

SC INFORMATION LETTER #06-15

SUBJECT: Regulations Approved by the General Assembly

DATE: June 23, 2006

AUTHORITY: S. C. Code Ann. Section 12-4-320 (2000)
S.C. Code Ann. Section 1-23-10(4) (2005)
SC Revenue Procedure #05-2

SCOPE: An Information Letter is a written statement issued to the public to announce general information useful in complying with the laws administered by the Department. An Information Letter has no precedential value.

The following regulation proposals were approved by the General Assembly on May 20, 2006 and became effective upon publication in the State Register on **June 23, 2006**. Each regulation is attached as published in the State Register.

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Note: For information on additional Department of Revenue regulations approved by the General Assembly earlier in the legislative session, see SC Information Letter #06-3.

Document No. 2987
DEPARTMENT OF REVENUE
CHAPTER 7

Statutory Authority: 1976 Code Section 12-4-320

Synopsis:

The South Carolina Department of Revenue is considering amending SC Regulation 7-200.2 to no longer require the holder of a beer, wine or liquor permit or license to maintain the records of purchases of beer, wine or liquor at the location to which these beverages were delivered. This change would require that such records be maintained for three (3) years within South Carolina and be available for inspection by an authorized representative of the Department of Revenue or the State Law Enforcement Division upon ten days notice. This change will allow a person with multiple locations to consolidate the purchase records in one location within the State instead of having to maintain the purchase records for each location at that location as required now.

Instructions: Amend SC Regulation 7-200.2 to no longer require the holder of a beer, wine or liquor permit or license to maintain the records of purchases of beer, wine or liquor at the location to which [sic] these beverages were delivered.

Text:

7-200.2. Every holder of a permit or license issued by the Department must keep and maintain at some location within the state records of all purchases of liquor, beer and wine. Such records must include the name of the seller and the date and quantity of the purchase. These reports of purchases must be kept for a period of three (3) years and upon ten days notice must be made available to the inspection of any authorized representative of the Department or the State Law Enforcement Division.

Fiscal Impact Statement:

There will be no impact on state or local political subdivisions expenditures in complying with this proposed legislation.

Statement of Rationale:

The purpose of this proposal is to amend SC Regulation 7-200.2 to no longer require the holder of a beer, wine or liquor permit or license to maintain the records of purchases of beer, wine or liquor at the location to which these beverages were delivered. This change would require that such records be maintained for three (3) years within South Carolina and be available for inspection by an authorized representative of the Department of Revenue or the State Law Enforcement Division upon ten days notice. The proposal to amend this regulation is needed to allow a person with multiple locations to consolidate the purchase records in one location within the State instead of having to maintain the purchase records for each location at that location as required now. The proposal to amend this regulation is also reasonable in that it is the department's responsibility to maintain regulations that allow a permit or license holder to maintain records in an efficient manner that is consistent with the regulatory nature of the alcoholic beverage licensing and control law.

Document No. 3033
DEPARTMENT OF REVENUE
CHAPTER 117
Statutory Authority: 1976 Code Section 12-4-320

Synopsis:

The South Carolina Department of Revenue is considering amending SC Regulation 117-334 concerning the sales and use tax and interstate commerce. The proposal would amend the regulation to clarify which tax applies, the sales tax or the use tax, to goods being shipped into South Carolina. The proposal represents the longstanding position of the Department of Revenue and is designed to assist South Carolina purchasers in determining when they are liable for the use tax.

Instruction: Amend SC Regulation 117-334 concerning the sales and use tax and interstate commerce.

Text:

117-334. Interstate Commerce

The purpose of this regulation is to determine which tax applies, the sales tax or the use tax, when tangible personal property is shipped into, or otherwise brought into, South Carolina and to address the application of the tax when goods are shipped from this State.

117.334.1 Goods coming into this State - Sales Tax:

(A) When tangible personal property is purchased for use or consumption in this State and (1) the seller is engaged or continuing within this State in the business of selling tangible personal property at retail and (2) delivery is made in this State, such sale is subject to the sales tax if the order for the future delivery of tangible personal property is sent by the purchaser to, or the subsequent delivery of the property is made by, any local branch, office, outlet or other place of business of the retailer in this State, or agent or representative operating out of or having any connection with, such local branch, office, outlet or other place of business. The term "other place of business" as used herein includes, but is not limited to, the homes of district managers, representatives, and other resident employees, who perform services in relation to the seller's functions in this State. Participation in the transaction in any way by the local office, branch, outlet or other place of business is sufficient to sustain the sales tax.

If the conditions above are met it is immaterial (1) that the contract of sale is closed by acceptance outside the State or (2) that the contract is made before the property is brought into the State.

Delivery is held to have taken place in this State (1) when physical possession of the tangible personal property is actually transferred to the purchaser or the purchaser's designee within this State, or (2) when the tangible personal property is placed in the mails at a point outside this State and directed to the purchaser or the purchaser's designee in this State or (3) when the

tangible personal property is placed on board a carrier at a point outside this State (regardless of shipping terms) and directed to the purchaser or the purchaser's designee in this State.

The term "engaged or continuing within this State in the business of selling tangible personal property at retail" as used in this regulation shall have the same meaning as the term "retailer maintaining a place of business in this State" as defined in Code Section 12-36-80.

(B) When tangible personal property is brought into this State by the seller, or an agent, salesman, or other representative of the seller, for sale at a permanent or temporary location (carnivals, festivals, roadside, etc.) or from a truck or other vehicle, such sale is subject to the sales tax.

117-334.2 Goods coming into this State - Use Tax:

(A) When tangible personal property is purchased for use or consumption in this State and delivery is made in this State, such sale is subject to the use tax if the order for future delivery is sent by the purchaser directly to the seller at a point outside this State, and the property is shipped into this State from a point outside this State directly to the purchaser or the purchaser's designee, provided there is no participation whatever in the transaction by any local branch, office, outlet or other place of business of the retailer or by any agent or representative of the retailer having any connection with such branch, office, outlet, or other place of business. The term "other place of business" as used herein includes, but is not limited to, the homes of district managers, service representatives, and other resident employees, who perform substantial services in relation to the seller's functions in this State.

The purchaser is liable for the use tax on the purchases outlined above in this subsection (117.334.2(A)) until the tax is paid to the State. In addition, a receipt, that shows the South Carolina tax, from a seller who is registered with the Department of Revenue to collect and remit the tax will relieve the purchaser of the liability for the tax on the purchase. However, a seller who is registered with the Department of Revenue to collect and remit the tax has a debt to the State for the use tax required to be collected under the law. If the purchaser is not relieved from his liability for the use tax as stated above, then the Department may assess the purchaser or the seller for the use tax.

(B) When tangible personal property is otherwise brought into this State by the purchaser for first use or consumption in this State, such use or consumption is subject to the use tax. See SC Regulation 117-320.1 for information concerning property purchased and used outside of South Carolina and later used in South Carolina and see Code Sections 12-36-1320 and 12-36-150 for a special imposition of the tax on transient construction property.

(C) When tangible personal property is purchased for use or consumption in this State and the property is shipped from a point outside this State directly to the purchaser or the purchaser's designee at a point in this State, there is a rebuttable presumption that the purchase is subject to the use tax. If the receipt from a seller does not separately state the South Carolina tax, the Department may assess either the purchaser or the seller (if licensed or nexus exists) for the use tax.

117-334.3 Goods coming into this State and Delivered onto the Catawba Indian Reservation

When tangible personal property is purchased for use or consumption on the Catawba Indian Reservation and delivery is made from a retail location outside of South Carolina to the Catawba Indian Reservation, such sale, based on the provisions of Code Section 27-16-130(H), is:

- (a) subject to the State use tax if the retailer is registered with the Department to remit the State tax. Local use taxes are not applicable.
- (b) subject to the Tribal use tax if retailer is not registered with the Department to remit the State tax. The Tribal use tax is equal to the combined State and local tax rate for the county in which the reservation is located and in which the delivery occurs. The Catawba Indian Tribe is responsible for collecting the tribal use tax.

117-334.4 Application of the Sales or Use Tax under Other Circumstances

The application of either the sales tax or the use tax under circumstances not addressed in this regulation will be determined on a case by case basis. The determination as to which tax will apply will consider whether or not the seller, as required for the application of the sales tax under Code Section 12-36-910, is “engaged or continuing within this State in the business of selling tangible personal property at retail,” whether or not the seller has sufficient “nexus” with South Carolina under current case law, and whether or not the retail sale occurs in this State.

117-334.5 Goods shipped from this State.

When tangible personal property is sold within the State and the seller is obligated to deliver it to the purchaser or to an agent or designee of the purchaser at a point outside of the State or to deliver it to a carrier or to the mails for transportation to the purchaser or to an agent or designee of the purchaser at a point outside this State, the retail sales tax does not apply provided the property is not returned to a point within the State. The most acceptable proof of transportation outside the State is:

- (a) A way-bill or bill of lading made out to the seller's order and calling for delivery; or
- (b) An insurance receipt or registry issued by the United States Postal Department, or a Post Office Department receipt Form 3817; or
- (c) A trip sheet signed by the seller's delivery agent and showing the signature and address of the person outside this State who received the goods delivered.

However, where tangible personal property pursuant to a sale is delivered in this State to the purchaser or to an agent or designee of the purchaser, other than a common carrier, the retail sales tax applies notwithstanding that the purchaser or the purchaser’s agent or designee may subsequently transport the property out of the State.

The department will be asking the Administrative Law Court, in accordance with S.C. Code Ann. ' 1-23-111 (2005), to issue a report that the proposal to amend the regulation is needed and reasonable.

Fiscal Impact Statement:

There will be no impact on state or local political subdivisions expenditures in complying with this proposed legislation.

Statement of Rationale:

The purpose of this proposal is to amend SC Regulation 117-334 concerning the sales and use tax and interstate commerce. The proposal would amend the regulation to clarify which tax applies, the sales tax or the use tax, to goods being shipped into South Carolina. The proposal represents the longstanding position of the Department of Revenue and is designed to assist South Carolina purchasers in determining when they are liable for the use tax. The proposal to amend this regulation is needed to reduce any taxpayer confusion as to which tax applies, the sales tax or the use tax, to goods being shipped into South Carolina. The proposal to amend this regulation is also reasonable in that it is the department's responsibility to maintain regulations that are clear and understandable and it represents the longstanding position of the Department of Revenue.

Document No. 2985
DEPARTMENT OF REVENUE
CHAPTER 117
Statutory Authority: 1976 Code Section 12-4-320

Synopsis:

The South Carolina Department of Revenue is considering amending SC Regulation 117-335 concerning the sales and use tax and manufactured and modular homes to address a change in the law in 2004 as to how modular homes are taxed and to address the issue of furniture and appliance sold with manufactured and modular homes. The portion of the proposal concerning the taxation of furniture and appliances sold with manufactured and modular homes is consistent with present Department of Revenue policy.

Instructions:

Amend SC Regulation 117-335 concerning the sales and use tax and manufactured and modular homes to address a change in the law in 2004 as to how modular homes are taxed and to address the issue of furniture and appliance sold with manufactured and modular homes.

Text:

117-335 Manufactured Homes and Modular Homes

Manufactured homes and modular homes are taxed differently under the sales and use tax code.

117-335.1 Manufactured Homes

The basis upon which the tax is calculated on a manufactured home (as defined in Code Section 40-29-20) is only sixty-five percent of the “gross proceeds of sales” as defined in Code Section 12-36-90.

The maximum tax due on the sale of a manufactured home is \$300 if the home meets certain energy efficient standards as set forth in Code Section 12-36-2110(B). If the home does not meet these energy efficient standards, then the maximum tax is \$300 plus 2% of the basis upon which the tax is calculated that exceeds \$6,000. A manufactured home is energy efficient if it meets the following energy efficiency levels as set forth in Code Section 12-36-2110(B): “storm or double pane glass windows, insulated or storm doors, a minimum thermal resistance rating of the insulation only of R-11 for walls, R-19 for floors, and R-30 for ceilings. However, variations in the energy efficiency levels for walls, floors, and ceilings are allowed and the exemption on tax due above three hundred dollars applies if the total heat loss does not exceed that calculated using the levels of R-11 for walls, R-19 for floors, and R-30 for ceilings. The edition of the American Society of Heating, Refrigerating, and Air Conditioning Engineers Guide in effect at the time is the source for heat loss calculation. The dealer selling the manufactured home must maintain records, on forms provided by the State Energy Office, on each manufactured home sold which contains the above calculations and verifying whether or not the manufactured home

met the energy efficiency levels provided for in this subsection. These records must be maintained for three years and must be made available for inspection upon request of the Department of Consumer Affairs or the State Energy Office.”

Local sales and use taxes that are administered and collected by the Department of behalf of local jurisdictions do not apply to manufactured homes.

The retail sale upon which the tax is based is the sale by the retailer to the consumer home buyer or contractor). See Code Section 12-36-2120(B).

117-335.2 Modular Homes

The basis upon which the tax is calculated on a modular home (as regulated in Chapter 43 of Title 23) is only fifty percent of the “gross proceeds of sales” as defined in Code Section 12-36-2120(34). A modular home regulated under Chapter 43 of Title 23 cannot be considered a manufactured home, even if the home meets the definitional requirements of a manufactured home in Code Section 40-29-20.

The maximum tax provisions do not apply to modular homes. Local sales and use taxes that are administered and collected by the Department of behalf of local jurisdictions do apply to modular homes.

The retail sale upon which the tax is based is the sale by the manufacturer to either the modular home dealer or home buyer, whichever is applicable. See Code Section 12-36-2120(34).

117-335.3 Other Factory Fabricated Buildings

Sales of portable classrooms and storage type manufactured buildings, recreational vehicles (RVs), travel trailers, campers, manufactured condominiums and units, and like tangible personal property are not considered sales of manufactured homes or modular homes.

117-335.4 Furniture and Appliance

Furniture and appliances are not considered a part of a manufactured or modular home, unless they are built-ins. For example, televisions, counter appliances, sofas, chairs and tables, even though sold with a home, are not a part of the home. Because these items are not a part of the home, they are taxed separately from the home at 5%, plus any applicable local sales and use tax, of their sales price less any trade-in allowed. The amount upon which the tax is calculated on furniture and appliances that are not built ins is the amount listed in the sales contract for these items or the retail fair market value of these items if the amounts for these items are not listed in the contract or if the amounts listed in the contract do not reasonably represent the retail fair market value of these items.

Items such as disposals, built-in dishwashers, and built-in stoves are considered a part of the home and are not taxed separately from the home if installed at the time of the retail sale of the home.

Fiscal Impact Statement:

There will be no impact on state or local political subdivisions expenditures in complying with this proposed legislation.

Statement of Rationale:

The purpose of this proposal is to amend SC Regulation 117-335 concerning the sales and use tax and manufactured and modular homes to address a change in the law in 2004 as to how modular homes are taxed and to address the issue of furniture and appliances sold with manufactured and modular homes. The portion of the proposal concerning the taxation of furniture and appliances sold with manufactured and modular homes is consistent with present Department of Revenue policy.

The proposal to amend SC Regulation 117-335 is needed to reduce any taxpayer confusion that may result from having a published regulation that is no longer consistent with the law and is needed to address through a regulation the taxation of furniture and appliances sold with manufactured and modular homes. The proposal to amend this regulation is also reasonable in that it is the department's responsibility to maintain regulations that are up-to date and consistent with the law.

Document No. 3032
DEPARTMENT OF REVENUE
CHAPTER 117
Statutory Authority: 1976 Code Section 12-4-320

Synopsis:

The South Carolina Department of Revenue is considering repealing SC Regulation 117-318.1 since this regulation is no longer needed due to a change in the sales and use tax law on warranty agreements that became effective October 1, 2005 as a result of Act 161, Section 19, of 2005. This regulation concerns the application of the sales and use tax to charges for warranty agreements.

Text:

Regulation 117-318.1 is repealed.

Fiscal Impact Statement:

There will be no impact on state or local political subdivisions expenditures in complying with this proposed legislation.

Statement of Rationale:

The purpose of this proposal is to repeal SC Regulation 117-318.1 concerning the application of the sales and use tax to charges for warranty agreements. Since the sales and use tax law on warranty agreements changed effective October 1, 2005 as a result of Act 161, Section 19, of 2005, SC Regulation 117-318.1 is no longer needed. The proposal to repeal this regulation is needed to reduce any taxpayer confusion that may result from having a published regulation that is no longer needed. The proposal to repeal this regulation is also reasonable in that it is the department's responsibility to maintain regulations that are up-to date and consistent with the law.

Document No. 2983
DEPARTMENT OF REVENUE
CHAPTER 117
Statutory Authority: 1976 Code Section 12-4-320

Synopsis:

The South Carolina Department of Revenue is considering amending SC Regulation 117-328 concerning the sales and use tax and radio and television stations to delete the last paragraph of the regulation. This paragraph concerns outdated "wired music." Such music is now transmitted via satellite and the charges for such transmissions, in the opinion of the Department, are subject to the tax under Code Sections 12-36-910(B)(3) and 12-36-1310(B)(3)) which impose the sales tax and use tax on charges for the ways or means for the transmission of the voice or messages. In addition, the last sentence of the paragraph concerning the proceeds from wired music is in conflict with the provisions of Code Sections 12-36-910(B)(3) and 12-36-1310(B)(3).

Instructions: Amend SC Regulation 117-328 concerning the sales and use tax and radio and television stations is amended to read:

Text:

117-328. Code Section 12-36-2120(26) exempts from the tax the sale of "all supplies, technical equipment, machinery and electricity sold to radio and television stations, and cable television systems, for use in producing, broadcasting or distributing programs. For the purpose of this exemption, radio, and television stations, and cable television systems are deemed to be manufacturers."

In light of the last sentence hereinabove, another statutory exemption (Code Section 12-36-2120(17)) is available. It reads that there is exempted from the measure of the tax levied, assessed or payable, "The gross proceeds of the sale of ... machines used in ... compounding, processing and manufacturing of tangible personal property; provided that the term 'machines,' as used in this article, shall include the parts of such machines, attachments and replacements therefor which are used, or manufactured for use, on or in the operation of such machines and which are necessary to the operation of such machines and are customarily so used; but this exemption shall not include automobiles or trucks ..."

An AM radio station is defined as a broadcasting station licensed by the Federal Communications Commission for the transmission of radiotelephone emissions primarily intended to be received by the general public and operated on a channel in the band 535-1605 kc/s. An FM radio station, including non-commercial educational radio stations, would come within the same definition except that it is operated on a channel in the band 88.1-107.9 mc/s. A television broadcasting station would also come within the same definition except that it is licensed to transmit both visual and aural radiotelephone emissions and is to be operated in the 54-890 mc/s frequency.

Sales of electricity to radio and television stations for use directly in producing programs and in broadcasting, and to provide necessary lighting therefor, are exempted from the sales and/or use tax. Also, electricity to operate air conditioning machinery necessary to the operation of exempt technical equipment and machinery and for live telecast is exempt from the tax.

Sales of electricity for any other purpose are subject to the tax, such as, but not limited to, electricity used in administrative offices, supervisory offices, parking lots, storage warehouses, maintenance shops, safety control, comfort air conditioning, elevators, housekeeping equipment and machinery, cafeterias, canteens, first aid rooms, supply rooms, water coolers, drink boxes and unit heaters.

The exemption applies to all purchases or rentals of supplies for use directly in the preparation of programs and in broadcasting, to include flash bulbs, paper supplies, stage properties when customarily re-used, such as stock articles of furniture and equipment, props (including materials from which props are fabricated), film, recording tape, artists supplies, chemicals for use in developing films, syndicated and feature films, phonograph records, transcriptions, script services, sheet music, syndicated tape and transcribed programs.

The term "technical equipment and machinery" is defined as specialized equipment and machinery peculiar to the industry when purchased for use directly in preparing programs or broadcasting. The term shall likewise include replacement parts and attachments therefor, and power wiring or cable connecting exempt technical equipment and machinery when such wiring is not built into and a part of a building or structure.

Examples of exempt technical equipment and machinery used in programming are timers, splicers, viewers, sound readers, projectors, screens, editing tables and lighting boards, darkroom equipment and machinery used for developing film for use in preparing programs, and cameras, recorders and mobile equipment and machinery (not including automobiles and trucks) used by station employees in newsgathering and in transmission.

Examples of studio technical equipment and machinery are: For radio stations, turntables, microphones, audio consoles, tape recorders, headphones and speech input equipment.

For television stations, all of the foregoing, and in addition, video switching equipment, cameras, film chains, slide projectors, film projectors, studio lighting and studio dimmer or light control boards.

Transmission equipment consists of AM, FM, and TV transmitters complete, to include coaxial cables or transmission lines connecting antennas to transmitters.

Antenna equipment consists of the antenna proper, not including towers and lights. (Note, however, when the tower is the antenna, as in AM radio, it is deemed to be exempt technical equipment.)

Purchases of broadcast testing machinery used primarily for the purpose of maintaining audio or visual transmission quality are not subject to the tax.

Machines, including typewriters, purchased for use primarily in producing program logs are exempted from the tax.

Machinery purchased for use in fabricating backdrops or props is not subject to the tax.

Subject to the tax are purchases of standard or stock articles of office equipment, such as desks, chairs, typewriters, billing machines, filing cabinets, film storage cabinets and general office supplies used in billing customers and for general office use; machinery, equipment and supplies (not including, however, tubes and replacement parts) for use in repairing technical equipment or machinery; and all purchases of building materials for use in constructing a building or structure, to include soundproofing materials for studios, radio or television towers (except as indicated hereinabove), plumbing fixtures, pipe, wiring, structural foundations (even though for exempt equipment or machinery) and air conditioning ductwork. (Note, however, that air conditioning machinery necessary to the production of live telecast and for the proper functioning of exempt technical equipment and machinery is not subject to the tax.)

Fiscal Impact Statement:

There will be no impact on state or local political subdivisions expenditures in complying with this proposed legislation.

Statement of Rationale:

The purpose of this proposal is to amend SC Regulation 117-328 concerning the sales and use tax and radio and television stations to delete the last paragraph of the regulation. This paragraph concerns outdated “wired music.” Such music is now transmitted via satellite and the charges for such transmissions, in the opinion of the Department, are subject to the tax under Code Sections 12-36-910(B)(3) and 12-36-1310(B)(3)) which impose the sales tax and use tax on charges for the ways or means for the transmission of the voice or messages. In addition, the last sentence of the paragraph concerning the proceeds from wired music is in conflict with the provisions of Code Sections 12-36-910(B)(3) and 12-36-1310(B)(3). The proposal to amend this regulation is needed to reduce any taxpayer confusion that may result from having a paragraph in a published regulation that is no longer needed and that is in conflict with the law. The proposal to amend this regulation is also reasonable in that it is the department’s responsibility to maintain regulations that are up-to date and consistent with the law.