



STATE OF SOUTH CAROLINA  
**DEPARTMENT OF REVENUE**

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

SC REVENUE PROCEDURE #21-1

- SUBJECT:** Assigning the Right to, and Filing a Claim for, Refund  
(Sales and Use Tax)
- EFFECTIVE DATE:** Applies to all periods open under the statute.
- SUPERSEDES:** All previous advisory opinions and any oral directives in conflict herewith.
- REFERENCES:** S.C. Code Ann. Section 12-60-470 (2014)  
S.C. Code Ann. Section 12-54-85 (2014)  
SC Regulation 117-334
- 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 Procedure is to provide procedural guidance to the public and Department personnel. It is an advisory opinion issued to assist in the administration of laws and regulations by providing guidance that may be followed in order to comply with the law. It is effective until superseded or modified by a change in statute, regulation, court decision, or another Department advisory opinion.

**INTRODUCTION**

The South Carolina Revenue Procedures Act contained in Chapter 60 of Title 12 contains the rules and procedures for filing a claim for refund. A taxpayer may file a claim for refund by filing a written claim with the Department. Code Section 12-60-470 sets forth the information that a refund claim must contain. The time limitation within which a taxpayer must file a claim for refund is set forth in Code Section 12-54-85.

The purpose of this advisory opinion is to provide guidance in determining who can apply for a sales tax refund or use tax refund - the retailer or the purchaser, and to set forth the process for filing the claim. Exhibit 1 provides information and statements that may be used to authorize the Department to accept a claim for refund from a person other than the person legally liable for the sales tax or use tax.<sup>1</sup>

## I. Who May File a Claim for Refund<sup>2</sup>

Code Section 12-60-470(C) establishes who may file a claim for, and receive, a refund of state taxes, and states in part:

- (1) Only the taxpayer legally liable for the tax may file a claim for refund or receive a refund, except that:
  - (a) a person who acts as a collector and remitter of state taxes may claim a credit or refund of the tax collected, but only if the person establishes that he has paid the tax in question to the State; and
    - (i) repaid the tax to the person from whom he collected it; or
    - (ii) obtained the written consent of the person from whom he collected the tax to the allowance of the credit or refund;
  - (b) a purchaser who has paid sales tax to a retailer for a specific transaction may claim a refund if the retailer who paid the sales tax to the State has assigned, in writing, the right to a refund of that sales tax to the purchaser.

Generally, only the person legally liable for the tax may file a claim for refund or receive a refund. With respect to the sales tax or the use tax, however, Code Section 12-60-470 provides limited exceptions that allow the person legally liable for the tax to assign the right to claim and obtain the refund to another person.

## II. Who is Legally Liable for the Sales Tax or the Use Tax

Code Section 12-36-910 imposes the sales tax on retailers engaged in business within South Carolina and applies to retail sales of tangible personal property within the state. Retailers making sales of tangible personal property in South Carolina are required to remit the sales tax to the Department. As such, the retailer is the person legally liable for the sales tax.

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<sup>1</sup> Code Section 12-60-470(C)(2) provides that the taxpayer legally liable for the tax may file a claim for refund and may assign the actual refund to another person after the Department has approved the refund. This provision allows for the assignment of the taxpayer's approved refund to another person. A discussion of this provision is not included in this advisory opinion since the purpose of this advisory opinion is to address when a taxpayer legally liable for a sales and use tax assigns his right to make a claim to another person who submits the claim to the Department.

<sup>2</sup> This advisory opinion does not apply to claims for refund by credit and debit card issuers with respect to foreign diplomats and missions. See Code Section 12-60-470(C)(3) and (4).

Code Section 12-36-1310 imposes the use tax on the purchaser on the purchase of tangible personal property at retail for use, storage, or other consumption in South Carolina. The use tax applies to purchases from out-of-state retailers and includes purchases from retailers made through the Internet (retailer’s website and retailer’s sales on auction sites), through out-of-state catalog companies, or when visiting another state or country. As such, the purchaser is the person legally liable for the use tax.

An out-of-state retailer must obtain a retail license and remit either the South Carolina sales tax or use tax on retail sales shipped into South Carolina if the out-of-state retailer has a physical presence in South Carolina or economic nexus with South Carolina. An out-of-state retailer that is not required to obtain a retail license and remit the South Carolina sales or use tax may, however, voluntarily obtain the retail license and collect and remit the tax to South Carolina.

Note: Either the South Carolina sales tax or the use tax applies to a single transaction, but not both.

### III. How to Determine if a Tax is a Sales Tax or a Use Tax

Guidance in determining whether the sales tax or the use tax applies to a retail sale of tangible personal property is provided below.

- A. Retail Sales at Locations in South Carolina. The sales tax applies to retail sales of tangible personal property at retail locations in South Carolina. Code Section 12-36-910.
- B. Retail Sales Shipped into South Carolina. Regulation 117-334 determines whether the sales or use tax applies to retail sales of goods shipped into South Carolina.

Sales Tax. Regulation 117-334.1, “Goods coming into this State – Sales Tax,” provides guidance with respect to the application of the sales tax on tangible personal property coming into South Carolina and reads, in part:

(A) When tangible personal property is purchased for use or consumption in this State and (1) the seller is engaged or continuing within this State in the business of selling tangible personal property at retail and (2) delivery is made in this State, such sale is subject to the sales tax if the order for the future delivery of tangible personal property is sent by the purchaser to, or the subsequent delivery of the property is made by, any local branch, office, outlet or other place of business of the retailer in this State, or agent or representative operating out of or having any connection with, such local branch, office, outlet or other place of business. The term “other place of business” as used herein includes, but is not limited to, the homes of district managers, representatives, and other resident employees, who perform services in relation to the seller’s functions in this State. Participation in the transaction in any way by the local office, branch, outlet or other place of business is sufficient to sustain the sales tax.

Based on this regulation, the sales tax would generally apply to the retail sale of tangible personal property coming from outside of South Carolina if the customer (1) places the order with a local office, store, place of business, representative, or employee in South Carolina or (2) the retailer delivers the property through a local office, store, place of business, representative, or employee in South Carolina. For example, the sales tax applies when a purchaser places an order online or by phone to an out-of-state retailer who then sends the purchaser's request to its South Carolina store for delivery to, or pick up by, the South Carolina customer.

Use Tax. Regulation 117-334.2, "Goods coming into this State – Use Tax," provides guidance with respect to the application of the use tax on tangible personal property coming into South Carolina and reads, in part:

(A) When tangible personal property is purchased for use or consumption in this State and delivery is made in this State, such sale is subject to the use tax if the order for future delivery is sent by the purchaser directly to the seller at a point outside this State, and the property is shipped into this State from a point outside this State directly to the purchaser or the purchaser's designee, provided there is no participation whatever in the transaction by any local branch, office, outlet or other place of business of the retailer or by any agent or representative of the retailer having any connection with such branch, office, outlet, or other place of business. The term "other place of business" as used herein includes, but is not limited to, the homes of district managers, service representatives, and other resident employees, who perform substantial services in relation to the seller's functions in this State.

Based on this regulation, the use tax would apply to the retail sale of tangible personal property coming from outside of South Carolina if the customer (1) places the order with an office, store, place of business, representative, or employee outside of South Carolina and (2) the retailer ships or delivers the property from an out-of-state location, provided there is no participation whatever in the transaction by any local branch, office, outlet or other place of business of the retailer or by any agent or representative of the retailer having any connection with such branch, office, outlet, or other place of business. For example, the use tax applies when a purchaser places an order online with an out-of-state retailer who fills the request from an office/store outside of South Carolina and ships the goods to the South Carolina customer via common carrier.

#### IV. Who May Request a Refund of Sales Tax

General Rule. Since the retailer is the person legally liable for the sales tax, the retailer is the person who must file a claim for refund in a retail sales tax transaction, unless an exception below applies.

Exceptions to the General Rule. Under the following exceptions, the purchaser (instead of the retailer) may file a claim for refund in a retail sales tax transaction:

1. Assignment of Right to the Refund Obtained. A purchaser who has paid the sales tax to a retailer for a specific transaction may file a claim for refund of the sales tax if the retailer

who paid the sales tax has assigned, in writing, the right to the refund of the sales tax to the purchaser. Code Section 12-60-470(C)(1)(b). Note: The retailer's assignment of right to the refund must be provided to the purchaser and the claim for refund must be filed prior to the expiration of the time limitation set forth in Code Section 12-54-85.

2. Resale Certificate or Exemption Certificate Used. A purchaser who provided an exemption certificate or resale certificate to the retailer to purchase the tangible personal property tax free, but the purchaser inadvertently remits the sales tax to the Department on a purchase that is exempt or excluded from the tax, may file a claim for refund. In these circumstances, liability for the tax has shifted to the purchaser under Code Section 12-36-2510 and, as such, the purchaser may file the claim for refund without obtaining an assignment of right for the refund from the retailer.

## V. Who May Request a Refund of Use Tax

General Rule. Since the purchaser is the person legally liable for the use tax, the purchaser is the person who must file a claim for refund in a use tax transaction. This general rule applies regardless of whether the use tax was paid directly to the Department by the purchaser or collected by the retailer from the purchaser and paid to the Department by the retailer, unless an exception below applies.

Exceptions to the General Rule. Under the following exceptions, the retailer (instead of the purchaser) may file a claim for refund and receive the refund in a retail use tax transaction:

1. Assignment of Right to Refund Obtained. A retailer who has collected use tax from a purchaser for a specific transaction(s) may file a claim for refund of the use tax if the retailer can establish that the use tax was paid by the retailer to the Department and the purchaser who paid the use tax to the retailer has assigned, in writing, the right to the refund of the use tax to the retailer. Code Section 12-60-470(C)(1)(a). Note: The purchaser's assignment of right to the refund must be provided to the retailer and the claim for refund filed prior to the expiration of the time limitation set forth in Code Section 12-54-85.
2. Retailer Collected and Repaid Use Tax. A retailer who has collected use tax from a purchaser for a specific transaction(s) may claim a refund of the use tax if the retailer can establish that the use tax was paid by the retailer to the Department and the retailer has repaid the use tax to the purchaser. Code Section 12-60-470(C)(1)(a).

## VI. How and When to Request a Claim for Refund

1. A request for a claim for refund must be in writing. The claim can be requested by letter, online through MyDORWAY, or by submitting Form SC ST-14, "Sales and Use Tax Refund Claim."
2. A claim for refund must contain the information required in Code Section 12-60-470(B). This information includes:
  - a. the name, address, and telephone number of the taxpayer (i.e., the person making the claim for refund);

- b. the appropriate taxpayer identification number;
- c. the tax period or date for which the tax was paid;
- d. the nature and kind of tax paid;
- e. the amount which the taxpayer claims was erroneously paid;
- f. a statement of facts supporting the taxpayer's position; and
- g. a statement outlining the reasons for the claim.

Note: If applicable, the claim for refund must include an assignment of right to the refund. See Exhibit 1 attached for guidance as to information to include in an assignment of right.

- 3. If an assignment of right to the refund is needed, the assignment must be provided by the person legally liable for the tax to the person filing the claim for refund and the claim for refund must be filed within the time limitations specified for filing a claim for refund in Code Section 12-54-85.

#### VII. Additional Information and Alternatives for a Purchaser to Receive a Refund of Tax Inadvertently Paid

- 1. Purchaser Inadvertently Paid Sales Tax or Use Tax on Exempt Item – Contact Retailer First. A purchaser can request that a retailer who inadvertently charges sales tax or use tax on an exempt sale refund the purchaser the tax paid that was paid by the purchaser to the retailer in error. The retailer can then decide whether or not to file a claim for refund.

For example, assume a purchaser is charged sales tax or use tax on a computer that is exempt from tax during South Carolina's annual August sales tax holiday weekend. The Department recommends the purchaser refer the retailer to the Department's advisory opinion providing guidance on exempt items during the tax free holiday or the applicable statute. After reviewing the law and Department's guidance, the retailer can refund the tax paid on the computer to the purchaser and decide whether or not to file a claim for refund.

- 2. Purchaser of Goods from Outside South Carolina – Obtain Assignment if Uncertain as to Person Liable for Tax. If a purchaser of goods coming from outside of the state is uncertain as to whether the sales tax or the use tax applied to the sale, it would be in the best interest of a purchaser considering requesting a refund for tax inadvertently paid to request an assignment of right from the retailer. The purchaser would need this assignment in order to receive a refund if it is determined the tax paid by the retailer was a sales tax and not a use tax.

#### VIII. Refund Process

Upon receipt, the Department will review the refund request. A refund may be approved in full or part. Persons who have been assigned a right to claim a refund by the taxpayer legally liable for the tax should be aware that Code Section 12-60-470(C)(5) provides that the refund may be reduced or eliminated as a result of taxes owed by the taxpayer legally liable for the tax or owed by the person filing the claim. Code Section 12-60-490 provides the order for the application of the refund to other taxes due from the taxpayer, if applicable.

If a refund claim is denied, such denial may be appealed as provided in Chapter 60 of Title 12. See SC Revenue Procedure #20-1, “Department of Revenue Internal Tax Appeals Process and Procedure” and SC Information Letter #20-22, “Tax Appeal Process and Procedures – Information Guides” for guidance on the tax appeal process.

SOUTH CAROLINA DEPARTMENT OF REVENUE

s/W. Hartley Powell  
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W. Hartley Powell, Director

June 16, 2021  
Columbia, South Carolina

## EXHIBIT 1

### Information to Include in an Assignment of Right to a Sales Tax Refund by a Retailer to the Purchaser.

An assignment of right to a sales tax refund under Code Section 12-60-470(C)(1)(b) is used when the purchaser has paid sales tax on a purchase to the retailer and the retailer subsequently remitted such tax to the Department. The Department recommends that the following information be included in an assignment of right of a sales tax refund provided by a retailer to a purchaser.

1. Name, address, and retail license number of the retailer.
2. The following (or similar) statement:

I, \_\_\_\_\_ (Owner or Authorized Employee) of \_\_\_\_\_ (Name of Retailer), hereby assign to \_\_\_\_\_ (Name of Purchaser) any and all rights which Retailer has to recover from the Department of Revenue the South Carolina sales tax paid on sales to Purchaser that was remitted to the Department of Revenue.

3. The assignment must specify the transaction(s) or time period(s) to which it applies.

For example, if the assignment concerns a specific transaction, the assignment must state the specific invoice date or invoice number to which it applies (e.g., “This assignment only applies to Invoice #3229, dated May 13, 2021”). If the assignment concerns multiple transactions, or a date range of transactions, the assignment must state the time periods to which it applies (e.g., “This assignment only applies to sales made to the purchaser from January 1, 2019 through April 30, 2021”).

4. The assignment includes a statement that the retailer agrees it has not filed and will not file a claim for refund on the sales taxes that are the subject of the assignment.
5. The assignment must be signed and dated by the owner or authorized employee of the retailer named in the assignment. See item 2 above.

Note: The assignment of right to a sales tax refund by a retailer to a purchaser is the most common assignment of the right to a refund with respect to sales and use tax. However, in rare circumstances involving use tax, a purchaser may assign his right to a use tax refund to a retailer under Code Section 12-60-470(C)(1)(a)(ii). A purchaser assigning his right to a use tax refund to a retailer may follow the above guidance and modify the above statements to assign his right to the use tax refund to the retailer.