



STATE OF SOUTH CAROLINA
DEPARTMENT OF REVENUE

300A Outlet Pointe Blvd., Columbia, South Carolina 29210
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SC REVENUE RULING #16-8

SUBJECT: Exemptions for Sales of Seeds and Plants to Grow Food
(Sales and Use Tax)

EFFECTIVE DATE: Applies to all periods open under statute.

REFERENCES: S.C. Code Ann. Section 12-36-2120 (2014)
SC Regulation 117-337

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 a 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 It is the Department's position until superseded or modified by a change in statute, regulation, court decision, or another Department advisory opinion.

I. INTRODUCTION.

Questions have arisen concerning the application of the state sales and use tax to sales of vegetable seeds, fruit seeds, vegetable plants, and fruit plants. Many individuals purchase these items to grow food for personal consumption (e.g., in a home garden) while other individuals and businesses purchase these items to grow plants and produce to sell at a roadside stand, farmers market, or other venue.

Section 12-36-2120 provides a list of exemptions from the state sales and use tax. Section 12-36-2120(75) provides an exemption for unprepared foods, but it does not explicitly state whether seeds and plants are considered unprepared foods which qualify for the exemption. Section 12-36-2120(6) provides another exemption for sales of "seeds, or seedlings, or nursery stock, used solely in the production for sale of farm, dairy, grove, vineyard, or garden products..." The purpose of this advisory opinion is to address the application of the state sales and use tax to sales of vegetable seeds, fruit seeds, vegetable plants, and fruit plants, whether for personal use in growing food or for use solely in production for sale.

II. DISCUSSION.

A. Law.

Section 12-36-910(A) provides the general sales tax imposition and states:

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

Section 12-36-90 defines “gross proceeds” and states:

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;

* * *

Section 12-36-60 defines “tangible personal property” as “personal property which may be seen, weighted, measured, felt, touched, or which is in any other manner perceptible to the senses.”

Section 12-36-1310(A) provides the use tax imposition 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 of the sales price of the property, regardless of whether the retailer is or is not engaged in business in this State.²

Section 12-36-130 defines “sales price” 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.”

¹ Section 12-36-1110 imposes an additional 1% sales tax to the 5% general sales tax imposition in Section 12-36-910(A).

² Section 12-36-1110 imposes an additional 1% use tax to the 5% use tax imposition in Section 12-36-1310(A).

Seeds and plants are tangible personal property for the purposes of the state sales and use tax because they may be seen, weighted, measured, felt and touched. Therefore, the gross proceeds of sales, or sales price, of vegetable seeds, fruit seeds, vegetable plants, and fruit plants are subject to the state sales and use tax, unless an exemption applies.

B. Unprepared Food Exemption For Personal Use And Consumption.

Section 12-36-2120 contains a list of exemptions from the sales and use tax imposed by Sections 12-36-910(A) and 12-36-1310(A), respectively. Section 12-36-2120(75) provides an exemption for the gross proceeds of sales, or sales price, of “unprepared food that lawfully may be purchased with United States Department of Agriculture food coupons...”³ It is not clear from this language whether this exemption applies to sales of vegetable seeds, fruit seeds, vegetable plants, and fruit plants for personal use and consumption. However, SC Regulation 117-337 was promulgated to provide guidance as to the application of Section 12-36-2120(75). This regulation defines “eligible food” and provides, in part:

For purposes of this regulation, the term ‘eligible food’ is food eligible for the exemption under Code Section 12-36-2120(75) that will be defined to include and exclude the following:

(A) Foods eligible for the exemption under Code Section 12-36-2120(75) include:

* * *

(2) Seeds and plants intended to grow food (not birdseed or seeds to grow flowers)...

See SC Regulation 117-337.1(A)(2).

Vegetable seeds, fruit seeds, vegetable plants, and fruit plants (e.g., strawberry plants, peach trees and apple trees)⁴ intended to grow food are considered eligible food under SC Regulation 117-337.1. Therefore, sales of vegetable seeds, fruit seeds, vegetable plants, and fruit plants (e.g., strawberry plants, peach trees and apple trees)⁵ which are used to grow food for personal use and consumption (e.g., in a home garden) are exempt from the state sales and use tax as unprepared food under Section 12-36-2120(75).⁶

C. Exemption For Use Solely In Production For Sale.

While the unprepared food exemption applies to sales of vegetable seeds, fruit seeds, vegetable plants, and fruit plants for personal use and consumption, Section 12-36-2120(6) provides an exemption for sales to persons in the business of growing food and plants for sale. This provision exempts the gross proceeds of sales, or sales price, of “seeds, or seedlings, or nursery stock, used solely in the production for sale of farm, dairy, grove, vineyard, or garden products...”

³ Section 12-36-2120(75) says that this exemption only applies to the state sales and use tax imposed by Chapter 36. Local sales and use taxes apply unless local tax law specifically exempts sales of unprepared food.

⁴ Fruit plants do not include ornamental trees or other plants.

⁵ See footnote #4.

⁶ Seeds for flowers and other ornamental plants, however, are subject to the state sales and use tax if sold for personal use (e.g., in a home garden).

Therefore, sales of vegetable seeds, fruit seeds, vegetable plants, and fruit plants (e.g., strawberry plants, peach trees and apple trees)⁷ which are used solely in production for sale (e.g., for sale at a roadside stand or farmers market) of farm, dairy, grove, vineyard, or garden products are exempt from the state sales and use tax under Section 12-36-2120(6).⁸

III. CONCLUSION.

Sales of vegetable seeds, fruit seeds, vegetable plants, and fruit plants to individuals to grow food in a home garden for personal use and consumption are exempt from the state sales and use tax as unprepared food items under Section 12-36-2120(75) and SC Regulation 117-337.1. In addition, sales of these same items to individuals or businesses for use solely in production of food for sale at a roadside stand, farmers market, or other venue are exempt from the state sales and use tax under Section 12-36-2120(6).

SOUTH CAROLINA DEPARTMENT OF REVENUE

s/Rick Reames III
Rick Reames III, Director

July 27, 2016
Columbia, South Carolina

⁷ See footnote #4.

⁸ Seeds for flowers and other ornamental plants which are sold to grow plants for sale are also exempt from the state sales and use tax under Section 12-36-2120(6).