior to and including the actual planting or sowing of the seed.

“Cultivation” is construed to include loosening of the soil around growing plants, control of moisture content of the soil, weed and pest control.

“Harvesting” is deemed to commence with the gathering of the crop and to be complete when the crop is placed in a temporary or permanent storage area. Provided, however, that the term shall also include the further preparation for storage or sale of certain crops such as curing tobacco, grains, peanuts, and the grading and packaging of peaches, cucumbers, tomatoes, etc.

SC Regulation 117-174.21 reads:

Farm wagons sold to farmers for use in planting, cultivating, and harvesting of farm crops are exempt from the sales and use tax under provisions of [Section 12-36-2120(16)], Code of Laws, [Supp. 1997].

Based on the above, the sale or purchase of a flatbed trailer or a stock trailer is exempt under Code Section 12-36-2120(16) if the flatbed trailer or stock trailer will be used in the “planting, cultivating, or harvesting” of farm crops (i.e., hay, corn, peaches) for sale in their “original state of production or preparation for sale.” If the flatbed trailer or stock trailer is not used, or is only incidentally used, in the “planting, cultivating, or harvesting” of farm crops (i.e., hay, corn, peaches) for sale in their “original state of production or preparation for sale,” then the exemption is not applicable. For example, a trailer used to haul cattle does not come within the exemption. While cattle are products of the farm, they are not farm crops and therefore the exemption under Code Section 12-36-2120(16) is not applicable.

Finally, it should be noted that, in accordance with the South Carolina Supreme Court in Hercules Contractors and Engineers, Inc. v. South Carolina Tax Commission, 280 S.C. 426, 313 S.E. 2d 300 (1984), a machine must be substantially used for the exempt purpose in order to qualify for the exemption. As such, if a flatbed trailer or a stock trailer is used for both exempt and nonexempt purposes, then the sale or purchase of the trailer is exempt from the sales and use tax if it is used substantially (not merely incidentally) in the “planting, cultivating, or harvesting” of farm crops (i.e., hay, corn, peaches) for sale in their “original state of production or preparation for sale.”

Note: While not an issue in this advisory opinion, it should be noted that the exemption also applies to “bulk coolers (farm dairy tanks) used in the production and preservation of milk on dairy farms, and [to] machines used in the production of poultry and poultry products on poultry farms, when such products are sold in the original state of production or preparation for sale.”

Sales to Nonresidents: Code Section 12-36-930 reads:

(A) The tax imposed by this article on sales of motor vehicles, as defined in Section 56-1-10, trailers, semitrailers, or pole trailers of a type to be registered and licensed, to a resident of another state, is the lesser of:

- (1) an amount equal to the sales tax, which would be imposed in the purchaser's state of residence, or
- (2) the tax that would be due under this chapter.

(B) At the time of the sale, the seller shall:

- (1) obtain from the purchaser a notarized statement of the purchasers (sic) intent to license the vehicle, within ten days, in the purchasers (sic) state of residence; and
- (2) retain a signed copy of the notarized statement. The purchaser shall give a copy to the sales tax agency of the purchasers (sic) state of residence.

(C) No tax is due if a nonresident will not receive credit in his state of residence for sales tax paid to this State under this section.

As a result of this code section, the department periodically surveys other states to determine the "amount equal to the sales tax, which would be imposed in the purchaser's state of residence." The most recent Information Letter published concerning this matter is SC Information Letter #98-17. In addition, the department has developed a form (Form ST-385) that may be used by retailers in obtaining the purchaser's "notarized statement of ... intent to license the vehicle, within ten days, in [his] state of residence."²

In determining the tax due on the sale of a trailer, semitrailer or pole trailer (of a type required to be registered and licensed) to a resident of another state, retailers should use the most recent published Information Letter on this subject. However, if a customer states that the sale of the trailer, semitrailer or pole trailer in question is exempt in his state and this exemption is not reflected in the above information letter (SC Information Letter #98-17), then the retailer should do one of the following to determine if the sale should be exempt from the tax under Code Section 12-36-930:

1. Request from the customer a copy of the exemption statute in his state of residence that indicates that the sale is exempt or a copy of an exemption certificate or some other evidence from his state of residence that indicates that the sale is exempt.

² See footnote #1.

2. Contact the applicable state agency (Revenue Department or Department of Motor Vehicles) in the customer's state of residence to determine if the sale is exempt and request that they verify in writing whether the sale is exempt. Retain the name and telephone number of the person who provided you the information for your records.

3. Contact the Office Services Division of the South Carolina Department of Revenue at (803) 898-5788. In order to receive a prompt reply, the complete facts of the transaction and statutory authority from the nonresident's state and the name and phone number of the applicable state agency in the nonresident's state should be provided when calling the department at the above number.

SOUTH CAROLINA DEPARTMENT OF REVENUE

s/Burnet R. Maybank III
Burnet R. Maybank, III, Director

Columbia, South Carolina
January 11, 1999