

117-300 Retail License

117-300.1. Doing Business in South Carolina.

117-300.2. Vending and other Coin-Operated Machines Dispensing Tangible Personal Property.

117-300.3. Operation of Deceased Licensed Retailer's Business by Personal Representative of His Estate.

117-300.4. Application for Transfer.

117-300.5. Fairs, Carnivals, Concessionaires at Athletic Stands and Other Public Exhibitions.

117-300.6. Partnership.

117-300 Retail License.

As a condition precedent to doing business in this state, every retailer shall obtain a retail license for each retail outlet.

117-300.1. Doing Business in South Carolina.

Every retailer making sales of tangible personal property for storage, use or other consumption in this state, who:

1. Maintains a place of business;
2. Qualifies to do business;
3. Solicits and receives purchases or orders by agent or salesman

must obtain from the department a retail license.

117-300.2. Vending and other Coin-Operated Machines Dispensing Tangible Personal Property.

For the purpose of determining the licenses required by persons engaged in the business of operating vending or coin-operated machines dispensing cigarettes and soft drinks in closed containers in this state, each point from which the service for such machines or other tangible personal property originates, shall be considered to be a retail outlet and a retail license must be obtained for each such point of service.

117-300.3. Operation of Deceased Licensed Retailer's Business by Personal Representative of His Estate.

The personal representative of the estate of a deceased licensed retailer may, upon filing with the department a certified copy of Letters Testamentary or Letters of Administration, as the case may be, and upon the approval of the department, continue the operation of the business covered by the license for purposes only of administering the estate.

117-300.4. Application for Transfer.

A licensed retailer may, upon written application and approval by the department, have transferred his retail dealer's license from one location to another without incurring additional license tax liability. This rule is for application only in cases where there is an abandonment of the licensed business location and a simultaneous moving to a new location. The licensed retailer making application for transfer must surrender his license of original issue and indicate on the license the address of his new location.

117-300.5. Fairs, Carnivals, Concessionaires at Athletic Stands and Other Public Exhibitions.

Operators of fairs, carnivals and concessionaire at athletic stands and other public exhibitions sell tangible personal property from booths which they operate. These sales are subject to the tax which must be remitted by the operator who controls or directs the management of such booths. The single retail license shall cover sales of tangible personal property made from all stands under the immediate management or control of each operator. A separate license will not be required for each change of location provided the operator furnishes the department an itinerary giving a schedule of locations and dates.

Persons conducting games of chance or skills at fairs, carnivals, circuses and other public exhibitions who deliver merchandise as prizes are deemed consumers of such articles. Property for use as outlined above purchased from without the state is subject to the tax based upon the reasonable and fair market value thereof at the time and place where used. The term "reasonable and fair market value" shall mean the retail selling price of the particular property involved in the absence of affirmative proof to the contrary. The taxable event in such cases occurs at the time of withdrawal of such property for use as prizes or gifts. Purchases in this state, of tangible personal property to be used as gifts or prizes, are subject to the sales tax. The purchaser thereof must pay his supplier the tax.

117-300.6. Partnership.

(A) A partnership engaged in the business of selling tangible personal property at retail, and therefore required to be licensed under the provisions of Article 5, Chapter 36 of Title 12, must obtain a new retail license, or retail licenses if the partnership has multiple retail locations, if:

1. The partnership incorporates.
2. A single partner takes over the business and operates it as a sole proprietorship.
3. The partnership is terminated (no part of any business, financial operation, or venture of the partnership continues to be carried on by any of its partners in a partnership) and a new partnership is begun.
4. The partnership is otherwise required to obtain a new Taxpayer Identification Number ("TIN"). (See SC Regulation 117-201.)

Note: If the retailer moves its retail business to a new location, then the retailer must notify the Department of the move prior to the move. Upon notification, the Department will issue a corrected retail license at no charge for the new location.

(B) A new retail license, or retail licenses if the partnership has multiple retail locations, is not required if:

1. The partnership merely changes its name.

2. The partnership has a change in ownership but is not required to obtain a new Taxpayer Identification Number (“TIN”). (See SC Regulation 117-201.) However, if there is a change of general partners, the Department advises the partnership to either advise the Department of the change in general partners or obtain a new retail license for each retail location. If the Department is not advised of the change in general partners or a new retail license is not obtained, it will be presumed that the persons listed in records of the Department of Revenue as the general partner or partners are liable for any sales or use taxes the partnership fails to pay (unless the retail license of record indicates the partnership is a registered LLP pursuant to Code Section 33-41-1120). Since the partnership is not required to obtain a new retail license under this circumstance, the payment of the application fee for a retail license, as prescribed in Code Section 12-36-510, is not required to be paid for a retail license obtained in order to ensure that only proper persons are listed as the general partner or partners in the records of the Department of Revenue.

(C) The term “partnership” includes a limited liability company (“LLC”) that is taxed for South Carolina income tax purposes as a partnership.

Note: Unlike other types of partnerships, a general partner in a limited liability partnership (“LLP”) is not liable for debts, obligations and liabilities chargeable to the partnership while the partnership is a registered LLP. (See Code Section 33-41-370.)

A partner in an LLP and a member of an LLC may, however, be individually and personally liable for withholding taxes, state and local sales and use taxes, or both as a “withholding agent” (withholding tax), a “responsible person” (state and local sales and use taxes), or both under the provisions of Code Section 12-8-2010 and Code Section 12-54-195.

(D) The conversion of a partnership to a registered LLP pursuant to Article 13 of Chapter 41 of Title 33 is a partnership-to-partnership conversion and the organization is still considered to be the same entity for South Carolina tax purposes and is not required to obtain a new retail license. However, the Department advises the resulting LLP to either advise the Department of the change in general partners or partners or obtain a new retail license for each retail location. If the Department is not advised of the change in general partners or partners or a new retail license is not obtained, it will be presumed that the general partner or partners are liable for any sales or use taxes the LLP fails to pay. Since the resulting LLP is not required to obtain a new

retail license, the payment of the application fee for a retail license, as prescribed in Code Section 12-36-510, is not required to be paid for a retail license obtained as a result of the conversion of a partnership to an LLP.

(E) The conversion of a partnership to an LLC taxed as a partnership pursuant to Code Section 33-44-902 is treated as a partnership-to-partnership conversion and the organization is still considered to be the same entity for South Carolina tax purposes and is not required to obtain a new retail license. See Code Section 33-44-903 which confirms that a partnership that has been converted into an LLC is the same entity that existed before conversion and all property owned by the converting partnership vests in the LLC.

However, the Department advises the resulting LLC to either advise the Department of the change in general partners or partners or obtain a new retail license for each retail location. If the Department is not advised of the change in general partners or partners or a new retail license is not obtained, it will be presumed that the general partner or partners are liable for any sales or use taxes the LLC fails to pay (unless the retail license of record indicates the partnership is a registered LLP pursuant to Code Section 33-41-1120). Since the resulting LLC is not required to obtain a new retail license, the payment of the application fee for a retail license, as prescribed in Code Section 12-36-510, is not required to be paid for a retail license obtained as a result of the conversion of a partnership to an LLC taxed as a partnership.

(F) The provisions of this regulation apply to the retail licensing requirements under the sales and use tax law (Chapter 36 of Title 12) and do not apply to the alcoholic beverage licensing provisions of Title 61. For information as to when a person must obtain a new alcoholic beverage license, see Code Section 61-2-140 and the various other licensing provisions of Title 61.

HISTORY: Added by State Register Volume 26, Issue No. 6, Part 2, eff June 28, 2002; State Register Volume 31, Issue No. 2, eff February 23, 2007.