



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

SC INFORMATION LETTER 94-34 (TAX)

SUBJECT: Local Option Tax
(Sales and Use Taxes)

DATE: December 16, 1994

SUPERSEDES: SC Information Letter #94-4

REFERENCE: S.C. Code Ann. Section 12-4-320 (Supp. 1993)
S.C. Code Ann. Section 4-10-10, et. seq. (Supp. 1993)

AUTHORITY: S.C. Code Ann. Section 12-4-320 (Supp. 1993)
S.C. Revenue Procedure #94-1

SCOPE: An Information Letter is a document issued for the purpose of disseminating general information or information concerning an administrative pronouncement.

Information Letters issued to disseminate general information have no precedential value and do not represent the official position of the Department. Information Letters designated as administrative pronouncements do represent the official advisory opinion of the Department.

INTRODUCTION

COUNTIES IMPOSING THE 1% LOCAL OPTION SALES AND USE TAXES:

Effective May 1, 1995, the following county will impose the additional 1% sales and use taxes:

Pickens

The following counties already impose the additional 1% sales and use taxes:

Effective July 1, 1991

Charleston
Colleton
Hampton
Jasper
Marion
McCormick
Saluda

Effective May 1, 1992

Abbeville
Allendale
Bamberg
Edgefield
Lancaster
Marlboro

Effective May 1, 1994

Chester
Florence

This Information Letter is intended to provide general local option sales and use tax information to construction contractors and suppliers of building materials in local option counties.

PURCHASES BY CONSTRUCTION CONTRACTORS WHICH ARE EXEMPT FROM THE LOCAL SALES AND USE TAXES

- I. Exemption. Purchases of building materials for use under a construction contract are exempt from the 1% tax if both of the following conditions are met:
 - A. 1. the construction contract is executed before the imposition date or
 2. a written bid is submitted before the imposition date culminating in a construction contract entered into before or after the imposition date, and
 - B. a verified copy of the contract is mailed within 6 months of the imposition date to:

South Carolina Department of Revenue
Office Services Division
License and Registration Section
P. O. Box 125
Columbia, South Carolina 29214-0109

A "verified copy" is a copy accompanied by a statement, signed under penalties of perjury, that it is true and correct. If the contractor is a corporation, the statement is to be signed by an officer of the corporation or an employee authorized to sign. If the contractor is a partnership, the statement is to be signed by a general partner. If the contractor is a sole proprietorship, the owner is to sign.

II. Special Exemption Certificate. In order for a contractor to purchase building materials for a particular contract free of the 1% tax, the contractor must complete Form ST-10-C ("Application for Exemption from Local Option Tax") and submit it to the Department of Revenue. If the Department determines the contract in question meets the requirements contained in Section I of this document, the contractor will be issued a special exemption certificate (Form ST-35). The certificate may only be used to purchase building materials for the contract for which it is issued and may not be used to purchase anything other than building material. If the contractor uses this certificate to make purchases free of the 1% tax, upon which the tax should have been paid, then the contractor will be held liable for the tax. Also, the certificate does not allow the contractor to make purchases of building materials free of the 5% state tax.

An exemption certificate issued by the Department of Revenue to a prime contractor may not be used by a subcontractor nor may a prime contractor use a subcontractor's exemption certificate. Each contractor must obtain his own certificate for each construction contract.

III. Important Dates:

A. Contracts Executed Before July 1, 1991. Those contracts executed before July 1, 1991, or for which a written bid was submitted before July 1, 1991, are exempt from the 1% tax in all seventeen local option tax counties listed above, if:

1. a "verified copy" of the contract is mailed to the Department of Revenue by December 31, 1991; and

2. the Department of Revenue issues an exemption certificate for the contract.

Exemption certificates issued for contracts described in this section are numbered, with the first two digits being "35" (i.e. 35XXXXXX).

B. Contracts Executed Before May 1, 1992. Those contracts executed before May 1, 1992, or for which a written bid was submitted before May 1, 1992, are exempt from the 1% tax in all local option counties except those listed below, if:

1. a "verified copy" of the contract is mailed to the Department of Revenue by October 31, 1992; and

2. the Department of Revenue issues an exemption certificate for the contract.

Exemption certificates issued for contracts described in this section are numbered, with the first two digits being "40" (i.e. 40XXXXXX).

Such certificates are not valid for Charleston, Colleton, Hampton, Jasper, Marion and McCormick counties.

- C. Contracts Executed Before May 1, 1994. Those contracts executed before May 1, 1994, or for which a written bid was submitted before May 1, 1994, are exempt from the 1% tax in all local option counties except those listed below, if:

1. a "verified copy" of the contract is mailed to the Department of Revenue by October 31, 1994; and

2. the Department of Revenue issues an exemption certificate for the contract.

Exemption certificates issued for contracts described in this section are numbered, with the first two digits being "45" (i.e. 45XXXXXX).

Such certificates are not valid for Abbeville, Allendale, Bamberg, Charleston, Colleton, Edgefield, Hampton, Jasper, Lancaster, Marion, Marlboro, McCormick and Saluda counties.

- D. Contracts Executed Before May 1, 1995. Those contracts executed before May 1, 1995, are exempt from the 1% tax in all local option counties except those listed below, if:

1. a "verified copy" of the contract is mailed to the Department of Revenue by October 31, 1995; and

2. the Department of Revenue issues an exemption certificate for the contract.

Exemption certificates issued for contracts described in this section are numbered, with the first two digits being "50" (i.e. 50XXXXXX).

Such certificates are not valid for Abbeville, Allendale, Bamberg, Charleston, Colleton, Edgefield, Hampton, Jasper, Lancaster, Marion, Marlboro, McCormick, Saluda, Chester and Florence counties.

- E. Contracts Executed After May 1, 1995. Those contracts executed after May 1, 1995, or for which a written bid is submitted after May 1, 1995, are subject to the 1% tax in all sixteen local option counties imposing the tax.

However, if the necessary requirements are met, such contracts may qualify for exemption from the 1% tax in those counties which impose the tax after May 1, 1995.

PURCHASES OF BUILDING MATERIALS FOR CONSTRUCTION CONTRACTS NOT MEETING THE REQUIREMENTS FOR EXEMPTION

Purchases of building materials for construction contracts not meeting the requirements under Section I of this document are subject to the 1% tax as follows:

1% Sales Tax:

If the property is delivered within the county in which the supplier is located, and that county has imposed the 1% tax, then the 1% sales tax is due.

If the property is delivered within the county in which the supplier is located, and that county has not imposed the tax, then the 1% sales tax is not due.

1% Use Tax:

The liability for the 1% use tax, as with the 5% state use tax, is on the contractor. The supplier may, however, be required to collect the tax from the contractor.

If the contractor takes delivery in one local option tax county and pays that county's 1% sales tax to the supplier, he is not liable for the 1% use tax if he takes the property to another local option tax county and stores, uses, or consumes the property in that county.

Also, the contractor is relieved of the liability for the 1% use tax if he has a receipt from the supplier showing the supplier has collected the 1% use tax from the contractor.

"MANUFACTURER/CONTRACTORS":

A so-called "manufacturer/contractor" is a construction contractor who produces his own building materials.

Pursuant to Code Section 12-36-110(1)(d), "manufacturer/contractors" are to report the additional 1% tax by county and municipality where they use or consume the building materials which they have produced - i.e., the location of the construction site.

Therefore, if the property is used or consumed in a county which has imposed the 1% local tax, then the tax is due. If the property is used or consumed in a county which has not imposed the 1% local tax, then the tax is not due. It does not matter where the "manufacturer/contractor's" business location is situated.

"Manufacturer/contractors" may also apply for the special exemption certificate provided for in this document.

DEFINITION OF THE TERM "BUILDING MATERIALS"

Pursuant to S.C. Regulation 117-174.45, the term "building materials" refers to tangible personal property which becomes a part of real property (e.g., lumber, bricks, nails, steel, wiring, etc.). The term does not refer to such items as machinery, tools, fuel, supplies, etc. which do not become a part of real property.

CREDIT FOR TAXES DUE AND PAID IN ANOTHER STATE:

As of January 1, 1991, credit is allowed against the use tax due in South Carolina for the state and local taxes due and paid in another state. Such credit is allowed even if the property is stored, used, or consumed in a South Carolina county which has not imposed the local option tax. (See SC Revenue Ruling #91-17, question 27, for further guidance concerning credit for taxes due and paid in another state.)

ADDITIONAL INFORMATION

S.C. Revenue Ruling 91-17 contains an extensive series of general questions and answers involving the local option sales and use taxes. To obtain a copy, please call the Department of Revenue's Administrative Section at (803) 737-4405.

If you have other questions concerning the local option tax and how it pertains to construction contractors, call Jerry Knight at (803) 737-4437, John McCormack at (803) 737-4438, or Steve Hallman at (803) 737-4433.