



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 #21-8

SUBJECT: Onetime Sales of Airplanes and Boats
(Sales Tax and Casual Excise Tax)

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

MODIFIES: SC Revenue Ruling #20-1

REFERENCES: S.C. Code Ann. Section 12-36-910 (2014)
S.C. Code Ann. Section 12-36-1710 (Supp. 2020)
S.C. Code Ann. Section 12-36-2110 (Supp. 2020)
SC Regulation 117-322 (2012)
SC Regulation 117-334 (2012)

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 It is the Department's position until superseded or modified by a change in statute, regulation, court decision, or another Departmental advisory opinion.

INTRODUCTION

Questions have arisen concerning the tax implications of sales of an airplane or boat in South Carolina when a seller comes to South Carolina for the sole purpose of making a onetime retail sale of an airplane or boat. The purchaser takes physical possession in South Carolina and may either maintain possession in South Carolina or immediately take the airplane or boat out of South Carolina.

Purchasers include South Carolina resident and nonresident individuals acquiring items for personal use and in-state and out-of-state companies purchasing items for their own business use. The airplane or boat may be titled, registered and/or licensed in the state of the individual's domicile, the company's principal place of business, or with the federal government (e.g., in the case of certain boats, with the U.S. Coast Guard).

LAW AND DISCUSSION

Sales Tax

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

A sales tax, equal to five 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.

Code Section 12-36-1110 increased the general sales tax rate to 6% from 5%. However, this additional 1% does not apply to items subject to a maximum sales tax pursuant to Code Section 12-36-2110. Code Section 12-36-2110(A)(1) and (4) establishes a maximum sales tax of \$500 on each sale, rental, and lease of an aircraft or a boat.

In International Harvester Co. v. Wasson, 281 S.C. 458, 460-61 (1984), the South Carolina Supreme Court identified the following three requirements for a transaction to be subject to the sales tax:

- (1) A person must be in the business of making retail sales in South Carolina.

The term business “includes all activities, with the object of gain, profit, benefit, or advantage...” Code Section 12-36-20.

- (2) The sale must be a retail sale.

Code Section 12-36-110 says that retail sales are all sales except those defined as wholesale sales; and Code Section 12-36-120 says wholesale sales do not include sales to users or consumers.

- (3) The sale must take place within South Carolina.

Code Section 12-36-100 defines a “sale” as “any transfer, exchange, or barter, conditional or otherwise, of tangible personal property for a consideration including ... a rental, lease, or other form of agreement; ...” If the transfer of tangible personal property, i.e., delivery, takes place in South Carolina, the sale takes place in this state.

Therefore, the sales tax is imposed with respect to all retail sales, rentals, and leases of tangible personal property in South Carolina by persons engaged in the business of selling, renting, or leasing tangible personal property at retail in this state. If the tangible personal property is delivered to the purchaser in South Carolina, the sales tax applies even if the purchaser takes the item out-of-state. See SC Regulation 117-334.

In addition, sales, rentals, and leases of airplanes or boats are subject to the sales and use tax at a rate of 5%, but no more than \$500. A lease must be in writing and specifically state the term of, and remain in force for, a period in excess of 90 continuous days to qualify for the maximum

tax.¹ Sales, rentals, and leases of items subject to a maximum tax are exempt from local sales and use taxes administered and collected by the Department.

Casual Excise Tax

Regulation 117-322 provides that “[c]asual or isolated sales by persons not engaged in the business of selling tangible personal property at retail are not subject to the sales or use tax.” The regulation defines “casual” as “occurring, encountered, acting or performed without regularity or at random;” and the terms “occasional” and “isolated” mean “occurring alone or once, an incident not likely to recur, sporadic.”²

While these transactions are not subject to sales tax, Code Section 12-36-1710 imposes a casual excise tax upon the issuance of a certificate of title or other proof of ownership for every (1) boat, (2) boat motor, or (3) airplane required to be registered, titled, or licensed. It only applies to the last sale before the application for title. See Code Sections 12-36-1710(A) and 12-36-1720. An individual or non-retailer who sold the item is not responsible for collecting the casual excise tax. The purchaser is liable for paying the casual excise tax. Further, airplanes or boats are excluded from the casual excise tax where a sales or use tax has been paid on the transaction necessitating the transfer.³

Code Section 12-36-1710 imposes the casual excise tax at a rate of 5% of the “fair market value” of the airplane or boat purchased. (See Code Section 12-36-1710(C) for the definition of “fair market value”.) Code Section 12-36-1110 increased the casual excise tax rate to 6% from 5%. However, this additional 1% does not apply to items subject to a maximum casual excise tax pursuant to Code Section 12-36-2110. Code Section 12-36-2110(A)(1) and (4) establishes a maximum casual excise tax for each sale, rental, and lease of an aircraft or boat. As such, sales, rentals, and leases of airplanes or boats are subject to the casual excise tax at a rate of 5%, but no more than \$500. A lease must be in writing and specifically state the term of, and remain in force for, a period in excess of 90 continuous days to qualify for the maximum tax.⁴ Also, as stated above, sales, rentals, and leases of maximum tax items are exempt from local sales and use taxes administered and collected by the Department.⁵

Title or Other Proof of Ownership Issued by the Federal Government

Code Section 50-23-20 requires all watercraft held or principally used in South Carolina to be titled by the SC Department of Natural Resources (“DNR”). However, Code Section 50-23-30 provides an exemption from this titling requirement for watercraft documented with the United States Coast Guard. In addition, South Carolina Attorney General Opinion #83-33 (July 8, 1983)

¹ Code Section 12-36-2110(A)(2). In addition, the sales or use tax applies to each renewal of the lease and the maximum tax for that renewal will only apply if (1) the lease renewal is in writing and (2) the lease renewal specifically states a term of, and remains in force for, a period in excess of 90 continuous days.

² Note: Commission Decision #87-145 addressed casual and isolated sales under a prior version of SC Regulation 117-322 (the sales and use tax regulations were reorganized in 2002) and said that “[i]f several sales are made, the seller in all likelihood has become engaged in the business of selling and thus within the terms of § [12-36-910].”

³ Code Section 12-36-1710(B)(4).

⁴ Code Section 12-36-2110(A)(2).

⁵ In addition, while Code Section 12-36-1710 imposes a casual excise tax on boats and airplanes, there is no law that authorizes counties, municipalities, or other local governments to impose a local casual excise tax.

addressed a question of whether South Carolina can impose the casual excise tax on a certificate of title or other proof of ownership issued by the U.S. Commissioner of Customs for a vessel. In finding that the casual excise tax may not be imposed, the opinion cited the exemption in a prior version of Code Section 50-23-30⁶ and further said:

In United States v. Livingston, 179 F. Supp. 9, affirmed 364 U.S. 855, 80 S. Ct. 1611, 4 L. Ed. 2d 1719, it was stated that:

'The doctrine of mutual immunity of state and of nation from taxation by the other, enunciated by Chief Justice Marshall in M'Culloch v. State of Maryland, 4 Wheat. 316, 4 L. Ed. 579, has not lost vitality with age. If, at times, it has seemed that 'the line between the taxable and the immune has been drawn by an unsteady hand,' the basic principle that the United States, its property, its essential functions and activities are not subjects of taxation by the states has not been questioned in modern times.'

Under such, the State cannot impose a tax upon the issuance by the United States of the certificate of documentation and registry. ... The casual excise tax is not applicable to the documentation and registry issued by the United States Customs office.

Based on the above, the casual excise tax does not apply to the issuance of a title, other proof of ownership, or other documentation for a boat by a federal government agency, such as the U.S. Coast Guard or U.S. Customs and Border Protection.⁷

In addition, the SC Aeronautics Commission has informed the Department that airplanes in South Carolina are registered, titled, and licensed by the Federal Aviation Administration ("FAA"), not by the SC Aeronautics Commission. The FAA became a component of the U.S. Department of Transportation in 1967 pursuant to the Department of Transportation Act (49 U.S.C. 106). Since the Department of Transportation is part of the federal government, for the same reasons stated above, the casual excise tax does not apply to the FAA's issuance of a title or other proof of ownership for an airplane in South Carolina.

EXAMPLES

The examples provided below illustrate the applicability of the maximum sales and use tax and casual excise tax to onetime retail sales of airplanes or boats in South Carolina. Since airplanes or boats are maximum tax items, local sales and use taxes administered by the Department on behalf of local jurisdictions do not apply to the following transactions.

⁶ Since the issuance of South Carolina Attorney General Opinion #83-33, the exemption cited in the prior version of Code Section 50-23-30 has been modified but is substantially the same.

⁷ The U.S. Coast Guard and U.S. Customs and Border Protection are federal agencies within the U.S. Department of Homeland Security. U.S. Coast Guard Vessel Documentation is a national form of boat registration. Documented vessels do not have titles; they maintain Certificates of Documentation that expire in 1-5 years from issuance. See <https://unitedstatesvessel.us/certificate-of-documentation/>.

Example 1 – Sale by Retailer to South Carolina Company for Use in South Carolina

Facts: A retailer located in State X flies an airplane to South Carolina for the sole purpose of selling and delivering the airplane to a South Carolina company for its own use in providing aerial tours in South Carolina. The airplane is titled by the FAA in the South Carolina company's name.

Conclusion: This is a retail transaction subject to South Carolina sales tax (5% rate but no more than \$500) since the retailer is engaged in the business of selling tangible personal property in South Carolina to the end user, and the sale (i.e., delivery) took place in South Carolina.

The result is the same in this example if the retailer sells and delivers a boat to the South Carolina company for its own use in providing boat tours.

Example 2 – Sale by Retailer to Nonresident Individual for Use Outside of South Carolina

Facts: A retailer located in State X flies an airplane to South Carolina for the sole purpose of selling and delivering the airplane to an individual purchaser from State Y for personal use in State Y. The airplane is titled by the FAA in the individual purchaser's name.

Conclusion: This is a retail transaction subject to South Carolina sales tax (5% rate but no more than \$500) since the retailer is engaged in the business of selling tangible personal property in South Carolina to the end user, and the sale (i.e., delivery) took place in South Carolina.

The result is the same in this example if the retailer sells and delivers a boat to the individual purchaser for personal use in State Y.

Example 3 – Sale by Nonretailer to South Carolina Company for Use in South Carolina

Facts: A nonretailer located in State X flies an airplane to South Carolina for the sole purpose of selling and delivering the airplane to a South Carolina company for its own use in providing aerial tours in South Carolina. The airplane is titled by the FAA in the South Carolina company's name.

Conclusion: This transaction is not subject to sales tax since the airplane was purchased from a person not engaged in the business of selling tangible personal property at retail (i.e., a nonretailer). In addition, the casual excise tax does not apply since the airplane was titled by a federal government agency, the FAA.

The result is the same in this example if the nonretailer sells and delivers a boat to the South Carolina company for its own use in providing boat tours in South Carolina, and the boat is registered with a federal government agency (e.g., the U.S. Coast Guard) in the South Carolina company's name. However, if the boat is titled with DNR, and not registered with the federal government, the South Carolina company must pay the casual excise tax (5% rate but no more than \$500).

Example 4 – Sale by Nonretailer to Nonresident Individual for Use Outside of South Carolina

Facts: A nonretailer located in State X flies an airplane to South Carolina for the sole purpose of selling and delivering the airplane to an individual purchaser from State Y for personal use in State Y. The airplane is titled by the FAA in the individual purchaser’s name.

Conclusion: This transaction is not subject to sales tax since the airplane was purchased from a person not engaged in the business of selling tangible personal property at retail (i.e., a nonretailer). In addition, the casual excise tax does not apply since the airplane was titled by a federal government agency, the FAA.

The result is the same in this example if the nonretailer sells and delivers a boat to the individual purchaser for personal use in State Y and the boat is titled by State Y or registered with a federal government agency (e.g., the U.S. Coast Guard) in the individual purchaser’s name.

NOTE: If a retailer comes to South Carolina for the sole purpose of making a onetime sale of a airplane or boat, and the retailer is not engaged in multiple retail sales transactions in South Carolina, then the Department will allow the retailer or purchaser to report and remit the sales tax due on the transaction using Form ST-236, “Casual Excise or Use Tax Return.” This will allow the retailer to make that onetime sale without having to register with the Department and file monthly returns. However, if the retailer makes multiple sales of airplanes or boats in South Carolina, the retailer is required to obtain a retail license, remit sales tax, and file monthly sales and use tax returns.

SOUTH CAROLINA DEPARTMENT OF REVENUE

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

June 10 _____, 2021
Columbia, South Carolina