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State of South Carolina  
Department of Revenue  
301 Gervais Street, P.O. Box 125, Columbia, South Carolina 29214  
Website Address: <http://www.sctax.org>

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SC REVENUE RULING #08-11

- SUBJECT:** Withdrawals from Inventory for Use in South Carolina or Outside of South Carolina  
(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 12-36-910(A) (2000)  
S. C. Code Ann. Section 12-36-1310 (2000; Supp. 2007)  
S. C. Code Ann. Section 12-36-1110 (Supp. 2007)  
S. C. Code Ann. Section 12-36-60 (2000)  
S. C. Code Ann. Section 12-36-110 (2000)  
S. C. Code Ann. Section 12-36-120 (2000)  
S. C. Code Ann. Section 12-36-90 (2000, Supp. 2007)  
S. C. Code Ann. Section 12-36-130 (2000, Supp. 2007)  
S. C. Code Ann. Section 12-36-2120(36) (2000)
- 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:** The purpose of a Revenue Ruling is to provide guidance to the public and to Department personnel. 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 It is the Department's position until superseded or modified by a change in statute, regulation, court decision, or another Departmental advisory opinion.

Question:

What is the application of the sales and use tax with respect to tangible personal property purchased at wholesale that is withdrawn from inventory and used or consumed in connection with the business, or used or consumed by the person withdrawing it, whether such tangible personal property is withdrawn, used or consumed within or without South Carolina?

## Conclusion:

Since a withdrawal, use, or consumption of tangible personal property purchased at wholesale each constitute a “retail sale,” any one such event occurring in South Carolina constitutes a “retail sale” within South Carolina and is subject to the tax based on the fair market value of the tangible personal property that is withdrawn, used or consumed in connection with the business or used or consumed by the person withdrawing it.

For example:

(1) If tangible personal property is withdrawn from inventory in South Carolina for use or consumption inside or outside of South Carolina, then the sales tax is due based on the fair market value of the tangible personal property since the withdrawal (“retail sale”) of the tangible personal property occurred within South Carolina. See Exhibit “A” for more details.

(2) If tangible personal property is withdrawn from inventory outside of South Carolina for use or consumption in South Carolina and then used and consumed in South Carolina, then the use tax is due based on the fair market value of the tangible personal property since the withdrawal outside of South Carolina constitutes a “purchase at retail” and the use or consumption of the tangible personal property occurred within South Carolina.

However, a credit under Code Section 12-36-1310(C) will be allowed against the South Carolina use tax for any tax legally due and paid in the other state on the withdrawal occurring in that state.

See Exhibit “A” for more details.

(3) If tangible personal property is transferred from inventory in South Carolina to an inventory outside of South Carolina where it will be held for sale, then no sales tax is due if any tangible personal property is subsequently withdrawn, used, or consumed outside of South Carolina since a withdrawal, use or consumption (“retail sale”) of the tangible personal property has not occurred in South Carolina. If, however, any tangible personal property is subsequently withdrawn from the inventory outside of South Carolina for use or consumption in South Carolina, see Example #2 above for guidance. See Exhibit “A” for more details

(4) If tangible personal property is transferred from inventory outside of South Carolina to an inventory in South Carolina where it will be held for sale, then the no sales tax is due until the tangible personal property is either sold at retail in South Carolina or is withdrawn, used or consumed (“retail sale”) in South Carolina. See Exhibit “A” for more details.

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 more detailed examples, see the attached charts in Exhibit “A” of this advisory opinion.**

Facts:

Tangible personal property is purchased at wholesale by a wholesaler or retailer for resale to retailers or consumers. The tangible personal property will be stored in inventory at a distribution facility, warehouse, or retail facility.

Some items in inventory will not be sold, but withdrawn from the inventory and sent to employees to personally use or consume. Examples include, but are not limited to, clothing, sporting equipment, or household items the employee will wear or use or consume. Other items in inventory will also not be sold, but withdrawn from the inventory and sent to employees to give away free of charge to customers as a promotion.

In some cases, the items will be withdrawn from inventory held in South Carolina and sent to employees outside of South Carolina to be used, consumed or given away as a promotion outside of South Carolina. In other cases, the items will be withdrawn from inventory held outside of South Carolina and sent to employees in South Carolina to be used, consumed or given away as a promotion in South Carolina.

Discussion:

Code Section 12-36-910(A) imposes the sales tax and states:

A sales tax, equal to [six] percent<sup>1</sup> of the gross proceeds of sales, is imposed upon every person engaged or continuing within this State in the business of selling tangible personal property at retail.

Code Section 12-36-1310(A) imposes the use tax and states:

A use tax is imposed on the storage, use, or other consumption in this State of tangible personal property purchased at retail for storage, use, or other consumption in this State, at the rate of [six] percent<sup>2</sup> of the sales

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<sup>1</sup> Beginning June 1, 2007, the total state sales and use tax rate increased to 6%. Code Section 12-36-1110, which increased the sales and use tax rate by 1% beginning June 1, 2007, states:

Beginning June 1, 2007, an additional sales, use, and casual excise tax equal to one percent is imposed on amounts taxable pursuant to this chapter, except that this additional one percent tax does not apply to amounts taxed pursuant to Section 12-36-920(A), the tax on accommodations for transients, nor does this additional tax apply to items subject to a maximum sales and use tax pursuant to Section 12-36-2110 nor to the sale of unprepared food which may be lawfully purchased with United States Department of Agriculture food coupons.

<sup>2</sup> See footnote #1.

price of the property, regardless of whether the retailer is or is not engaged in business in this State.

Code Section 12-36-60 defines the term “tangible personal property” and states:

“Tangible personal property” means personal property which may be seen, weighed, measured, felt, touched, or which is in any other manner perceptible to the senses. It also includes services and intangibles, including communications, laundry and related services, furnishing of accommodations and sales of electricity, the sale or use of which is subject to tax under this chapter and does not include stocks, notes, bonds, mortgages, or other evidences of debt. Tangible personal property does not include the transmission of computer database information by a cooperative service when the database information has been assembled by and for the exclusive use of the members of the cooperative service.

Based on the above, in order for the sales or use tax to apply, there must be a retail sale of tangible personal property.

Code Section 12-36-110, defines the terms “retail sale” and “sale at retail” to mean, in part:

Sale at retail and retail sale mean all sales of tangible personal property except those defined as wholesale sales. The quantity or sales price of goods sold is immaterial in determining if a sale is at retail.

\* \* \* \*

(1) The terms include:

\* \* \* \*

(c) the withdrawal, use, or consumption of tangible personal property by anyone who purchases it at wholesale, except:<sup>3</sup>

(i) withdrawal of tangible personal property previously withdrawn and taxed by such business or person,

(ii) tangible personal property which becomes an ingredient or component part of tangible personal property manufactured or compounded for sale,

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<sup>3</sup> The exceptions listed in this provision are not discussed in this document for purposes of simplifying the discussion.

(iii) tangible personal property used directly in manufacturing, compounding, or processing tangible personal property for sale,

(iv) materials, containers, cores, labels, sacks, or bags used incident to the sale and delivery of tangible personal property;

(v) a motor vehicle operated with a dealer, transporter, or manufacturer, or education license plate and used in accordance with the provisions of Section 56-3-2320 or 56-3-2330; (Emphasis added.)

Code Section 12-36-120 defines the terms “wholesale sale” and “sale at wholesale” to mean, in part, a sale of:

... tangible personal property to licensed retail merchants, jobbers, dealers, or wholesalers for resale, and do not include sales to users or consumers not for resale;

Based on the above, a “retail sale” includes:

(1) the withdrawal of tangible personal property by anyone who purchased it at wholesale;

(2) the use of tangible personal property by anyone who purchased it at wholesale; or,

(3) the consumption of tangible personal property by anyone who purchased it at wholesale.

Code Section 12-36-90 defines the term “gross proceeds of sales,” which is the basis for calculating the sales tax, in part as:

... the value proceeding or accruing from the sale, lease, or rental of tangible personal property.

(1) The term includes:

\* \* \* \*

(c) the fair market value of tangible personal property previously purchased at wholesale which is withdrawn from the business or stock and used or consumed in connection with the business or used or consumed by any person withdrawing it, except for:<sup>4</sup>

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<sup>4</sup> The exceptions listed in this provision are not discussed in this document for purposes of simplifying the discussion.

(i) withdrawal of tangible personal property previously withdrawn and taxed by such business or person;

(ii) tangible personal property which becomes an ingredient or component part of tangible personal property manufactured or compounded for sale;

(iii) tangible personal property replacing defective parts under written warranty contracts if:

(A) the warranty, maintenance, service, or similar contract is given without charge, at the time of original purchase of the defective property, or the tax was paid on the sale or renewal of warranty, maintenance, or similar service contract for tangible personal property of which the defective part was a component, whether or not such contract was purchased in conjunction with the sale of tangible personal property,

(B) in the case of a warranty, maintenance, service, or similar contract that is given without charge at the time of original purchase of the defective property, the tax was paid on the sale of the defective part or on the sale of the property of which the defective part was a component, and

(C) the warrantee is not charged for any labor or materials,

(iv) an automobile furnished without charge to a high school for use solely in student driver training programs;

(v) a new motor vehicle used by a dealer as a demonstrator.  
(Emphasis added.)

Based on the above, tangible personal property purchased at wholesale is subject to the sales tax based upon its fair market value<sup>5</sup> 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.

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<sup>5</sup> 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.

In considering these two provisions together, the statute does not require that withdrawal, use and consumption all take place in South Carolina. Since a withdrawal, use, or consumption of tangible personal property purchased at wholesale each constitute a “retail sale,” any one such event occurring in South Carolina constitutes a “retail sale” within South Carolina and is subject to the tax based on the fair market value of the tangible personal property that is or will be used or consumed in connection with the business or used or consumed by the person withdrawing it.

Furthermore, with respect to tangible personal property withdrawn outside of South Carolina for use or consumption in South Carolina, we must consider whether the sales tax or use tax is imposed and whether a credit allowed for a sales tax or use tax paid in another state on the withdrawal in that state?

As stated above, a withdrawal, use or consumption of tangible personal property by anyone who purchases it at wholesale is a retail sale.

Code Section 12-36-1310(A) imposes the use tax and states:

A use tax is imposed on the storage, use, or other consumption in this State of tangible personal property purchased at retail for storage, use, or other consumption in this State, at the rate of [six] percent<sup>6</sup> of the sales price of the property, regardless of whether the retailer is or is not engaged in business in this State. (Emphasis added)

Code Section 12-36-130 defines “sales price” in part as:

... the total amount for which tangible personal property is sold, without any deduction for the cost of the property sold, the cost of the materials used, labor or service cost, interest paid, losses, or any other expenses.

Code Section 12-36-1310(C) authorizes a credit for taxes paid in another state and reads:

When a taxpayer is liable for the use tax imposed by this section on tangible personal property purchased in another state, upon which a sales or use tax was due and paid in the other state, the amount of the sales or use tax due and paid in the other state is allowed as a credit against the use tax due this State, upon proof that the sales or use tax was due and paid in the other state. If the amount of the sales or use tax paid in the other state is less than the amount of use tax imposed by this article, the user shall pay the difference to the department. (Emphasis added.)

Therefore, since a withdrawal is a retail sale under Code Section 12-36-110, it also constitutes a “purchase at retail.”

Based on the above, the use or consumption of tangible personal property withdrawn outside of South Carolina is subject to the use tax when the withdrawal outside the state

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<sup>6</sup> See footnote #1.

is for the purpose of using or consuming the tangible personal property in South Carolina. The withdrawal outside the state is a “purchase at retail” under Code Section 12-36-1310(A) and Code Section 12-36-110 and the fair market value upon which the tax is based is the “sales price” (the amount for which tangible personal property was sold under Code Sections 12-36-110 and 12-36-130) for purposes of the South Carolina use tax.

In addition, a credit under Code Section 12-36-1310(C) will be allowed against the South Carolina use tax for any sales or use tax legally due and paid in the other state on the withdrawal occurring in that state.

Finally, with respect to tangible personal property withdrawn in South Carolina for use or consumption outside of South Carolina, we must consider whether Code Section 12-36-2120(36) is applicable.

Code Section 12-36-2120(36) exempts from the tax:

tangible personal property where the seller, by contract of sale, is obligated to deliver to the buyer, or to an agent or donee of the buyer, at a point outside this State or to deliver it to a carrier or to the mails for transportation to the buyer, or to an agent or donee of the buyer, at a point outside this State;

While a withdrawal is a retail sale under the law, a contract – an agreement between two or more parties – does not exist. Therefore, the exemption in Code Section 12-36-2120(36) does not apply to tangible personal property withdrawn in South Carolina for use or consumption outside of South Carolina by the business or person withdrawing it.

**The attached charts shown as Exhibit “A” should provide guidance.**

**Note: This advisory opinion concerns tangible personal property purchased at wholesale for resale, but withdrawn from inventory and used and consumed by the business or the person withdrawing it. It does not address tangible personal property manufactured for sale by a manufacturer but used and consumed by the manufacturer. For information on manufacturers using and consuming tangible personal property they manufacture, see Code Section 12-36-910(B)(4) and Code Section 12-36-1310(B)(4).**

SOUTH CAROLINA DEPARTMENT OF REVENUE

s/Ray N. Stevens  
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Ray N. Stevens, Director

July 18 \_\_\_\_\_, 2008  
Columbia, South Carolina



## **Exhibit A**

(The attached charts are intended to provide guidance for most taxpayers who withdraw, use or consume tangible personal property from inventory in connection with their business or who withdraw, use or consume tangible personal property from inventory for their personal use. It is not intended to provide all possible examples of the withdrawal, use, or consumption of tangible personal property from a taxpayer's inventory.)

**Situation #1 – Employee’s Personal Use: Tangible personal property has been purchased at wholesale by a wholesaler or retailer for resale to retailers or consumers. The tangible personal property will be stored in inventory at a distribution facility, warehouse, or retail facility. Some items in inventory will not be sold, but withdrawn from the inventory and sent to employees to personally use or consume. Examples include, but are not limited to, clothing, sporting equipment, or household items the employee will wear or use or consume.**

| Event in South Carolina   | Event Outside of South Carolina   | Taxability of Situation #1  |
|---|---|---|
| The tangible personal property is withdrawn from inventory in South Carolina and given to or shipped to an employee in South Carolina for use or consumption either in South Carolina or outside of South Carolina. | None  | The taxable event is the <u>withdrawal from inventory in South Carolina</u> and the sales tax is due based upon the fair market value of tangible personal property.  |
| The tangible personal property is withdrawn from inventory in South Carolina and shipped to an employee outside of South Carolina.  | The employee receives the tangible personal property outside of South Carolina and personally uses or consumes the tangible personal property either inside or outside of South Carolina. | The taxable event is the <u>withdrawal from inventory in South Carolina</u> and the sales tax is due based upon the fair market value of tangible personal property.  |
| The employee receives the tangible personal property from an inventory located outside of South Carolina and personally uses or consumes the tangible personal property in South Carolina.                          | The tangible personal property is withdrawn from inventory outside of South Carolina and shipped to an employee in South Carolina.  | The taxable event is the <u>use or consumption of the tangible personal property in South Carolina</u> and the use tax is due based upon the fair market value of tangible personal property. A credit under Code Section 12-36-1310(C) will be allowed against the SC use tax for any tax legally due and paid in the other state on the withdrawal in that state. |

**Situation #2 – Sent to Employee to Give Away as Promotion:** Tangible personal property has been purchased at wholesale by a wholesaler or retailer for resale to retailers or consumers. The tangible personal property will be stored in inventory at a distribution facility, warehouse, or retail facility. Some items in inventory will not be sold, but withdrawn from the inventory and sent to employees to give away free of charge to customers as a promotion. Examples include, but are not limited to, clothing, sporting equipment, or household items.

| Event in South Carolina  | Event Outside of South Carolina   | Taxability of Situation #2   |
|--|---|--|
| <p>The tangible personal property is withdrawn from inventory in South Carolina and shipped to an employee in South Carolina to give away to a customer located either inside or outside of South Carolina as a promotion. The employee receives the tangible personal property and gives it away as a promotion to a customer for the customer to use or consume.</p> | <p>None</p>   | <p>The taxable event is the <u>withdrawal from inventory in South Carolina</u> and the sales tax is due based upon the fair market value of tangible personal property.</p>  |
| <p>The tangible personal property is withdrawn from inventory in South Carolina and shipped to an employee outside of South Carolina to give away to a customer located either inside or outside of South Carolina as a promotion.</p>   | <p>The employee receives the tangible personal property outside of South Carolina and gives it away as a promotion to a customer located either inside or outside of South Carolina for the customer to use or consume inside or outside of South Carolina.</p> | <p>The taxable event is the <u>withdrawal from inventory in South Carolina</u> and the sales tax is due based upon the fair market value of tangible personal property.</p>  |
| <p>The employee receives the tangible personal property from an inventory located outside of South Carolina and gives it away as a promotion to a customer in South Carolina for the customer to use or consume in South Carolina.</p>   | <p>The tangible personal property is withdrawn from inventory outside of South Carolina and shipped to an employee in South Carolina to give away to a customer as a promotion.</p>   | <p>The taxable event is the <u>use or consumption of the tangible personal property in South Carolina (when the employee gave it away to a customer as a promotion)</u> and the use tax is due based upon the fair market value of tangible personal property. A credit under Code Section 12-36-1310(C) will be allowed against the SC use tax for any tax legally due and paid in the other state on the withdrawal in that state.</p> |

**Situation #3 – Sent to Employee to Sell, but Given Away as a Promotion:** Tangible personal property has been purchased at wholesale by a wholesaler or retailer for resale to retailers or consumers. The tangible personal property will be stored in inventory at a distribution facility, warehouse, or retail facility. Some items in inventory are transferred from inventory in the store, warehouse or distribution center to an employee outside of South Carolina. The employee maintains an inventory of tangible personal property for sale and has the authority to give away some inventory free of charge to customers as a promotion. Examples include, but are not limited to, clothing, sporting equipment, or household items.

| Event in South Carolina  | Event Outside of South Carolina  | Taxability of Situation #3   |
|--|--|--|
| The tangible personal property is transferred from inventory in the store or warehouse in South Carolina to an employee in South Carolina who maintains an inventory of tangible personal property for sale. The tangible personal property is withdrawn from the employee's inventory located in South Carolina and is given away as a promotion to a customer located either inside or outside of South Carolina for the customer to use or consume. | None   | The taxable event is the <u>withdrawal from the employee's inventory in South Carolina</u> and the sales tax is due based upon the fair market value of tangible personal property.  |
| The tangible personal property is transferred from inventory in the store or warehouse in South Carolina to an employee outside of South Carolina who maintains an inventory of the tangible personal property for sale.   | The tangible personal property is withdrawn from the employee's inventory located outside of South Carolina and is given away as a promotion to an out-of-state customer for the customer to use or consume outside of South Carolina. | The taxable event is the <u>withdrawal from the employee's inventory outside of South Carolina</u> . Since the withdrawal, use and consumption of the tangible personal property occurs outside of South Carolina, no sales or use tax is due. |
| The tangible personal property is withdrawn from the employee's inventory in South Carolina and is given away as a promotion to a customer located either inside or outside of South Carolina for the customer to use or consume inside or outside of South Carolina.  | The tangible personal property is transferred from inventory in the store or warehouse outside of South Carolina to an employee in South Carolina who maintains an inventory of the tangible personal property for sale.               | The taxable event is the <u>withdrawal from the employee's inventory in South Carolina</u> and the sales tax is due based upon the fair market value of tangible personal property.  |

**Situation #4 – Sent to Employee to Show or Display as a Sample:** Tangible personal property has been purchased at wholesale by a wholesaler or retailer for resale to retailers or consumers. The tangible personal property will be stored in inventory at a distribution facility, warehouse, or retail facility. Some items in inventory will not be sold, but withdrawn from the inventory and sent to employees as a sample to show or display to customers; however, **the sample will not be available for sale while being shown or displayed by the employee.** Examples include, but are not limited to, clothing, sporting equipment, or household items.

| Event in South Carolina  | Event Outside of South Carolina   | Taxability of Situation #4  |
|--|---|---|
| The tangible personal property is withdrawn from inventory in South Carolina and shipped to an employee in South Carolina as a sample to show or display to customers located either inside or outside of South Carolina. The sample is not available for sale while being shown or displayed by the employee. | None  | The taxable event is the <u>withdrawal from inventory in South Carolina</u> and the sales tax is due based upon the fair market value of tangible personal property. <sup>7</sup>   |
| The tangible personal property is withdrawn from inventory in South Carolina and shipped to an employee outside of South Carolina as a sample to show or display to customers located either inside or outside of South Carolina.  | The employee receives the tangible personal property outside of South Carolina and shows or displays the sample to customers located either inside or outside of South Carolina. The sample is not available for sale while being shown or displayed by the employee. | The taxable event is the <u>withdrawal from inventory in South Carolina</u> and the sales tax is due based upon the fair market value of tangible personal property. <sup>8</sup>   |
| The employee receives the tangible personal property from an inventory located outside of South Carolina and shows or displays the sample to customers located either inside or outside of South Carolina. The sample is not available for sale while being shown or displayed by the employee.                | The tangible personal property is withdrawn from inventory outside of South Carolina and shipped to an employee in South Carolina as a sample to show or display to customers located either inside or outside of South Carolina.                                     | The taxable event is the <u>use, consumption or storage of the tangible personal property in South Carolina</u> and the use tax is due based upon the fair market value of tangible personal property. A credit under Code Section 12-36-1310(C) will be allowed against the SC use tax for any tax legally due and paid in the other state on the withdrawal, use or consumption in that state. <sup>9</sup> |

<sup>7</sup> The sales tax is a transactional tax. The withdrawal from inventory is a transaction subject to the sales tax. If the sample is returned to the distribution facility, warehouse, or retail facility for sale, this sale is a second, separate and distinct transaction that is subject to the sales tax based on the discounted price provided the sale is a retail sale occurring in South Carolina.

<sup>8</sup> See footnote #6.

<sup>9</sup> The sales tax and the use tax are transactional taxes. The use, storage or consumption of the tangible personal property is a transaction subject to the use tax. If the sample is returned to the distribution facility, warehouse, or retail facility for sale, this sale is a second, separate and distinct transaction that is subject to the sales tax based on the discounted price provided the sale is a retail sale occurring in South Carolina.

**Situation #5 – Sent to Employee to Show or Display as a Sample:** Tangible personal property has been purchased at wholesale by a wholesaler or retailer for resale to retailers or consumers. The tangible personal property will be stored in inventory at a distribution facility, warehouse, or retail facility. Some items in inventory will not be sold, but withdrawn from the inventory and sent to employees as a sample to show or display to customers; however, the sample will be available for sale while being shown or displayed by the employee.<sup>10</sup> Examples include, but are not limited to, clothing, sporting equipment, or household items.

| Event in South Carolina   | Event Outside of South Carolina  | Taxability of Situation #5   |
|---|--|--|
| <p>The tangible personal property is shipped from the distribution facility, warehouse or retail facility in South Carolina to an employee in South Carolina as a sample to show or display to customers located either inside or outside of South Carolina. The sample is available for sale while being shown or displayed by the employee.</p> | <p>None</p>  | <p>Since the sample is available for sale, it is not subject to the tax unless otherwise used or consumed by the employee or business in South Carolina or until sold at retail in South Carolina. If used or consumed in South Carolina, <u>the taxable event is the use or consumption in South Carolina</u> and the sales tax is due based upon the fair market value of tangible personal property. If <u>sold at retail in South Carolina</u>, the sales tax is due on the “gross proceeds” of the sale.<sup>11</sup></p> |
| <p>The tangible personal property is shipped from the distribution facility, warehouse or retail facility in South Carolina to an employee outside of South Carolina as a sample to show or display to customers located either inside or outside of South Carolina.</p>  | <p>The employee receives the tangible personal property outside of South Carolina and shows or displays the sample to customers located either inside or outside of South Carolina. The sample is available for sale while being shown or displayed by the employee.</p> | <p>Since the sample is available for sale, it is not subject to the tax unless otherwise used or consumed by the employee or business in South Carolina or until sold at retail in South Carolina. If used or consumed in South Carolina, <u>the taxable event is the use or consumption in South Carolina</u> and the sales tax is due based upon the fair market value of tangible personal property. If <u>sold at retail in South Carolina</u>, the sales tax is due on the “gross proceeds” of the sale.<sup>12</sup></p> |

<sup>10</sup> The determination that tangible personal property is available for sale while being shown or displayed by an employee will be based on the facts and circumstance as supported by the taxpayer’s records. Factors to consider in making this determination include but are limited to, the taxpayer’s operational requirements or restrictions, whether the product is subsequently discounted when sold due to use (see “Note” below), the employees’ history of selling or not selling the samples. etc. If the facts and circumstances and the taxpayer’s records do not support that the tangible personal property is available for sale, the Department will apply the tax as set forth in Scenario #4.

<sup>11</sup> See footnote #6.

<sup>12</sup> See footnote #6.

**Situation #5 – Sent to Employee to Show or Display as a Sample – Continued:**

| Event in South Carolina   | Event Outside of South Carolina  | Taxability of Situation #5   |
|---|--|--|
| <p>The employee receives the tangible personal property from outside of South Carolina and shows or displays the sample to customers located either inside or outside of South Carolina. The sample is available for sale while being shown or displayed by the employee.</p> | <p>The tangible personal property is shipped from the distribution facility, warehouse or retail facility outside of South Carolina to an employee in South Carolina as a sample to show or display to customers located either inside or outside of South Carolina.</p> | <p>Since the sample is available for sale, it is not subject to the tax unless otherwise used or consumed by the employee or business in South Carolina or until sold at retail in South Carolina.</p> <p>If used or consumed in South Carolina, <u>the taxable event is the use or consumption in South Carolina</u> and the use tax is due based upon the fair market value of tangible personal property. A credit under Code Section 12-36-1310(C) will be allowed against the SC use tax for any tax legally due and paid in the other state on the withdrawal, use or consumption in that state.</p> <p>If <u>sold at retail in South Carolina</u>, the sales tax is due on the “gross proceeds” of the sale.<sup>13</sup></p> |

Note: In this Scenario #5, it states that tangible personal property sent to employees as a sample to show or display to customers is not subject to the tax if the sample is still available for sale while being shown or displayed by the employee, unless “otherwise used or consumed by the employee or business in South Carolina.” Examples of samples available for sales that are “otherwise used or consumed by the employee or business in South Carolina” include, but are not limited to (1) an employee who shows or displays the sample but also demonstrates how the product is used such as demonstrating the effectiveness of a vacuum cleaner, (2) an employee who shows and displays the sample but gives it away to the customer as a promotion or an enticement to buy the product, and (3) an employee who shows or displays the sample but also uses a sample for his own personal use. The determination as to whether samples that are available for sale are “otherwise used or consumed by the employee or business in South Carolina” will be based on the facts and circumstances.

<sup>13</sup> See footnote #8.