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117-309 Retailers.

The following addresses the application of the sales and use tax to the transactions of some retailers. The list of retailers is not all inclusive and the types of transactions discussed for each retailer are not all inclusive. In addition to selling tangible personal property, some of these retailers may also provide services, some of which are sold in conjunction with tangible personal property and other which are not sold in conjunction with tangible personal property.

117-309.1. Florists.

Where florists sell through telegraphic delivery association the following rules will apply:

1. On all orders taken by a South Carolina florist and telegraphed to a second florist in South Carolina for delivery in this state, the sending florist will be held liable for the sales tax measured by his receipts from the total amounts collected from the customer.

2. In cases where a South Carolina florist receives an order pursuant to which he gives telegraphic instructions to a second florist located outside South Carolina for delivery of flowers to a point outside South Carolina, tax will likewise be owing with respect to the total receipts of the sending florist from the customer who placed the order.

3. In cases where a South Carolina florist receives telegraphic instructions from other florists located either within or outside of South Carolina for the delivery of flowers, the receiving florist will not be held liable for tax with respect to any receipts which he may realize from the

transaction. In this instance, if the order originated in South Carolina, the tax will be payable by the South Carolina florist who first received the order and gave the telegraphic instructions to the second florist.

117-309.2. Photographers, Photo Finishers, and Photo Copiers.

Photographers operating photographic studios for the purpose of taking photographs and portraits are primarily engaged in the business of selling tangible personal property to their customers and such sales are taxable.

In cases where individuals deliver pictures to photographers or photographic studios for tinting or coloring, the receipts from such tinting or coloring would not be subject to tax, since such a charge would be the result of service rendered.

Where individuals deliver to what are commonly known as photo finishers, films for developing by the latter, the charge made by photo finishers for actual developing of the films is compensation for a service and does not represent receipts from the sale of tangible personal property. If, however, the photo finisher supplies or sells to his customer, for whom he may be developing the film, printed pictures, the charge for such prints or pictures would constitute a sale at retail, which would be taxable. In such cases, if the photo finisher does not segregate the charge for developing of the films from the charge for prints or pictures, the total amount of the charge to the customer would be taxable. Photostatic copies produced and sold by a photostat producer to purchasers for use, and not for purpose of resale, constitute sales of tangible personal property at retail and are taxable.

117-309.3. Printers.

Printers are engaged in the business of producing tangible personal property and their sales of printed matter such as catalogues, books, letterheads, bills, envelopes, folders, advertising circulars, and the like, to purchasers who use or consume these articles are sales at retail. A printer may not deduct from the selling price of such tangible personal property charges for the labor or service of performing the printing even though such labor or service charges may be billed to the customer separately from the charge for the stock. Such labor or service is embodied in and becomes a part of the tangible personal property sold. Where printers purchase from the United States Post Office, cards and envelopes stamped for postage, and imprint thereon various legends for customers, the printers must pay the tax measured by their gross proceeds of the sale of the printed cards or envelopes to their customers. Such cards and envelopes constitute tangible personal property and if they are not resold by such customers, the sales by the printers are at retail. Such printers are entitled to deduct the amount of the postage from the selling price.

No tax arises from the service of imprinting or from the service of typesetting performed by the printer for another printer, where title to the metal does not pass to the customer.

Gross receipts accruing from the sales of printed matter of all kinds are subject to the tax, except as otherwise specifically provided.

Sales of materials to printers are at wholesale, tax-free, when such materials become a component of the printed matter produced for sale. Where the printer qualifies as a manufacturer or processor he is entitled to purchase free of the tax the machines used in printing. Supplies, materials, and equipment not becoming a component of the product to be sold or not constituting a machine used in manufacturing are subject to the sales or use tax, whichever may apply.

117-309.4. Artists.

Artists engaged in the business of designing, sketching, engraving, drawing or painting upon paper, canvas, wood or other materials and selling such designs, sketches, engraving, drawings or paintings to purchasers for use or consumption and not for resale, are in the business of selling tangible personal property at retail and are required to pay the tax upon the total amount of the receipts from such sales.

The tax is payable on the total selling price of the finished product and no division of the selling price may be made so that the tax would be payable only on the materials consumed. A completed painting is tangible personal property as is, for example, a valuable vase. In the same category is a completed design sketch, engraving or drawing made or designed by artists.

117-309.5. Sellers of Custom-made Items.

Where persons contract to manufacture, compound, process, or fabricate their materials into articles of tangible personal property according to the special order of their customers, the total receipts from the sales of such articles are subject to the sales or use tax, whichever may apply. The seller may not deduct any of his costs, nor can he deduct any of his charges for labor or services, which are an item of the production or fabrication cost of the articles, to arrive at the taxable amount. Articles commonly made to order are portieres, curtains, draperies, tents, awnings, clothing, convertible tops, seat covers, and slip covers.

Persons making sales of made-to-order and custom-made articles purchase the materials which become a component or ingredient of their products at wholesale, tax-free. The equipment, tools, and supplies used or consumed in the production of such articles, and not becoming a part thereof, are subject to the tax.

117-309.6. Machine Shops.

Property manufactured or fabricated by machine shops and custom foundries is subject to the sales tax, except when sold for resale purposes or when exempted by one of the exemptions found in the sales and use tax law.

In doing repair work, the machine shop operator consumes the materials which lose their identity in the repairing process, such as paint, solder, babbitt and lumber. He is also considered to be the consumer of such items as cotter keys, nails, washers, stove bolts and nuts, bits of metal, and sheets of metal used in patching or reinforcing. The receipts from the use of these materials are not subject to the sales and use tax. The sales or use tax is due by the machinist at the time of purchase from his suppliers.

Where the machinist in making repairs, fabricates or manufactures a recognizable part or attachment for the article being repaired (as contrasted to patching, mending, or reinforcing weakened parts) no deduction is permissible for labor or any other expenses which are a part of fabricating or manufacturing the part or attachment. He may, however, if making separate agreements to sell the manufactured or fabricated part and to install same, remit tax only on the sales price of the fabricated part or attachment, provided his books and invoices show clearly a separation between the sales price of the fabricated part or attachment and the labor and service of installation.

117-309.7. Ship Chandlers.

Ship chandlers sell marine supplies to operators of all kinds of watercraft and to others. The sale or sales by ship chandlers of fuel, lubricants and supplies for use aboard ships plying on the high seas engaged in trade or commerce between South Carolina ports and ports of other states and foreign countries are not subject to the tax. All other sales made by ship chandlers, not for resale, are taxable with the exception of tangible personal property delivered to a ship from a bonded warehouse in the custody and under supervision of the United States customs officials, who deliver such properties aboard ships to a locked compartment on which a custom seal is placed, which seal by federal rule cannot be broken until the vessel has passed the 12 mile limit.

117-309.8. Undertakers.

Caskets, grave vaults, shrouds, and other tangible personal property furnished by undertakers and funeral directors in rendering burial services are sold by them at retail. These sales are subject to the sales tax.

Where there is a separation of services from the sale of tangible personal property in invoices rendered, and where receipts from sales and receipts from services are properly identified on the books and records of the undertaker, the sales tax will not apply to receipts accruing from the rendering of such services as embalming, hearse service, transportation of family, etc.

In complying with the provision for the separation of charges, a detailed itemization is not required. A separation, listing items such as caskets, vaults, embalming, hearses, and other expenses, without indicating the amount of each item, but indicating the total amount of the charge, and then indicating the amount of the sales tax would be in compliance with the department's determination, if the invoice also contains a statement evidencing the separation

of the charges. As an example, if the sale of the tangible personal property amounts to 50 percent of the total charge, then a statement may be shown on the invoice such as: "For purposes of calculating the South Carolina sales tax, 50 percent of the above charge is determined to be subject to the sales tax as being the sale of tangible personal property."

The department is not saying that 50 percent, or any other percentage, is to be used as a basis of separating the sale of tangible personal property from the sale of service.

Several methods have been approved by the division when percentages are used. There are predicated on (1) The funeral director must establish a fair and reasonable percentage to assure the state of at least the correct amount of the tax. (2) Auditable records must be maintained to enable verification of the accuracy of the percentage used, and (3) The invoice to the customer must have imprinted thereon (by stamp or some other designation) the method used in computing the tax.

South Carolina undertakers and funeral directors incur sales and/or use tax liability by reason of sales and service rendered in South Carolina, regardless of the situs of interment. Out-of-state undertakers and funeral directors incur no sales and/or use tax liability to South Carolina when the only business the out-of-state funeral director or undertaker has within this state is the rendering of burial service.

Where undertakers and funeral directors service burial insurance policies, the measure of the sales tax is the total of receipts from all sources accruing to the undertaker as a result of his furnishing tangible personal property. In some instances the undertaker furnishes caskets or other property, the sales price of which is in excess of the amount covered by the insurance policy, which excess is paid by the family of the deceased. In these instances the total sales price of the substituted property is to be used as the measure of the tax.

Where the undertaker is also the insurer, his use of property in servicing his insurance policies is not a sale of such property. In these instances the undertaker is the purchaser at retail of the property used on which he owes either sales or use tax at the time he purchases the property.

Undertakers purchase property, which they sell at retail as stated above, at wholesale, tax-free.

Undertakers purchase at retail consumable supplies, equipment, and property furnished in servicing their own insurance contracts, which consumable supplies and equipment are taxable to them at the time of purchase, including hearses, ambulances, instruments, tools, fixtures, furniture, all other equipment, embalming fluids, chemicals of all kinds, and all other supplies.

117-309.9. Sign Companies.

A person engaged in the business of erecting, on properties owned or controlled by him, signs for the display of products of a second party for a consideration is deemed to be engaged in the business of selling a service. A tax is due measured by the purchase price of all tangible personal property used or consumed by such person as additions or improvements to realty.

A person engaged in the business of designing, fabricating and erecting signs on properties of another, for the display of that person's products, is deemed to be a retailer. The gross proceeds of the sale of such signs are subject to the tax. If the signs are leased or rented, the lease or rental proceeds are subject to the tax.

A person engaged in both of the above businesses shall pay the tax in accordance with the applicable provisions as set forth hereinabove.

A person who designs and constructs a sign as defined in the second paragraph above may, if all statutory requirements are met, be considered a manufacturer.

117-309.10. Interior Decorators.

Interior decorators are generally engaged in the business of selling home or office furnishings of which many, such as portieres, curtains, draperies and seat and slip covers, are made to customers' specifications. The total charge for such made-to-order merchandise is subject to the tax without any deduction for fabrication labor whether such labor is performed by the decorator or by others for the decorator's account.

It is frequently necessary to repair, renovate or reupholster furniture. Sublet repairs are taxable on the total charge to the customer when the repair materials are sold or furnished by the decorator.

It may also be necessary to remodel interiors such as by painting or papering walls, hanging mirrors, pictures and lighting fixtures or other accessories, or replacing floor coverings. Labor for these purposes is not subject to the tax provided it is separately shown from the sales price of tangible personal property on the invoice to the customer. Other exempt charges when separately invoiced to the customer are consultation fees and reimbursement for travel expenses.

117-309.11. Sellers of Ice.

Sales of ice by manufacturers and wholesalers to licensed retail dealers engaged in the retail business of selling ice to users or consumers are sales for resale and are not subject to the tax. Ice sold to such licensed retailers which is withdrawn for use or consumption bears the sales and/or use tax and the same must be reported and remitted to the department. Ice sold to

restaurants, cafes, cafeterias, drug stores, etc., which enters into and becomes an ingredient or component part of the food and drink which such businesses compound for sale are sales at wholesale, free of the sales and use tax.

Sales of ice made for any other purposes than above specified are sales at retail and subject to the tax.

117-309.12. Sellers of Oxygen, Propane or Butane.

Gases such as oxygen, etc., sold to hospitals, medical doctors, dentists, and others for professional use are subject to the sales or use tax, whichever may apply.

Sales of propane or butane gases or any similar gas, unless an otherwise exempt sale to a manufacturer or compounder, are subject to sales or use tax, whichever may apply.

Gas pressure regulators purchased by a seller of propane gas for use by such seller on storage tanks furnished to customers come within the exemption found at Section 12-36-2120(17). The proceeds derived from the sale or lease of such regulators to customers are subject to the tax.

117-309.13. Sellers of Automobile Seat Cover and Top Linings.

Seat covers and prefabricated top linings are recognized units of tangible personal property which, when sold, are subject to the tax on the total sales price without any deduction for cost of materials, labor costs, or any other cost which is a part of the fabrication, distribution or selling.

117-309.14. Sellers of Ice Cream Freezers.

Sales of ice cream freezers of the type used on trucks or in retail outlets for the making of ice cream are subject to the tax.

117-309.15. Rentals and Leases.

The gross receipts or gross proceeds proceeding or accruing from the leasing or renting of tangible personal property are subject to the sales or use tax.

When on long-term continuing lease agreements where the lessor is required to furnish, for a consideration, maintenance services and/or operating supplies, the tax may be paid measured by (1) the total amount received, or (2) the total amount, taking as a deduction on the return charges for such services and/or supplies.

By using the first method, the lessor may purchase tax-free, as for resale, all items of tangible personal property passed on to the lessee. By using the second method, tax must be paid on all items of tangible personal property used in servicing the leased property.

If the owner of tangible personal property furnishes an operator or crew to operate such property, such owner is not deemed to be renting or leasing the property but is rendering a service and the receipts therefrom are not subject to the sales or use tax. Persons purchasing tangible personal property for use in rendering such service are liable for payment of sales or use tax at the applicable rate on the purchase price.

Where a person customarily rents tangible personal property and customarily withdraws the same for his own use, storage or consumption, a tax is due by such person on each withdrawal for use, the tax to be measured by the amount he would customarily receive as rental had the property been leased or rented for a like period of time. In the alternative the tax may be paid on the full purchase price of the property and no further liability incurred on withdrawals for use. Having once elected either method of reporting on withdrawals for use, the taxpayer must so continue unless and until permission has been received from the department in writing to make a change. Regardless of the method selected for accounting for the tax on withdrawals for use, the tax is due on all amounts proceeding or accruing from the rental, lease or sale of the property.

117-309.16. Materials Used to Recondition Automotive Vehicles for Resale.

The purchases of materials and parts by automobile dealers for purposes of reconditioning automotive vehicles for resale are construed to be purchases of tangible personal property at wholesale and are, therefore, not subject to the sales or use tax.

The practical result of the foregoing is to enable the automobile dealer to purchase free of the tax for resale only those items of tangible personal property which are to be passed on to the ultimate consumer, and does not extend to such things as machinery, equipment, tools, paint remover, upholstery cleaner, tire cleaner and other properties which do not become a part of the vehicle being reconditioned for sale.

117-309.17. Withdrawals From Stock, Merchants.

To be included in gross proceeds of sales is the money value of property purchased at wholesale for resale purposes and subsequently withdrawn from stock for use or consumption by the purchaser.

The value to be placed upon such goods is the price at which these goods are offered for sale by the person withdrawing them. All cash or other customary discounts which he would allow to his customers may be deducted; however, in no event can the amount used as gross proceeds of sales be less than the amount paid for the goods by the person making the withdrawal.

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