
State of South Carolina
Department of Revenue
301 Gervais Street, P.O. Box 125, Columbia, South Carolina 29214
Website Address: <http://www.sctax.org>

SC REVENUE RULING #09-11

- SUBJECT:** Federal “Car Assistance Rebate System”
(Sales and Use Tax)
- EFFECTIVE DATE:** Applies to all periods open under the statute.
- SUPERSEDES:** All previous advisory opinions and any oral directives in conflict herewith.
- REFERENCES:** S. C. Code Ann. Section 12-36-910(A) (2000)
S. C. Code Ann. Section 12-36-90 (2000; Supp. 2008)
S. C. Code Ann. Section 12-36-1310(A) (2000)
S. C. Code Ann. Section 12-36-130 (2000; Supp. 2008)
S. C. Code Ann. Section 12-36-2120(2) (2000)
- AUTHORITY:** S. C. Code Ann. Section 12-4-320 (2000)
S. C. Code Ann. Section 1-23-10(4) (2005)
SC Revenue Procedure #09-3
- SCOPE:** The purpose of a Revenue Ruling is to provide guidance to the public and to Department personnel. It is an advisory opinion issued to apply principles of tax law to a set of facts or general category of taxpayers. It is the Department’s position until superseded or modified by a change in statute, regulation, court decision, or another Departmental advisory opinion.

Question:

How does the use of a federal electronic voucher of \$3,500.00 or \$4,500.00 in purchasing a new, fuel-efficient motor vehicle, as described in the facts, affect the measure of the sales tax – “gross proceeds of sales” – and the measure of the use tax – “sales price?”

Conclusion:¹

It is the department's opinion that a federal electronic voucher of \$3,500.00 or \$4,500.00 used in the purchase of a new, more fuel-efficient motor vehicle is a part of the measure of the sales tax – “gross proceeds of sales” – and the measure of the use tax – “sales price and is subject to the sales and use tax. However, the maximum sales and use tax due on the transaction cannot exceed \$300.00.

In other words, if a new, fuel-efficient motor vehicle is sold by a retailer using a federal electronic voucher of \$3,500.00 or \$4,500.00 as described in the facts, and the price charged the consumer by the retailer is reduced by the amount of the federal electronic voucher, then the total amount received by the retailer from the consumer and the federal government is includable in “gross proceeds of sales” for sales tax purposes or “sales price” for use tax purposes, and therefore, subject to the sales and use tax. However, the total sales and use tax due on the sale of the new, fuel-efficient motor vehicle cannot exceed \$300.00.

Note: The amount allowed by the retailer for the salvage value of the motor vehicle that is “traded in” as part of the sales transaction is not subject to the tax.

Note: If a South Carolina consumer travels to another state and purchases a new, fuel-efficient motor vehicle from a retailer in the other state for use, storage or consumption in South Carolina, the South Carolina consumer would only owe the use tax on the difference between the sales tax paid in the other state (if any) and the use tax due in South Carolina. In other words, if the state and local sales or use tax due and paid in another state is equal to or greater than the state and local use tax due in South Carolina, then no use tax is due in South Carolina. See Code Section 12-36-1310(C) and SC Revenue Ruling #07-5.

Facts:

The “Car Allowance Rebate System” is a new program administered by the National Highway Traffic Safety Administration (“NHTSA”) that was authorized by Congress under the Consumer Assistance to Recycle and Save Act of 2009.²

If a transaction meets the requirements of the program, a federal electronic voucher of either \$3,500.00 or \$4,500.00 is sent to the new car dealer and is used to assist a consumer in the purchase of a new, more fuel-efficient motor vehicle when that consumer is trading-in an older motor vehicle as part of the purchase transaction.

¹ During the time period that a draft of this revenue ruling was published for public comments and suggestions, the United States Department of Transportation announced that the Federal “Car Assistance Rebate System” would end on August 24, 2009. It was, however, decided that this revenue ruling would still be issued as an advisory opinion to make the public aware of the Department of Revenue's position on this matter and in case Congress decided to re-authorize the program.

² The Consumer Assistance to Recycle and Save Act of 2009 is part (Title XIII) of the Supplemental Act, Public Law 111-32, 123 Stat.1859.

The following are some general requirements of the program (as noted on the NHTSA website for the program):

- (1) The trade-in vehicle must be less than 25 years old on the trade-in date.
- (2) Only the purchase or lease of a new vehicle qualifies for the program.
- (3) Generally, the trade-in vehicle must get 18 or less miles per gallon (some very large pick-up trucks and cargo vans have different requirements).
- (4) The trade-in vehicle must be registered and have been insured continuously for the full year preceding the trade-in.
- (5) The program runs through November 1, 2009 or when the funds are exhausted, whichever comes first.
- (6) The program requires the disposal of the eligible trade-in vehicle and that the dealer disclose to the purchaser an estimate of the scrap value of the trade-in vehicle. The scrap value, however minimal, will be in addition to the rebate, and not in place of the rebate.

For more details on the requirements of this program, visit the website established by the NHTSA for the “Car Allowance Rebate System” at <http://www.cars.gov/>.

Discussion:

Code Section 12-36-910(A) imposes “a sales tax, equal to five percent³ of gross proceeds of sales, upon every person engaged ... within this State in the business of selling tangible personal property at retail.”

Code Section 12-36-90 defines the term “gross proceeds of sales” and reads, in part:

Gross proceeds of sales, or any similar term, means the value proceeding or accruing from the sale, lease, or rental of tangible personal property.

- (1) The term includes:

* * * *

- (b) the proceeds from the sale of tangible personal property without any deduction for:

³ Code Section 12-36-1110 increased the general sales and use tax rate by 1% from 5% to 6%. However, the 1% increase does not apply to the sale of items subject to the maximum tax provisions of Code Section 12-36-2110. As such, sales of motor vehicles to be licensed for use on the highways are taxed a rate of 5%; however, the maximum tax due on the sale of the motor vehicle cannot exceed \$300.00.

- (i) the cost of goods sold;
- (ii) the cost of materials, labor, or service;
- (iii) interest paid;
- (iv) losses;
- (v) transportation costs;
- (vi) manufacturers or importers excise taxes imposed by the United States; or
- (vii) any other expenses.

(2) The term does not include:

- (a) a cash discount allowed and taken on sales;

* * * *

- (c) the value allowed for secondhand property transferred to the vendor as a trade-in;

* * * *

Code Section 12-36-1310(A) imposes the use tax at the rate of five percent⁴ of the sales price of the property “on the storage, use, or other consumption in this State of tangible personal property purchased at retail for storage, use, or other consumption in this State.”

Code Section 12-36-130 defines the term “sales price” and reads:

"Sales price" means the total amount for which tangible personal property is sold, without any deduction for the cost of the property sold, the cost of the materials used, labor or service cost, interest paid, losses, or any other expenses.

(1) The term includes:

- (a) any services or transportation costs that are a part of the sale, whether paid in money or otherwise; and

⁴ Code Section 12-36-1110 increased the general sales and use tax rate by 1% from 5% to 6%. However, the 1% increase does not apply to the sale of items subject to the maximum tax provisions of Code Section 12-36-2110. As such, sales of motor vehicles are taxed a rate of 5%; however, the maximum tax due on the sale of a motor vehicle cannot exceed \$300.00.

(b) any manufacturers or importers excise tax imposed by the United States.

(2) The term does not include:

(a) a cash discount allowed and taken on the sale;

(b) an amount charged for property, which is returned by the purchaser, and the full amount is refunded in cash or by credit;

(c) the value allowed for secondhand property transferred to the vendor in partial payment; and

(d) the amount of any tax imposed by the United States with respect to retail sales, whether imposed upon the retailer or consumer, except for manufacturers or importers excise taxes.

Opinion of the Attorney General S-OAG-45 (SC Department of Revenue Manual of Regulations and Opinions of the Attorney General) concerns a manufacturer's rebate paid to the purchaser, and reads in part:

There is nothing in the sales tax statutes or regulations permitting a seller to deduct from his gross proceeds an amount paid by a third party to or for the benefit of a purchaser, even though the purpose of the payment is to reimburse the purchaser for a part of the purchase price.

Also, in *Meyers Arnold v. South Carolina Tax Commission*, 285 S.C. 303, 328 S.E. 2d. 920 (1985), the Court of Appeals, in interpreting the definition of "gross proceeds of sales" with respect to lay away fees paid in conjunction with lay away sales, held:

Section 12-35-30 [now Section 12-36-90] defines gross proceeds of sales as "the value proceeding or accruing from the sale of tangible personal property ... without any deduction for service costs." But for the lay away sales, Meyers Arnold would not receive the lay away fees. The fees are obviously rendered in making lay away sales. For these reasons, this court holds the lay away fees are part of the gross proceeds of sales and subject to the sales tax.

Furthermore, SC Revenue Ruling #99-9 provides guidance with respect to manufacturer's coupons, and concludes in part:

If a consumer purchases a product from a local retailer using a manufacturer's coupon as described in the facts, and the price charged the consumer by the retailer is reduced by the value assigned the coupon by the manufacturer, then the total amount received by the retailer from the consumer and the manufacturer is includable in "gross proceeds of sales,"

and therefore, subject to the sales tax. For example, if an item normally sells for \$5.00 and the customer pays \$4.00 and presents a manufacturer's coupon valued at \$1.00, then the sales tax is based on \$5.00 ("gross proceeds of sale") since the retailer receives \$4.00 from the customer and \$1.00 from the manufacturer.

Based on the above, the amount received by the retailer from the federal government via the electronic voucher under the "Car Assistance Rebate System" and the amount received from the consumer are a part of "gross proceeds of sales" or "sales price" and subject to the sales and use tax. However, any amount allowed for the salvage value of the motor vehicle "traded- in" as part of the sale transaction is not a part of "gross proceeds of sales" or "sales price" and not subject to the sales and use tax.

However, Code Section 12-36-2110(A) establishes a maximum tax for motor vehicles and states in part:

The maximum tax imposed by this chapter is three hundred dollars for each sale made after June 30, 1984, or lease executed after August 31, 1985, of each:

* * * *

(2) motor vehicle;

* * * *

In the case of a lease, the total tax rate required by law applies on each payment until the total tax paid equals three hundred dollars. Nothing in this section prohibits a taxpayer from paying the total tax due at the time of execution of the lease, or with any payment under the lease. To qualify for the tax limitation provided by this section, a lease must be in writing and specifically state the term of, and remain in force for, a period in excess of ninety continuous days.

Therefore, the maximum sales and use tax due with respect to a sale or lease (provided the lease is in writing and states a term of, and remain in force for, a period in excess of ninety continuous days) of a motor vehicle is \$300.00.

Finally, one additional issue must be considered – does the use of the federal electronic voucher in purchasing a new, fuel-efficient motor vehicle make the sale an exempt sale to the federal government under Code Section 12-36-2120(2)?

Commission Decision #93-2 provides an analogous situation with respect to purchases involving Medicare and Medicaid funds. In that decision, the commissioners held:

Section 12-36-2120(2) exempts sales to the federal government from sales tax. According to the taxpayers, transactions involving medicare and

medicaid funds are actually sales to the federal government and thus exempt under this provision.

There are two reasons why this argument is incorrect. First, the federal government is not the purchaser of the items in question. The mere fact medicare or medicaid funds are involved is of no consequence. Stripped of their highly regulated guidelines, these programs do nothing more than reimburse the taxpayer for purchases made by the program's recipients.

As such, the federal government is not the purchaser of the new, fuel-efficient motor vehicle and the federal "Car Assistance Rebate System" does nothing more than reimburse the retailer (in part) for the purchase of a new, fuel-efficient motor vehicle made by a consumer. Therefore, such sales are subject to the sales and use tax and not exempt under the exemption for sales to the federal government found in Code Section 12-36-2120(2).

Based on the above, it is the department's opinion that a federal electronic voucher of \$3,500.00 or \$4,500.00 used in the purchase of a new, more fuel-efficient motor vehicle is a part of the measure of the sales tax – "gross proceeds of sales" – and the measure of the use tax – "sales price and is subject to the sales and use tax. However, the maximum sales and use tax due on the transaction cannot exceed \$300.00.

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SOUTH CAROLINA DEPARTMENT OF REVENUE

s/Ray N. Stevens
Ray N. Stevens, Director

August 25, 2009
Columbia, South Carolina