

SC REVENUE ADVISORY BULLETIN #00-9

**SUBJECT:** Sales Tax Rate Reduction on Certain Foods  
(Sales and Use Tax)

**EFFECTIVE DATE:** January 1, 2001

**SUPERSEDES:** All previous advisory opinions and any oral directives in conflict herewith.

**REFERENCES:** House Bill 3649, Part 1B, Section 32

**AUTHORITY:** S. C. Code Ann. Section 12-4-320 (2000)  
S. C. Code Ann. Section 1-23-10(4) (2000)  
SC Revenue Procedure #99-4

**SCOPE:** The purpose of a Revenue Advisory Bulletin is to provide guidance to the public and to Department personnel. It is a written statement issued to apply principles of tax law to a specific set of facts or a general category of taxpayers. **A Revenue Advisory Bulletin does not have the force or effect of law, and is not binding on the public.** It is, however, the Department's position and is binding on agency personnel until superseded or modified by a change in statute, regulation, court decision, or advisory opinion.

**Introduction:**

The General Assembly, in House Bill 3649, Part 1B, Section 32, enacted legislation to reduce the State sales and use tax rate, beginning January 1, 2001, on food items eligible for purchase with United States Department of Agriculture food coupons.

Beginning on January 1, 2001, the State sales and use tax rate on food items eligible for purchase with United States Department of Agriculture food coupons will be 4% instead of 5%. If the funds are authorized by the General Assembly, the State tax rate of food items eligible for purchase with United States Department of Agriculture food coupons will be reduced in subsequent years until the tax on such food items is eliminated.

House Bill 3649, Part 1B, Section 32 states:

(a) The General Assembly finds that it is appropriate to provide certain forms and levels of tax reduction when at the same time it has determined that every reasonable effort has been made and accomplished to fund, to the fullest extent possible, adequate and comprehensive programs in education and health care which are fundamental to progress, growth, and economic development. The General Assembly herein provides for a twenty percent reduction in the rate of sales tax imposed on the gross proceeds of sales, or the sale price of food items eligible for purchase with United States Department of Agriculture food coupons, beginning in January 1, 2001. Eighty percent of the revenues from sales taxes raised subsequent to imposition of the special sales tax rates provided by this section must be credited to the general fund of this State and used as sales taxes are used, and the remainder must be credited to the Education Improvement Act Fund. It is the further intent of the General Assembly that, provided the funds are authorized for the fiscal year in which the following schedule is eligible to be implemented, and notwithstanding the rate of tax imposed pursuant to Chapter 36, Title 12 of the 1976 Code, the rate of tax imposed pursuant to that chapter on the gross proceeds of sales, or the sale price of food items eligible for purchase with United States Department of Agriculture food coupons, is four percent for sales from January 1, 2001, through December 31, 2001; three percent for such sales from January 1, 2002, through December 31, 2002; two percent for such sales from January 1, 2003, through December 31, 2003; one percent for such sales from January 1, 2004, through December 31, 2004; and on and after January 1, 2005, the gross proceeds of sales, or the sale price of food items eligible for purchase with United States Department of Agriculture food coupons shall be exempt from the tax imposed pursuant to Chapter 36, Title 12 of the 1976 Code.

(b) General fund appropriations for any fiscal year made for the support of the public school system of the State must be greater than or equal to the revenues that would have been derived from the general retail sales tax, if the exemption provided for herein had not been authorized, from the soft drinks tax, the state's portion of the alcoholic liquors tax, and cable television fees as forecasted in the general fund revenue estimate of the Board of Economic Advisors. General fund revenues in an amount equal to the revenue that would have been derived from the sales tax if the exemption provided for herein had not been authorized for food items which may be purchased lawfully with USDA food coupons must be deposited from the state general fund by the Comptroller General to the Educational Improvement Act fund established in Section 59-21-1010 and for appropriations for the support of the public school system which shall include the following: Department of Education; State Board for Technical and Comprehensive Education, Educational Television Commission, Wil Lou Gray Opportunity School, School for the Deaf and the Blind, John de la Howe School, debt service on capital improvement bonds applicable to the above agencies, debt service on school bonds, and other school purposes provided by law. The revenue that would have been derived from the sales tax if the exemption provided for herein had not been authorized for food items which may be purchased lawfully with USDA food coupons shall nevertheless be considered as general retail sales tax revenue for purposes of this section.

## Questions and Answers:

1. What food items are eligible for the lower sales tax rate beginning January 1, 2001?

All food items which may be purchased lawfully with USDA food coupons<sup>1</sup> are eligible for the lower sales tax rate beginning January 1, 2001.

2. What are the food items which may be purchased lawfully with USDA food coupons?

Foods which may be purchased with USDA food coupons and are eligible for the lower sales tax rate beginning January 1, 2001 include:

- \$ Any food **intended to be eaten at home by people**, including snacks, beverages and seasonings
- \$ Seeds and plants intended to grow food (not birdseed or seeds to grow flowers)
- \$ Cold prepared items, such as salads or sandwiches, **intended to be eaten at home by people**

Items which cannot be purchased with USDA food coupons and are, therefore, subject to the state sales and use tax at the state rate of 5% are:

- \$ Alcoholic beverages, such as beer, wine, or liquor
- \$ Hot beverages ready-to-drink such as coffee
- \$ Tobacco
- \$ Hot foods ready to eat
- \$ Foods designed to be heated in the store
- \$ Hot and cold food to be eaten at a lunch counter, in a dining area or anywhere else in the store or in a nearby area such as a mall food court
- \$ Vitamins and medicines (Note: Medicines sold by prescription are exempt from the 5% state sales and use tax.)
- \$ Pet food
- \$ Any non-food items such as tissue, soap or other household goods

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<sup>1</sup> For purposes of the lower sales tax rate authorized by House Bill 3649, Part 1B, Section 32 and this advisory opinion, food coupons also means food stamps, electronic benefits transfer cards and any other method approved by the United States Department of Agriculture.

3. Must the above food items be purchased with USDA food coupons to be eligible for the lower sales tax rate beginning January 1, 2001?

No.

Note: Food items which are purchased with USDA food coupons are exempt from the state sales and use tax.

4. Must the food items eligible for the lower sales tax rate beginning January 1, 2001 be purchased from a retailer authorized by the United States Department of Agriculture to accept food coupons?

No, all food items which may be purchased lawfully with USDA food coupons are eligible for the lower sales tax rate beginning January 1, 2001 regardless of whether or not they are purchased from a retailer authorized by the United States Department of Agriculture to accept food coupons.

5. When the State sales and use tax rate on food items eligible for purchase with United States Department of Agriculture food coupons is reduced to 4% beginning January 1, 2001, what will be the State sales and use tax rate on sales of such food items to persons 85 years of age or older?

When the State sales and use tax rate on food items eligible for purchase with United States Department of Agriculture food coupons is reduced to 4% beginning January 1, 2001, the State sales and use tax rate on sales of such food items to persons 85 years of age or older will be 3%.

Note: If the State sales and use tax rate on food items eligible for purchase with United States Department of Agriculture food coupons is reduced further in subsequent years in accordance with House Bill 3649, Part 1B, Section 32, the State sales and use tax rate on sales of such food items to persons 85 years of age or older will be as follows:

<u>Year Beginning</u>	<u>Reduced State Rate</u>	<u>Reduced State Rate for Persons 85 or Older</u>
1/1/2002	3%	2%
1/1/2003	2%	1%
1/1/2004	1%	Exempt
1/1/2005	Exempt	Exempt

**For a more detailed discussion of this issue, see SC Revenue Advisory Bulletin #00-8.**

6. When the State sales and use tax rate on food items eligible for purchase with United States Department of Agriculture food coupons is reduced to 4% beginning January 1, 2001, what will be the local sales and use tax rate on sales of such food items in counties that impose a local sales and use tax on food items eligible for purchase with United States Department of Agriculture food coupons ?

When the State sales and use tax rate on food items eligible for purchase with United States Department of Agriculture food coupons is reduced to 4% beginning January 1, 2001, the local sales and use tax rate on sales of such food items in counties that impose a local sales and use tax on food items eligible for purchase with United States Department of Agriculture food coupons will not change.

However, if the food items eligible for purchase with United States Department of Agriculture food coupons become exempt from State sales and use taxes on January 1, 2005 (or January 1, 2004 in the case of sales to individuals 85 years of age or older) in accordance with House Bill 3649, Part 1B, Section 32, then sales of such food items in counties that presently impose a local sales and use tax on food items eligible for purchase with United States Department of Agriculture food coupons will also be exempt from the local sales and use tax.

**For a more detailed discussion of this issue, see SC Revenue Advisory Bulletin #00-8.**

7. When a food item eligible for purchase with United States Department of Agriculture food coupons is prepackaged with a non-eligible item, or a single price is established for a combination of a food item eligible for purchase with United States Department of Agriculture food coupons and a non-eligible item, is the lower sales tax rate applicable?

No. For example, if a grocery store advertises and sells a basket containing fruit and a bottle of wine, the lower sales tax rate is **not** applicable.

SOUTH CAROLINA DEPARTMENT OF REVENUE

s/Elizabeth A. Carpentier  
Elizabeth A. Carpentier, Director

December 14, 2000  
Columbia, South Carolina