
State of South Carolina
Department of Revenue
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SC INFORMATION LETTER #07-5

SUBJECT: Regulation Approved by the General Assembly
Retail Licenses and Partnerships
(Sales and Use Tax)

DATE: March 6, 2007

AUTHORITY: S. C. Code Ann. Section 12-4-320 (2000)
S.C. Code Ann. Section 1-23-10(4) (2005)
SC Revenue Procedure #05-2

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.

A proposal to amend SC Regulation 117-300.6, which concerns “Retail Licenses and Partnerships,” was approved by the General Assembly on February 1, 2007 and became effective upon publication in the State Register on **February 23, 2007**.

The amended regulation is attached as published in the State Register.

Document No. 3057
DEPARTMENT OF REVENUE
CHAPTER 117
Statutory Authority: 1976 Code Section 12-4-320

Synopsis:

The South Carolina Department of Revenue is considering amending SC Regulation 117-300.6 concerning retail licenses and partnerships. Presently, this regulation is out of date since this regulation references an annual license and the retail license is no longer issued on an annual basis. In addition, Federal law states that a partnership is terminated if there is a 50% change in ownership over a 12 month period; however, federal law states that the partnership does not need a new employer identification number (“EIN”). This proposed regulation would not require a new retail license in such cases (similar to the federal law that does not require a new EIN). The proposed regulation would also not require a new retail license with respect to certain conversions of partnerships to either limited liability partnerships or limited liability companies.

Instructions:

Amend SC Regulation 117-300.6 concerning retail licenses and partnerships. This regulation is out of date since this regulation references an annual license and the retail license is no longer issued on an annual basis.

Text:

(A) A partnership engaged in the business of selling tangible personal property at retail, and therefore required to be licensed under the provisions of Article 5, Chapter 36 of Title 12, must obtain a new retail license, or retail licenses if the partnership has multiple retail locations, if:

1. The partnership incorporates.
2. A single partner takes over the business and operates it as a sole proprietorship.
3. The partnership is terminated (no part of any business, financial operation, or venture of the partnership continues to be carried on by any of its partners in a partnership) and a new partnership is begun.
4. The partnership is otherwise required to obtain a new Taxpayer Identification Number (“TIN”). (See SC Regulation 117-201.)

Note: If the retailer moves its retail business to a new location, then the retailer must notify the Department of the move prior to the move. Upon notification, the Department will issue a corrected retail license at no charge for the new location.

(B) A new retail license, or retail licenses if the partnership has multiple retail locations, is not required if:

1. The partnership merely changes its name.

2. The partnership has a change in ownership but is not required to obtain a new Taxpayer Identification Number (“TIN”). (See SC Regulation 117-201.) However, if there is a change of general partners, the Department advises the partnership to either advise the Department of the change in general partners or obtain a new retail license for each retail location. If the Department is not advised of the change in general partners or a new retail license is not obtained, it will be presumed that the persons listed in records of the Department of Revenue as the general partner or partners are liable for any sales or use taxes the partnership fails to pay (unless the retail license of record indicates the partnership is a registered LLP pursuant to Code Section 33-41-1120). Since the partnership is not required to obtain a new retail license under this circumstance, the payment of the application fee for a retail license, as prescribed in Code Section 12-36-510, is not required to be paid for a retail license obtained in order to ensure that only proper persons are listed as the general partner or partners in the records of the Department of Revenue.

(C) The term “partnership” includes a limited liability company (“LLC”) that is taxed for South Carolina income tax purposes as a partnership.

Note: Unlike other types of partnerships, a general partner in a limited liability partnership (“LLP”) is not liable for debts, obligations and liabilities chargeable to the partnership while the partnership is a registered LLP. (See Code Section 33-41-370.)

A partner in an LLP and a member of an LLC may, however, be individually and personally liable for withholding taxes, state and local sales and use taxes, or both as a “withholding agent” (withholding tax), a “responsible person” (state and local sales and use taxes), or both under the provisions of Code Section 12-8-2010 and Code Section 12-54-195.

(D) The conversion of a partnership to a registered LLP pursuant to Article 13 of Chapter 41 of Title 33 is a partnership-to-partnership conversion and the organization is still considered to be the same entity for South Carolina tax purposes and is not required to obtain a new retail license.

However, the Department advises the resulting LLP to either advise the Department of the change in general partners or partners or obtain a new retail license for each retail location. If the Department is not advised of the change in general partners or partners or a new retail license is not obtained, it will be presumed that the general partner or partners are liable for any sales or use taxes the LLP fails to pay. Since the resulting LLP is not required to obtain a new retail license, the payment of the application fee for a retail license, as prescribed in Code Section 12-36-510, is not required to be paid for a retail license obtained as a result of the conversion of a partnership to an LLP.

(E) The conversion of a partnership to an LLC taxed as a partnership pursuant to Code Section 33-44-902 is treated as a partnership-to-partnership conversion and the organization is still considered to be the same entity for South Carolina tax purposes and is not required to obtain a new retail license. See Code Section 33-44-903 which confirms that a partnership that has been converted into an LLC is the same entity that existed before conversion and all property owned by the converting partnership vests in the LLC. However, the Department advises the resulting LLC to either advise the Department of the change in general partners or partners or obtain a new retail license for each retail location. If the Department is not advised of the change in general partners or partners or a new retail license is not obtained, it will be presumed that the general partner or partners are liable for any sales or use taxes the LLC fails to pay (unless the retail license of record indicates the partnership is a registered LLP pursuant to Code Section 33-41-1120). Since the resulting LLC is not required to obtain a new retail license, the payment of the application fee for a retail license, as prescribed in Code Section 12-36-510, is not required to be paid for a retail license obtained as a result of the conversion of a partnership to an LLC taxed as a partnership.

(F) The provisions of this regulation apply to the retail licensing requirements under the sales and use tax law (Chapter 36 of Title 12) and do not apply to the alcoholic beverage licensing provisions of Title 61. For information as to when a person must obtain a new alcoholic beverage license, see Code Section 61-2-140 and the various other licensing provisions of Title 61.

Fiscal Impact Statement:

There will be no impact on state or local political subdivisions expenditures in complying with this proposed legislation.

Statement of Rationale:

The purpose of this proposal is to amend SC Regulation 117-300.6 concerning retail licenses and partnerships. Presently, this regulation is out of date since this regulation references an annual license and the retail license is no longer issued on an annual basis. In addition, Federal law states that a partnership is terminated if there is a 50% change in ownership over a 12 month period; however, federal law states that the partnership does not need a new employer identification number (“EIN”). This proposed regulation would not require a new retail license in such cases (similar to the federal law that does not require a new EIN). The proposed regulation would also not require a new retail license with respect to certain conversions of partnerships to either limited liability partnerships or limited liability companies. The proposal to amend this regulation is needed to reduce any taxpayer confusion that may result from having a published regulation that is in conflict with the law. The proposal to amend this regulation is also reasonable in that it is the department’s responsibility to maintain regulations that are up-to date and consistent with the law and the advent of new entities such as limited liability companies and the laws that address such entities.