

## Chapter 22

### Administrative Requirements

Before engaging in any retail business in South Carolina, a retail license must be purchased from the Department.

#### A. Retail Licenses

The law provides for the following types of retail licenses:

Permanent locations. A \$50 license must be purchased for each permanent retail location.<sup>1</sup>

Fairs, Carnivals, and Athletic Events: The single retail license covers 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.<sup>2</sup>

Vending Machines: For persons engaged in the business of operating vending or coin-operated machines dispensing cigarettes or soft drinks in closed containers in South Carolina, each point from which the service for such machines or other tangible personal property originates, is considered to be a retail outlet and a retail license must be obtained for each such point of service.<sup>3</sup>

Also, an out-of-state retailer must purchase a retail license and collect the South Carolina use tax if the retailer has retail locations in South Carolina; maintains an office, warehouse or other place of business in South Carolina; has a salesperson in South Carolina soliciting orders on a regular basis; has an agent located in South Carolina; delivers his/her goods on his/her own trucks; or has made greater than \$100,000 of gross sales into South Carolina in the current or prior calendar year.<sup>4</sup>

Artists and craftsmen. Every artist and craftsman making retail sales at arts and crafts shows and festivals of items they have created or assembled may purchase a \$20 license. This license may only be used at one location at a time.<sup>5</sup>

Transient or temporary businesses. A \$50 license must be purchased by persons operating a transient or temporary business in South Carolina. A retail license for a transient business may

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<sup>1</sup> South Carolina Code §12-36-510(A)(1) and SC Regulation 117-300.

<sup>2</sup> South Carolina Regulation 117-300.5.

<sup>3</sup> South Carolina Regulation 117-300.2.

<sup>4</sup> This is based on the concept of *nexus* - a sufficient connection between a person and a state, and a sufficient connection between an activity, property, or transaction and a state, that allows the state to subject the person and the activity, property, or transaction to its taxing jurisdiction. What actually constitutes *nexus* is determined by the courts and may change from time to time, and you are advised to be aware of changes. See SC Revenue Ruling #18-14 regarding nexus for remote sellers and Chapter 13 of this manual for a more detailed discussion of nexus.

<sup>5</sup> South Carolina Code §12-36-510(A)(2).

only be used for one location at a time. A retail license for a temporary business may only be used in one location.<sup>6</sup>

*A transient business* is a business, other than artists and craftsmen, not having a permanent retail location in South Carolina. *A temporary business* is a business that makes retail sales in South Carolina for no more than 30 consecutive days at any one location.

A licensed retailer may, upon written application and approval by the Department, have his retail dealer's license transferred from one location to another without incurring additional license tax liability, but 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.<sup>7</sup> To notify the Department of a change in business location, the retailer should complete Form SC 8822.<sup>8</sup>

The Department may determine which retail license or licenses a retailer must obtain.<sup>9</sup>

A retail license is not required of:

- (a) persons selling at flea markets or conducting a yard sale no more than once a quarter;<sup>10</sup>
- (b) organizations devoted exclusively to public or charitable purposes conducting concession sales at festivals,<sup>11</sup> if all the net proceeds are used for those public or charitable purposes and if in advance of the festival its organizers provide the Department information necessary to ensure compliance with the law;<sup>12</sup>
- (c) persons furnishing accommodations to transients for one week or less in any calendar quarter;<sup>13</sup>
- (d) persons furnishing accommodations to transients where the rental income from such accommodations is wholly excluded from the gross income of the taxpayer pursuant to Internal Revenue Code Section 280A(g);<sup>14</sup>

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<sup>6</sup> South Carolina Code §12-36-510(A)(3).

<sup>7</sup> South Carolina Regulation 117-300.4.

<sup>8</sup> Form SC 8822 can also be used for business name changes and other address changes.

<sup>9</sup> South Carolina Code §12-36-510(D).

<sup>10</sup> South Carolina Code §12-36-510(B)(1).

<sup>11</sup> For purposes of this provision, a festival does not include a recognized state or county fair.

<sup>12</sup> South Carolina Code §§12-36-510(B)(2) and 12-36-2120(39).

<sup>13</sup> South Carolina Code §12-36-510(B)(3). Persons who rent accommodations for one week or less in any calendar quarter must still remit the sales tax on the accommodations annually by April 15<sup>th</sup> of the following year unless otherwise exempt under SC Code §12-36-920(A).

<sup>14</sup> For this exemption to apply, the taxpayer must rent the dwelling unit for less than 15 days during the taxable year and must use the dwelling unit as a residence (for personal purposes) 14 days or more during the taxable year.

- (e) certain nonprofit organizations exempt from the sales and use tax under South Carolina Code §12-36-2120(41);<sup>15</sup> and,
- (f) persons engaged in the business of operating vending or coin-operated machines dispensing any tangible personal property other than cigarettes or soft drinks in closed containers. If the person either (1) sells cigarettes or soft drinks in closed containers through vending machines or (2) sells any tangible personal property at retail through any means other than vending machines, they must obtain a retail license.

## **B. Obtaining a Retail License**

A retail license may be obtained by applying on-line at the Department’s website at [dor.sc.gov](http://dor.sc.gov) and clicking on “MyDORWAY.”

A completed application with the appropriate license tax amount may also be mailed to: South Carolina Department of Revenue, P.O. Box 125, Columbia, South Carolina 29214-0850.

## **C. Operating Without a Retail License – Penalty**

A person required to obtain a retail license that engages in business as a retailer in this State without a retail license or after the license has been suspended is guilty of a misdemeanor and, upon conviction, must be punished by a fine of not more than two hundred dollars or imprisonment not exceeding thirty days, or both. This offense is triable in magistrate’s court. This provision also applies to each officer of a corporation which engages in business without a retail license or after the license is suspended.<sup>16</sup> In addition, this provision<sup>17</sup> may be enforced by local law enforcement authorities as well as the Department.<sup>18</sup>

Also, a person required to obtain a retail license who fails to pay the \$50 license tax or obtain the license within the time provided is liable for a penalty not to exceed five hundred dollars.<sup>19</sup>

## **D. Returning a License<sup>20</sup>**

When a business is closed, sold or otherwise transferred to another person, the retail license, as well as all other licenses issued by the Department, must be returned to the Department for cancellation and the taxpayer must remit unpaid or accrued taxes.<sup>21</sup>

The Department may refuse to issue a license to a person, and may revoke one or more licenses held by a person, who has failed to return a license and remit taxes.

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<sup>15</sup> South Carolina Code §§12-36-510(B)(4) and 12-36-2120(41). See also SC Revenue Procedure #03-6 and SC Revenue Ruling #10-1 for a list of the type of nonprofit organizations eligible for this exemption and for other information related to this exemption.

<sup>16</sup> South Carolina Code §12-36-560.

<sup>17</sup> South Carolina Code §12-36-560.

<sup>18</sup> Attorney General Opinion dated 1/29/1996.

<sup>19</sup> South Carolina Code §12-36-570.

<sup>20</sup> South Carolina Code §12-54-126. See also SC Regulation 117-300.6 for special rules regarding partnerships.

<sup>21</sup> Form C-278 is used to closeout an account with the Department for a business that has been sold or closed permanently.

## E. Purchaser’s Certificate of Registration

A Purchaser’s Certificate of Registration is required for those businesses and nonprofit organizations **not** making retail sales who purchase tangible personal property from outside South Carolina and store, use or consume the property in South Carolina.<sup>22</sup> Those licensed as retailers do not need a Purchaser’s Certificate of Registration.

A completed application (Form SCDOR-111) may be mailed to: South Carolina Department of Revenue, P.O. Box 125, Columbia, South Carolina 29214. There is no charge for a Purchaser’s Certificate of Registration.

## F. Special Events Returns<sup>23</sup>

In lieu of purchasing a retail license, certain retailers may report their sales on a special events return. A special event is any promotional show, trade show, fair or carnival for which an admissions fee is required. Also, the event must operate for less than 12 consecutive days.

A special events return may be used by a retailer who is **not** required to be licensed as an artist or craftsman, or who is **not** already licensed as a transient or temporary retailer.

The Department does not have a separate form called a *special events return*. A retailer should file Form ST-3 (and Form ST-389 if applicable) and write “***Special Events Return,***” or similar notation, on the face of each form. The discount for prompt payment is not allowed on such returns.

Special events returns are due within five days of the completion of the special event. However, the Department may require earlier filing and payment, if deemed necessary.

## G. Types of Paper Returns

Most taxpayers who are liable for the state and local taxes that are administered and collected by the Department must file Form ST-3. However, the type of form used depends on the taxpayer’s business. The following forms are used depending on the taxpayer’s business:

<u>Type</u>	<u>Form Number</u>	<u>Local Form Number</u>
General Form	ST-3	ST-389
Accommodations	ST-388	ST-389, ST-3T
Aviation Gasoline	ST-403	ST-389
Maximum Tax	ST-455	ST-389, ST-593
Individual Use Tax	UT-3/UT-3W	No local form required
Casual Excise/Use Tax	ST-236	No local form required

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<sup>22</sup> For more detailed information on use tax reporting requirements for business and nonprofit organizations, as well as individuals, see SC Revenue Ruling #18-9.

<sup>23</sup> South Carolina Code §12-36-510(C).

Note: With respect to local sales and use tax that is administered and collected by the Department, retailers who are located in a county that does not impose a local sales and use tax and do not make deliveries into other counties that do impose a local sales and use tax, do not need to file the ST-389 with the state form.

Retailers that are either located in a county that does impose a local sales and use tax or that make deliveries into counties that do impose a local sales and use tax for which they are responsible for remitting to the Department, must file the ST-389 with the state form. See Chapter 12 and SC Revenue Ruling #18-15 for information on a retailer's responsibilities for remitting local sales and use taxes.

Note: A retailer with two or more locations may apply to file a "consolidated" sales tax return. See the Department's website for more information about this new method.

## H. Reporting Requirements

Any tax due must be paid with the return and reported to the Department under one of the following methods:

Monthly Returns. Generally, every taxpayer required to file their sales and/or use tax return must file the tax return on a monthly basis, unless permission is granted by the Department to use one of the other methods listed below. The return is due by the 20th day of the month following the month in which liability for the tax arises.<sup>24</sup> For example, sales made in April are reportable to the Department by May 20. Any tax due is payable with the return.

28-day returns. The Department may allow filing of returns for 28-day periods. If permission is granted, the returns are due by the 20th day following the end of each 28-day period.<sup>25</sup>

Quarterly returns. The Department may allow a taxpayer to file quarterly, instead of monthly; if the taxpayer's monthly tax liability is \$100 or less.<sup>26</sup>

Other Filing Periods. The Department may authorize, in addition to monthly or quarterly, other filing periods.<sup>27</sup>

Note: With respect to any return due (*e.g.*, monthly, quarterly, etc.), the taxpayer must file the return even if the taxpayer did not make any sales during that tax period or had a zero tax liability for that period.

Where a store has leased departments operated by other persons, each such person operating a leased department must make a separate return, if he keeps his own books and makes his own collections on accounts.<sup>28</sup>

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<sup>24</sup> South Carolina Code §12-36-2570(A) & (B).

<sup>25</sup> South Carolina Code §12-36-2570(D).

<sup>26</sup> South Carolina Code §12-36-2580.

<sup>27</sup> South Carolina Code §12-36-2590.

<sup>28</sup> South Carolina Regulation 117-327.

Where the store leasing such department keeps the books and makes collections for the leased department the store may, as agent for the lessee, make returns for such leased department and pay the taxes due. Note, however, the lessee shall not be relieved of his liability until the amount due has been paid. This method of accounting for the tax is authorized only by special permission of the Department.<sup>29</sup>

Where the store makes returns as agent for leased departments, it shall make separate returns for each department leased or shall make a consolidated return for both its business and the leased departments using “Schedule of Locations” to show a breakdown of gross proceeds of sales and other required information relating to its business and relating to each leased department. In any case, the lessor must obtain the permission of the Department of Revenue to make returns for his lessee.<sup>30</sup>

## **I. Reporting and Paying the Tax Electronically**

### MyDORWAY

The Department’s Electronic Tax System (MyDORWAY) is designed to give taxpayers a fast, free and secure way to file and pay their sales, use, accommodations, local option and special local taxes online. MyDORWAY is effective for sales and use tax returns due on or after September 1, 2015. All sales and use tax returns used for reporting the 6% State sales and use tax, and applicable local sales and use taxes administered and collected by the Department on behalf of local jurisdictions, may be filed via MyDORWAY.

The Department’s MyDORWAY System will allow a retailer to make payment by EFW (Electronic Funds Withdrawal/Bank Draft) or credit card (MasterCard and VISA).

To register, visit the Department’s website ([dor.sc.gov](http://dor.sc.gov)) and click on MyDORWAY. For additional assistance, call toll free (844) 898-8542 or email [MyDORWAY@dor.sc.gov](mailto:MyDORWAY@dor.sc.gov).

### Electronic Filing Program (EFT/XML)

The Department has designed an Electronic Filing Program (EFT/XML) for the transmission of the payment and filing of tax return information for **sales, use, accommodations, local option and/or special local taxes**.

Businesses that have paid \$15,000 or more, during any one filing period during the past year, are required to file and pay electronically.<sup>31</sup> Taxpayers with less than \$15,000 in tax due during a filing period may participate voluntarily with the EFT/XML Program. Taxpayers filing an accommodations tax return filed for multiple locations must provide electronically the location information by address and the amount of net taxable sales for each location.<sup>32</sup> For further information, call 1-800-476-0311.

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<sup>29</sup> South Carolina Regulation 117-327.

<sup>30</sup> South Carolina Regulation 117-327.

<sup>31</sup> South Carolina Code §12-54-250.

<sup>32</sup> South Carolina Code §12-36-922 (Act No. 237, Section 3, of 2022, effective June 22, 2022)

A retailer interested in filing and paying one tax (e.g., sales tax, use tax, local sales tax, local use tax,) through EFT/XML must file and pay all of these taxes through EFT/XML. For example, a retailer cannot file and pay sales tax through this program and pay local option through a conventional process. Be aware that both the return and the payment must be filed and paid electronically; a retailer cannot choose to do one part electronically and the other by a different method.

Electronic payments can be made by using the ACH (Automated Clearing House) debit or credit method.

Advantages of participating in electronic programs include:

- (1) Eliminates paperwork; no more paper returns and checks;
- (2) Reduces return error potential due to no re-keying; no manual intervention;
- (3) Accurate timing of payment from the retailer's bank account; and
- (4) Comprehensive audit trail for both the return and the payment.

## **J. Discount for Timely Payment<sup>33</sup>**

If returns are filed and the taxes shown due on the return are paid in full by the due date, the taxpayer is allowed a discount on the taxes due.

The discount is calculated based on the total taxes (state and local) due with the return as follows:

For returns showing a total tax due (state and local) of less than \$100. The discount is 3% of the total tax due.

For returns showing a total tax due (state and local) of \$100 or more. The discount is 2% of the total tax due.

The discount for a taxpayer cannot exceed the following amounts in a State fiscal year:

Taxpayer Filing Paper Returns. The discount allowed cannot exceed \$3,000 for a taxpayer who files by paper (regardless of the number of retail locations).

Taxpayer Filing Electronic Returns. The discount allowed cannot exceed \$3,100 for a taxpayer who files electronically (regardless of the number of retail locations).

Out of State Retailer Voluntarily Collecting Use Tax. The discount allowed cannot exceed \$10,000 for an out of state retailer who voluntarily registers to collect and remit

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<sup>33</sup> South Carolina Code §12-36-2610; SC Revenue Ruling #21-7.

use tax (i.e., a retailer who does not have either physical presence or economic nexus with South Carolina), regardless of the number of out of state locations.

In calculating the maximum discount (whether \$3,000, \$3,100 or \$10,000), begin with the June return filed in July and end with the May return filed in June.

The discount amount is not recomputed on an amended return that is filed after the due date of the original return. In such instance, the taxpayer filing the amended return is allowed the discount amount reported on the original return. If, however, an amended return is filed on or before the due date of the original return, then the discount amount is recomputed on the amended return.<sup>34</sup>

## **K. Cash Deposit or Bond**

Transient retailers who have no permanent business location from which retail sales are made may be required to make a sufficient cash deposit or bond with the Department to cover at least their annual sales tax liability. This cash deposit or bond must be made before receiving a retail license.<sup>35</sup>

## **L. Recordkeeping**

Every person subject to the sales and/or use taxes is required to keep “records, receipts, invoices and other pertinent papers in the form the Department requires.”<sup>36</sup> This includes records in electronic format.<sup>37</sup> Purchase invoices must show the names and addresses of vendors from whom purchases are made.<sup>38</sup>

Separate records for wholesale sales and retail sales must be kept. If separate records are not kept, it is presumed all sales are at retail.<sup>39</sup>

Records must be kept for a period of **four years**.<sup>40</sup>

The penalty for failing to keep records as required by the Department is a maximum of \$500 per return.<sup>41</sup>

## **M. Assessments**

The Department may assess unpaid taxes within three years of the date the taxpayer’s return was filed, or due to be filed, whichever occurs later.<sup>42</sup>

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<sup>34</sup> See SC Revenue Ruling #21-7.

<sup>35</sup> South Carolina Code §12-36-520.

<sup>36</sup> South Carolina Code §§12-36-2540(A) and 12-54-210; SC Regulations 117-200 and 117-200.1.

<sup>37</sup> South Carolina Regulation 117-200.2.

<sup>38</sup> South Carolina Code §12-36-2540(C).

<sup>39</sup> South Carolina Code §12-36-2540(B).

<sup>40</sup> South Carolina Regulation 117-200.1.

<sup>41</sup> South Carolina Code §12-54-210.

<sup>42</sup> South Carolina Code §12-54-85(A).



For example, if a taxpayer files the September 2020 sales and use tax return on the due date, October 20, 2020, the Department has until October 20, 2023, to determine if additional taxes are due and assess the taxpayer for those taxes. If the taxpayer filed the September 2020 return late on November 30, 2020, the Department has until November 30, 2023, to determine if additional taxes are due and assess the taxpayer for those taxes.

However, there are exceptions to the three-year limitation to assess additional taxes. The Department may assess for additional taxes after the three-year period if:

- (1) The taxpayer has consented in writing to extending the time period for assessing the tax.<sup>43</sup> This consent form must be completed before the three-year time limit expires. This consent form is usually completed at the beginning of the audit process when the taxpayer and the auditor agree to the period of time to be audited.
- (2) The taxpayer understates 20% of total taxes. In this case, the Department has six years to assess the taxpayer for the unpaid taxes.<sup>44</sup>
- (3) The taxpayer has failed to file the return.<sup>45</sup> In this case, the Department may go back to August of 1985.<sup>46</sup>
- (4) The taxpayer has filed a fraudulent return with the intent to evade the tax.<sup>47</sup> In this case, the Department may go back to August of 1985.<sup>48</sup>
- (5) The taxpayer has failed to pay a use tax and the Department assesses the use tax as a result of information received from other state or local taxing authorities, regional or national tax administration organizations, or the federal government. The use taxes may be assessed within 12 months of receiving the information, but no later than 72 months after the last day the use tax may be paid without penalty.<sup>49</sup>

The taxpayer who collects from the purchaser a state or local sales or use tax that exceeds the amount allowed or required by state law, may be held liable for a penalty. The penalty could be up to 150% of the tax amount collected that exceeds the authorized amount.<sup>50</sup>

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<sup>43</sup> South Carolina Code §12-54-85(C)(4).

<sup>44</sup> South Carolina Code §12-54-85(C)(3).

<sup>45</sup> South Carolina Code §12-54-85(C)(2).

<sup>46</sup> South Carolina Code §12-54-85(C). At one time there was a statute that presumed that any tax due for more than 10 years had been paid. That statute was repealed effective August 1, 1995. Now there are no limitations on assessment of taxes where no return was filed and none on fraudulent returns. The Department has consistently taken the position that the former 10 year statute would continue to apply to taxes due before August 1, 1995; therefore it does not seek to make assessments for periods before August 1, 1985 (10 years prior to the August 1, 1995, effective date).

<sup>47</sup> South Carolina Code §12-54-85(C)(1).

<sup>48</sup> See footnote 46.

<sup>49</sup> South Carolina Code §12-54-85(C)(5).

<sup>50</sup> South Carolina Code §12-54-196.

## N. Refunds and Appeals Process

The following briefly explains the South Carolina Tax Appeals Procedure for State Tax Refund Claims (Other than Property Tax, Bingo, and Alcoholic Beverage Matters). See SC Revenue Procedure #20-1 for more information on this procedure.

### Initial Process

- A. A taxpayer may seek a refund of any state tax paid (other than a property tax) by filing a written claim for refund with the Department.

In most instances, only the taxpayer legally liable for the tax may claim or receive a refund.<sup>51</sup> In the case of the sales tax, this is the retailer. In the case of the use tax, this is the purchaser. However,

- (1) with respect to sales tax, a purchaser who has paid the sales tax to the retailer for a specific transaction may claim and receive a refund if the retailer who paid the sales tax to the Department has assigned in writing the right to the refund of the sales tax to the purchaser.<sup>52</sup>
- (2) with respect to the use tax, the retailer who collected the use tax from the purchaser and remitted to the Department may claim and receive the refund if the retailer establishes that the use tax has been repaid to the purchaser or the retailer has obtained written consent from the purchaser to claim and receive the use tax refund.<sup>53</sup>

Also, the taxpayer legally liable for the tax (the retailer for sales tax and the purchaser for use tax) may assign in writing the refund to another person if the taxpayer legally liable for the tax has filed the claim for refund, the Department determines the claim is allowable, the amount of the refund is decided by the Department, and the Department has approved the refund.<sup>54</sup>

For special rules concerning foreign diplomats, see South Carolina Code §12-60-470(C)(3).

- B. The refund claim must specify:<sup>55</sup>
- (a) the taxpayer's name, mailing address, and telephone number;
  - (b) the appropriate taxpayer identification number or numbers;
  - (c) the tax period or date for which the tax was paid;
  - (d) the nature and kind of tax paid;

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<sup>51</sup> South Carolina Code §12-60-470(C)(1).

<sup>52</sup> South Carolina Code §12-60-470(C)(1)(b).

<sup>53</sup> South Carolina Code §12-60-470(C)(1)(a).

<sup>54</sup> South Carolina Code §12-60-470(C)(2).

<sup>55</sup> South Carolina Code §12-60-470(B).

- (e) the amount claimed as erroneously paid;
  - (f) a statement of facts supporting the taxpayer's position;
  - (g) a statement outlining the reasons for the refund claim, including any law or other authority upon which the taxpayer relies; and
  - (h) any other relevant information the Department may reasonably require.
- C. As a general rule, the refund claim must be filed within three years of the time the return was filed or two years from the date the tax was paid, whichever occurs later. If no return was filed, a claim for refund must be filed within two years from the date the tax was paid.<sup>56</sup>
- D. The appropriate division of the Department will decide what refund, if any, is due and give the taxpayer written notice of its decision.
- E. If a taxpayer's claim for refund is denied, the taxpayer can appeal by filing a written protest with the Department. The protest must be filed within 90 days from the date of the written denial of the refund claim. The protest must contain the information the refund claim is required to include.
- F. During the appeals process, the taxpayer may represent himself/herself or may be represented by the same persons who may participate in the administrative tax process under §12-60-90 of the South Carolina Code. This includes, but is not limited to, attorneys, certified public accountants, enrolled agents, and officers of a corporation.
- G. If a refund is due, it must be first applied against other sales or use taxes due by the claimant and then against other state taxes due by the claimant.<sup>57</sup>

#### Review by the Department of Revenue and Conferences with the Department

- A. If the taxpayer files a protest, the division within the Department that denied the refund claim will acknowledge receipt of the protest in writing and provide the taxpayer with information as to how to request a division meeting to discuss the protest and the refund claim. If the taxpayer wants to request a division meeting, the taxpayer must do so within 30 days of the date of the acknowledgement letter. If the taxpayer requests a division meeting, the division will make every attempt to hold the meeting within 60 days of the date of the acknowledgement letter. The purpose of the meeting is for the taxpayer and the division representative to discuss the facts and issues, to allow the taxpayer to present any additional information or authority supporting the taxpayer's position, and to resolve the appeal if possible. The meeting may be conducted by telephone if the taxpayer and the division agree. After the meeting, if the appeal has not been resolved and the taxpayer wishes to continue with the appeal, the taxpayer's protest and file will be forwarded to the Appeals Section of the Department.

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<sup>56</sup> South Carolina Code §12-54-85(F).

<sup>57</sup> South Carolina Code §12-60-490.

- B. The Appeals Section will conduct a substantive review of the taxpayer's appeal and will offer the taxpayer a conference. The conference may be conducted by telephone if the taxpayer and the Appeals Section agree. The purpose of the conference is for the taxpayer and the Appeals Section to discuss the appeal, agree on a preliminary stipulation of facts and issues, and resolve the appeal if possible.
- C. If the taxpayer's appeal is not resolved after the Appeals Section conference and review, and the taxpayer chooses to go forward on the appeal, the taxpayer's protest and file will be forwarded to the General Counsel for Litigation.
- D. A department representative within the General Counsel for Litigation's Office will conduct a substantive review of the protest and file. If the taxpayer or the department representative believe a conference would help resolve the matter, a conference will be held. The conference may be conducted by telephone if the taxpayer and the department representative agree. If the appeal is not resolved, the department representative will prepare a written department determination addressing the issues raised in the taxpayer's appeal. The department determination will be mailed or delivered to the taxpayer and, generally, must be issued within one year of the taxpayer's filing of the protest.

#### Request for a Contested Case Hearing before the Administrative Law Court

- A. If a taxpayer has exhausted his administrative remedies, the taxpayer may request a contested case hearing before the Administrative Law Court if the taxpayer disagrees with the department determination.
- B. If the department determination is not issued timely, the Department will notify the taxpayer in writing of the right to request a contested case hearing.
- C. The request for a contested case hearing must be made in writing and must be made within 30 days of the date of the department determination or notice. The request must comply with the rules of the Administrative Law Court and include any applicable filing fee. The request must be sent to the Administrative Law Court with a copy sent to the Department.
- D. The rules of the Administrative Law Court will control from this point forward.
- E. If the taxpayer does not request a contested case hearing within 30 days of the date of the department determination or notice, the taxpayer's refund claim will be deemed denied and no refund of taxes will be issued to the taxpayer.

### **O. Penalties and Interest**

Taxpayers who fail to file sales and use tax returns, or fail to pay these taxes when they are due, are subject to certain penalties. Penalties are imposed as follows:

Failure to file - This penalty is imposed at the rate of 5% of the taxes due for each month, or fraction of a month, the return is late. For example, if the September 2020 return is filed on

October 30, 2020, it is 10 days late and the taxpayer is subject to a penalty equal to 5% of the tax due on that return. If this same return had not been filed until November 23, 2020, the taxpayer would be subject to a penalty equal to 10% of the tax due on that return.

Failure to pay - This penalty is imposed at the rate of 0.5% of the taxes due for each month, or fraction of a month, the taxes are late. For example, if the September 2020 return is filed on October 30, 2020, it is 10 days late and the taxpayer is subject to a penalty equal to 0.5% of the tax shown as due on that return. If this same return had not been filed until November 23, 2020, then the taxpayer would be subject to a penalty equal to 1% of the taxes shown as due on that return.

If the taxpayer is audited and taxes are found to be due, then the failure to pay penalty is not due if the taxes are paid within 10 days of the Department's assessment for such taxes.

**If the taxes found to be due under the audit are not paid within 10 days of the Department's assessment, then the penalty is imposed at the rate of 0.5% of the taxes due for each month, or fraction of a month, from the 11th day after the assessment is issued until the taxes are paid.**

## **P. Other Penalties**

Penalties for operating without a retail license<sup>58</sup> are found in Chapter 36 of Title 12 of the South Carolina Code of Laws. Other penalties, including penalties for negligence<sup>59</sup> and fraud,<sup>60</sup> are found in Chapter 54 of Title 12.

## **Q. Interest**

The Department, by law, imposes interest if a taxpayer fails to pay any sales and use taxes due. Interest is imposed at the same rate as provided in the Internal Revenue Code. The interest rate is published quarterly in an information letter.

For fiscal year 2020-2021 (July 1, 2020 through June 30, 2021), Budget Provisos 41.2 and 117.85 (Act No. 135 of 2020) direct the Department to reduce the rate of interest paid on eligible refunds by a total of three percentage points.

## **R. Waiver of Penalties**

The Department has the authority to waive penalties imposed if there is reasonable cause to do so. Taxpayers who request a waiver or reduction of penalties imposed should do so in writing, and should set forth the reasons why such penalties should be waived or reduced. The Department employee reviewing the request will then determine if a waiver or reduction of penalties is warranted under the guidelines established by the Department in SC Revenue Procedure #08-6.

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<sup>58</sup> South Carolina Code §§12-36-560 and 12-36-570.

<sup>59</sup> South Carolina Code §12-54-43(F)(1).

<sup>60</sup> South Carolina Code §12-54-44.

## **S. Assessments and Appeals (Including License Revocations and Denials)**

The following briefly explains the South Carolina Tax Appeals Procedure for State Tax Assessments including License Revocations and Denials (Other than Property Tax, Bingo, and Alcoholic Beverage Matters). See SC Revenue Procedure #20-1 for more information on this procedure.

### Initial Process

- A. When a division of the Department determines a taxpayer owes additional taxes, it will send or give the taxpayer a proposed assessment. In addition, the Department may deny or revoke any license issued by the Department for failure to pay taxes or certain regulatory violations. The revocation or denial of a tax license is appealed in the same manner as a proposed assessment.
- B. The proposed assessment is the first written notice sent or given to the taxpayer stating a Division within the Department has concluded a tax is due or has proposed that a license issued by the Department be denied or revoked. It does not include the auditor's work papers, draft audit reports, or a document specifically stating it is not a proposed assessment. If the taxpayer disagrees with a proposed assessment, the taxpayer is entitled to appeal the findings using the following procedures.
- C. The taxpayer may appeal a proposed assessment made by the Department by filing a protest within 90 days of the date of the proposed assessment. The taxpayer may agree with portions of the proposed assessment and disagree with others. The portion of the proposed assessment with which the taxpayer agrees may be paid to avoid additional interest and penalties, and the remainder can be appealed through the taxpayer's protest.

The revocation or denial of a tax license is appealed in the same manner as a proposed assessment.

- D. The protest must be in writing and must contain, as applicable:
  - (a) the taxpayer's name, mailing address, and telephone number;
  - (b) the appropriate taxpayer identification number or numbers;
  - (c) the tax period or date for which the tax was proposed;
  - (d) the nature and kind of tax (or license) in dispute;
  - (e) a statement of facts supporting the taxpayer's position;
  - (f) a statement outlining the reasons for the protest, including any law or other authority upon which the taxpayer relies; and

(g) any other relevant information the Department may reasonably prescribe.

The taxpayer does not need to provide legal or other authority if the total amount of the proposed assessment is less than \$2,500. This does not apply to partnerships, "S" corporations, exempt organizations, or employee plans if the proposed tax is imposed by Chapter 6, 11, or 13 of Title 12.

- E. During the appeals process, the taxpayer may represent himself/herself or may be represented by the same persons who may participate in the administrative tax process under Section 12-60-90 of the South Carolina Code. This includes, but is not limited to, attorneys, certified public accountants, enrolled agents, or officers of a corporation.

### Review by the Department of Revenue and Conferences with the Department

- A. If the taxpayer files a protest, the division within the Department that issued the proposed assessment will acknowledge receipt of the protest in writing and provide the taxpayer with information as to how to request a division meeting to discuss the protest and the taxpayer's appeal. If the taxpayer wants to request a division meeting, the taxpayer must do so within 30 days of the date of the acknowledgement letter. If the taxpayer requests a division meeting, the division will make every attempt to hold the meeting within 60 days of the date of the acknowledgement letter. The purpose of the meeting is for the taxpayer and a division representative to discuss the facts and issues, to allow the taxpayer to present any additional information or authority supporting the taxpayer's position, and to resolve the appeal if possible. The meeting may be conducted by telephone if the taxpayer and the division agree. After the meeting, if the appeal has not been resolved and the taxpayer wishes to continue with the appeal, the taxpayer's protest and file will be forwarded to the Appeals Section of the Department.
- B. The Appeals Section will conduct a substantive review of the taxpayer's protest and file and will offer the taxpayer a conference. The conference may be conducted by telephone if the taxpayer and the Appeals Section agree. The purpose of the conference is for the taxpayer and the Appeals Section to discuss the appeal, agree on a preliminary stipulation of facts and issues, and resolve the appeal if possible.
- C. If the appeal is not resolved after the Appeals Section conference and review, and the taxpayer chooses to go forward on the appeal, the taxpayer's protest and file will be forwarded to the General Counsel for Litigation.

A department representative within the General Counsel for Litigation's Office will conduct a substantive review of the protest and file. If the taxpayer or the department representative believe a conference would help resolve the matter, a conference will be held. The conference may be conducted by telephone if the taxpayer and the department representative agree. If the appeal is not resolved, the department representative will prepare a written department determination addressing the issues raised in the appeal. The department determination will be mailed or delivered to the taxpayer and, generally, must be issued within one year of the taxpayer's filing of the protest.

## Request for a Contested Case Hearing Before the Administrative Law Court

- A. If a taxpayer has exhausted his administrative remedies, the taxpayer can request a contested case hearing before the Administrative Law Court if the taxpayer disagrees with the department determination.
- B. If the department determination is not issued timely, the Department will notify the taxpayer in writing of the right to request a contested case hearing.
- C. The request for a contested case hearing must be made in writing and must be made within 30 days of the date of the department determination or notice. The request must comply with the rules of the Administrative Law Court and include any applicable filing fee. The request must be sent to the Administrative Law Court with a copy sent to the Department.
- D. The rules of the Administrative Law Court will control from this point forward.
- E. If the taxpayer does not request a contested case hearing within 30 days of the date of the department determination or notice, the taxpayer's proposed tax assessment or the revocation or denial of the license will become final and non-appealable and the Department may begin collecting on the underlying tax debt and/or the applicable license will be revoked or not issued. If the taxpayer is unable to pay the debt, the taxpayer may contact the Department about an installment agreement.

## **T. The Fairness in Lodging Act**

The governing body of a county or municipality may impose, by ordinance, a local accommodations tax, on the gross proceeds derived from the rental or charges for accommodations furnished to transients as provided in South Carolina Code §12-36-920(A), not to exceed 3%. The revenue generated by this additional tax must be used exclusively for certain tourism purposes.<sup>61</sup>

The "Fairness in Lodging Act,"<sup>62</sup> enacted on June 9, 2014, gives municipalities and counties the option of exercising additional enforcement authority and sharing data with the Department with respect to individuals who rent residential accommodations to tourists and fail to remit the local accommodations tax and the state sales tax on accommodations. The governing body of the municipality or county that imposes the local accommodations tax may implement the provisions of the Act through an ordinance and by providing a certified copy of the ordinance to the Director of the Department.<sup>63</sup> The provisions of the Act do not apply to any residential real property lawfully assessed for property tax purposes pursuant to South Carolina Code §12-43-220(c) when all rental income on the property is not included in gross income for federal income tax purposes pursuant to Internal Revenue Code §280A(g).<sup>64</sup>

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<sup>61</sup> South Carolina Code §6-1-520.

<sup>62</sup> South Carolina Code §§6-1-810 through 6-1-825.

<sup>63</sup> South Carolina Code §6-1-815(A).

<sup>64</sup> South Carolina Code §6-1-815(B).



When the provisions of the Act apply in a jurisdiction, the Department and the implementing municipality or county must share helpful data in determining possible instances of noncompliance using returns and other documents filed with or available to them.<sup>65</sup> The municipality or county must include a notice with the annual property tax notices provided to owners of residential real property assessed at 6%.<sup>66</sup> The notice must include: details of local and state accommodations taxes required to be paid by persons renting residential real property to tourists; the intention of the municipality or county to vigorously enforce the requirements; and specific directions for obtaining additional information about the requirements, including names, addresses and telephone numbers of municipal or county officials able to answer questions, provide forms, and assist in compliance.<sup>67</sup>

The implementing municipality or county may impose a one-time civil noncompliance penalty of \$500 to \$2,000 for each seven days that a property was rented. The one-time penalty is in addition to other penalties and interest imposed under the ordinance for failure to comply with local accommodations tax requirements of owners who rent residential accommodations to tourists. The county or municipality may not impose the additional penalty unless the owner received the notice as required under the Act. For purposes of enforcement and collection, the additional penalty is deemed a property tax on the rental property.<sup>68</sup>

The Act requires the Department to identify websites containing “rent by owner” vacation rental opportunities and to request that the websites post a statement that owners of South Carolina rental properties must be licensed and collect applicable local and state fees and taxes.<sup>69</sup>

The Act requires the Department to provide data and assistance to municipalities and counties that have implemented the Fairness in Lodging Act.<sup>70</sup> The county or municipality<sup>71</sup> and the Department<sup>72</sup> may share information in the performance of their duties required under the Fairness in Lodging Act.

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<sup>65</sup> South Carolina Code §6-1-820(A).

<sup>66</sup> South Carolina Code §12-43-220(e).

<sup>67</sup> South Carolina Code §6-1-820(B).

<sup>68</sup> South Carolina Code §6-1-820(C).

<sup>69</sup> South Carolina Code §6-1-825.

<sup>70</sup> South Carolina Code §12-4-310(11).

<sup>71</sup> South Carolina Code §6-1-120(B)(3).

<sup>72</sup> South Carolina Code §12-54-240(B)(13).