



301 Gervais Street, P.O. Box 125, Columbia, South Carolina 29214

SC REVENUE RULING #92-10

SUBJECT: Transfers Subject To the Casual Excise Tax
(Casual Excise Tax)

TAX ANALYST: Steve Hallman

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

SUPERSEDES: All previous documents and any oral directives in conflict herewith.

REFERENCE: S.C. Code Ann. Section 12-36-100 (Supp. 1991)
S.C. Code Ann. Section 12-36-1310 (Supp. 1991)
S.C. Code Ann. Section 12-36-1710 (Supp. 1991)
S.C. Code Ann. Section 12-36-1720 (Supp. 1991)

AUTHORITY: S.C. Code Ann. Section 12-4-320 (Supp. 1991)
SC Revenue Procedure #87-3

SCOPE: A Revenue Ruling is the Commission's official interpretation of how tax law is to be applied to a specific set of facts. A Revenue Ruling is public information and remains a permanent document until superseded by a Regulation or is rescinded by a subsequent Revenue Ruling.

Question:

What transfers are subject to the casual excise tax imposed by Code Section 12-36-1710?

Facts:

Many motor vehicles, motorcycles, boats, motors, and airplanes are titled or registered in South Carolina where a sales or use tax has been paid on the transaction necessitating the transfer. Frequently, however, motor vehicles, motorcycles, boats, motors, or airplanes are titled or registered in this State and a sales or use tax has not been paid on the transaction necessitating the transfer. In the latter case, there has been some confusion as to whether to impose the casual excise tax under certain conditions (e.g. property which has been used substantially in another state by the owner thereof, or transferred as a gift or prize).

Discussion:

Code Section 12-36-1710(A) imposes the casual excise tax and reads:

In addition to all other fees prescribed by law there is imposed an excise tax for the issuance of every certificate of title, or other proof of ownership, for every motor vehicle, motorcycle, boat, motor, or airplane, required to be registered, titled, or licensed. The tax is five percent of the fair market value of the motor vehicle, motorcycle, airplane, boat, and motor.

Code Section 12-36-1710(B) states, in part:

Excluded from the tax are:

- (1) motor vehicles, motorcycles, boats, motors, or airplanes:
 - (a) transferred to members of the immediate family;
 - (b) transferred to a legal heir, legatee, or distributee;
 - (c) transferred from an individual to a partnership upon formation of a partnership, or from a stockholder to a corporation upon formation of a corporation;
 - (d) transferred to a motor vehicle or motorcycle dealer licensed under Section 56-3-2310 for the purpose of resale;
 - (e) transferred to a financial institution for the purpose of resale;
 - (f) transferred as a result of repossession to any other secured party, for the purpose of resale;
- (2) the fair market value of a motor vehicle, motorcycle, boat, motor, or airplane, transferred to the seller or secured party in partial payment;
- (3) gross proceeds of transfers of motor vehicles, motorcycles, or airplanes specifically exempted by Section 12-36-2120 from the sales or use tax;
- (4) motor vehicles, motorcycles, boats, motors, or airplanes, where a sales or use tax has been paid on the transaction necessitating the transfer....

Code Section 12-36-1720 reads "[t]he excise tax applies only to the last sale before the application for title."

In summary, the casual excise tax is imposed upon the issuance of a certificate of title or other proof of ownership for motor vehicles, motorcycles, boats, motors, or airplanes, unless specifically excluded from the tax (e.g. when a sales or use tax has been paid on the sale necessitating the transfer of title). Also, there must have been a sale which necessitated the transfer of title of such property in order to impose the tax.

Code Section 12-36-100 defines the terms "sale" and "purchase" to mean "any transfer, exchange, or barter, conditional or otherwise, of tangible personal property for a consideration."

Finally, with respect to purchases made outside South Carolina, we must consider the State use tax. Code Section 12-36-1310 states, in part:

- (A) 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 five percent of the sales price of the property, regardless of whether the retailer is or is not engaged in business in this State.

* * * *

- (C) 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 of payment of the sales or use tax. The provisions of this section do not apply if the state in which the property was purchased does not allow substantially similar tax credits for tangible personal property purchased in this 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 commission.

Conclusion:

I. PURCHASES MADE WITHIN SOUTH CAROLINA

The casual excise tax applies to the issuance of every certificate of title, or other proof of ownership, for motor vehicles, motorcycles, boats, motors, and airplanes purchased in South Carolina if a sales tax has not been paid on the transaction necessitating the transfer of title. (See Item III below, and §12-36-1710(B) for exclusions.)

II. PURCHASES MADE OUTSIDE SOUTH CAROLINA

Purchases From Retailers:

The use tax applies to the storage, use, or other consumption in this State of motor vehicles, motorcycles, boats, motors, or airplanes purchased from retailers located outside South Carolina for storage, use, or other consumption in this State.

If a sales or use tax was due and paid in another state on such purchases, a credit against the South Carolina use tax is allowed if the other state allows similar credit for property purchased in this State.

Note: The use tax does not apply to property purchased from retailers located outside South Carolina if the property is used substantially outside this State by the purchaser before being stored, used, or consumed in this State.

Purchases From Non-Retailers:

The casual excise tax applies to the issuance of every certificate of title, or other proof of ownership, for motor vehicles, motorcycles, boats, motors, and airplanes purchased outside South Carolina from non-retailers if a sales or use tax has not been paid on the transaction necessitating the transfer of title.

Note: The casual excise tax does not apply to property purchased outside South Carolina if the property has been substantially used outside this State by the purchaser before being titled, registered, or licensed in South Carolina. (See Item III below, and §12-36-1710(B) for exclusions.)

III. GIFTS AND PRIZES

The casual excise tax does not apply to property transferred as a gift or prize in that there has not been a sale to the person receiving the property. (See §12-36-1710(B) for exclusions.)

SOUTH CAROLINA TAX COMMISSION

s/A. Crawford Clarkson Jr.
A. Crawford Clarkson, Jr., Chairman

s/T. R. McConnell
T. R. McConnell, Commissioner

s/James M. Waddell Jr.
James M. Waddell, Jr., Commissioner

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