



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 RULING #20-4

SUBJECT: Tariffs and Tariff Surcharges
(Sales and Use Taxes)

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

REFERENCES: S.C. Code Ann. Section 12-36-90 (2014)
S.C. Code Ann. Section 12-36-130 (2014)
S.C. Code Ann. Section 12-36-910 (2014)
S.C. Code Ann. Section 12-36-1310 (2014)

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 It is the Department's position until superseded or modified by a change in statute, regulation, court decision, or another Department advisory opinion.

QUESTIONS

1. Is a charge, or an increase in the sales price, by a retailer of tangible personal property for the cost of a tariff imposed by the federal government includable in "gross proceeds of sales" or "sales price" and subject to the sales and use tax?
2. Is the cost of a tariff imposed directly on the purchaser subject to sales or use tax when the property is purchased for the purchaser's own use?

FACTS

Some retailers are increasing the sales price of tangible personal property sold to consumers or are adding a separate fee to a customer's invoice in order to recover some or all of the cost of paying a tariff directly to the federal government or to a supplier who passed some or all of the cost of the tariff on to the retailer.

In other cases, individuals or businesses that are purchasing tangible personal property for their own use from businesses in a foreign country must pay a tariff on the property directly to the federal government as the importer of the property.

Questions have arisen as to the applicability of sales and use taxes to the cost of tariffs.

LAW AND ANALYSIS

Code Section 12-36-910(A) imposes a sales tax upon every person engaged or continuing within this State in the business of selling tangible personal property¹ at retail. Code Section 12-36-1310(A) imposes a use tax 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, regardless of whether the retailer is or is not engaged in business in this State.

The sales tax is imposed on the “gross proceeds of sales” as defined in Code Section 12-36-90. The use tax is imposed on the “sales price” as defined in Code Section 12-36-130. They are essentially both defined as the total proceeds or “value proceeding or accruing from the sale, lease, or rental of tangible personal property,” without deductions for expenses. Expenses that are not deducted include: the cost of goods sold; the cost of materials, labor, or service; interest; losses; transportation; or manufacturers or importers excise taxes imposed by the United States. However, “gross proceeds of sale” and “sales price” do not include the amount of any tax imposed by the United States with respect to retail sales, except for manufacturers or importers excise taxes.

Tariffs (or duties) are taxes imposed by the federal government on the importation of goods and are collected by U.S. Customs and Border Protection. The Code of Federal Regulations defines “duties” and “importers” as follows:

Duties. “Duties” means Customs duties and any internal revenue taxes which attach upon importation.

* * *

Importer. “Importer” means the person primarily liable for the payment of any duties on the merchandise, or an authorized agent acting on his behalf.²

The Code of Federal Regulations also provides that tariffs are imposed upon imported goods, and that the importer is personally liable to the United States for tariffs.³

Based on the above, the United States government imposes tariffs (duties) on certain imported goods. It is not imposed “with respect to retail sales.” A tariff is a transaction between the importer and the federal government. The importer is personally liable for the tariff.⁴ The

¹ The term “tangible personal property” for sales and use tax purposes is defined in Code Section 12-36-60 and includes items such as communications and laundry services not typically thought of as tangible personal property.

² 19 CFR §101.1.

³ 19 CFR §141.1(b)(1).

⁴ 19 CFR §141.1(b)(1).

determination of whether the tariff amount is includable in “gross proceeds of sales” or “sales price” and therefore subject to sales and use tax,⁵ depends on who is responsible for the payment of the tariff based on the facts of the transaction – the purchaser or someone other than the purchaser.⁶

When someone other than the purchaser, often the seller, is the importer and responsible for the cost of the tariff, and the cost of some or all of the tariff is passed on to the purchaser, the amount which is passed on to the purchaser is included in the “gross proceeds of sales” or “sales price” of the sales or use tax.

When the purchaser is the importer and personally liable for the tariff, the purchase of the product from the seller and the payment of the tariff by the purchaser directly to the federal government are two separate and distinct transactions. Because tariffs are not “tangible personal property” as defined in Code Section 12-36-60, they are not subject to sales and use tax when they are not included in the transaction involving the taxable sale of tangible personal property.

CONCLUSIONS

1. As provided in Code Sections 12-36-90 and 12-36-130, the sales and use taxes are imposed on the total proceeds of a sale; it is the sum total of all consideration received by a retailer in conjunction with the retail sale of tangible personal property, without any deductions, unless specifically provided.⁷

Accordingly, a charge, or an increase in the sales price, by a retailer of tangible personal property for the cost, or any part of the cost, of a tariff imposed by the federal government is includable in “gross proceeds of sales” or “sales price” and subject to the sales and use tax, unless the retail sale of the tangible personal property is otherwise exempt from the sales and use tax (e.g., a sale to the federal government or a sale for resale).

Example: Retailer Increases Retail Sales Price Due to Tariff

South Carolina retailer A purchases product X from a foreign entity for \$50,000. The product is subject to a 10% tariff (\$5,000) upon importation into the United States. Retailer A, the importer, pays the \$5,000 tariff cost to the federal government when the product is imported.

⁵ The transaction could be subject to either sales tax or use tax, depending on whether a representative of the seller is physically present in South Carolina and participates in the transaction. See SC Regulation 117-334.

⁶The importer may be the: (1) consignee, (2) importer of record, (3) actual owner of the merchandise, or (4) transferee of the merchandise. See 19 CFR §101.1.

⁷ Code Section 12-36-90, defining “gross proceeds of sales,” and Code Section 12-36-130, defining “sales price,” provide certain exclusions from the measure of sales and use taxes.

Retailer A then sells product X at retail. The customer's invoice states:

<u>Item</u>	<u>Amount</u>
Imported Product X	\$60,000
Tariff Surcharge	<u>\$ 2,000</u>
Total Sales Price	\$62,000

The "gross proceeds of sales" for the retail transaction, upon which the sales tax is calculated, is \$62,000. Retailer A remits South Carolina sales tax based on \$62,000. No deduction is allowed for the portion of the cost (\$2,000) of the tariff paid by retailer A to the federal government and passed on to the purchaser.

The answer is the same if the product is sold for \$62,000 and the tariff amount is not listed as a separate line item on the customer's invoice.

2. When a product is purchased from a foreign entity by the person who will use or consume the product, the determination of whether the cost of a tariff is includable in the measure or basis of the sales or use tax depends on whether the payment of the tariff was the responsibility of the purchaser or someone else (i.e., whether the purchaser is the "importer").

Tariff is the Responsibility of the Purchaser: Where the purchaser is the importer and, therefore, personally liable for the tariff, the cost of the tariff is not includable in the "gross proceeds of sales" or "sales price" of the sales or use tax because the purchase of the item and the payment of the tariff by the purchaser to the federal government are two separate and distinct transactions.⁸ The purchaser's sales or use tax is based only on gross proceeds of sales or sales price of the transaction with the seller. It does not include the cost of the tariff owed and paid by the purchaser to the federal government.

Tariff is the Responsibility of Someone other than the Purchaser: Where, for example, the seller is the importer and a portion or all of the cost of the tariff is recovered from the purchaser, the charge is includable in "gross proceeds of sales" or "sales price" and subject to the sales and use tax, unless the retail sale of the tangible personal property is otherwise exempt from the sales and use tax.

Example: Tariff Imposed on the User of the Property and the Sale is Not Exempt from Sales and Use Taxes

South Carolina retailer B purchases product Z from a foreign entity for \$100,000 for use in its administrative offices (i.e., the product is not purchased for resale). The product is subject to a 25% tariff (\$25,000) upon importation into the United States. Retailer B, the importer, pays the \$25,000 tariff cost to the federal government when the product is imported.

⁸ The tariff in this example is a transaction between the purchaser (importer) and the federal government.

The retail purchase of the tangible personal property and the payment of the tariff by retailer B directly to the federal government are two distinct transactions (i.e., the tariff is paid on the importation of the product; it is not part of the retail transaction). As such, the measure of the South Carolina use tax to be paid by retailer B to the Department is \$100,000 (the sales price of the product). Because the \$25,000 tariff is not a part of the retail purchase of product Z, it is not included in the “sales price” of the transaction and is not subject to the use tax. Retailer B remits the South Carolina use tax to the Department.

SOUTH CAROLINA DEPARTMENT OF REVENUE

s/W. Hartley Powell

W. Hartley Powell, Director

October 10, 2020
Columbia, South Carolina