

SC TEMPORARY REVENUE RULING #10-4

SUBJECT: Energy Star Appliance Rebate Program
(Sales 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)

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 Temporary Revenue Ruling is to provide immediate 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 It is temporary, and is the Department's position until superseded or modified by a change in statute, regulation, court decision, or another Departmental advisory opinion.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 a rebate, ranging from \$50.00 to \$500.00, authorized under the State Energy Office's Appliance Rebate Program for the purchase of a new, Energy Star appliance, as described in the facts, affect the measure of the sales tax – "gross proceeds of sales?"

Conclusion:

It is the department's opinion that a rebate, ranging from \$50.00 to \$500.00, authorized under the State Energy Office's Appliance Rebate Program for the purchase of a new, Energy Star appliance, as described in the facts, is a part of the measure of the sales tax – "gross proceeds of sales" – and is subject to the sales tax.

For example, the State Energy Office's Appliance Rebate Program provides for a \$50.00 rebate on the purchase of a new, qualified Energy Star refrigerator. If the qualifying refrigerator has a sales price of \$800.00, the price charged the customer by the retailer is

reduced by the \$50.00 rebate. However, the total amount received by the retailer from the consumer (\$750.00) and the State Energy Office's Appliance Rebate Program (\$50.00) is includable in "gross proceeds of sales" for sales tax purposes, and therefore, the entire \$800.00 received by the retailer is subject to the sales and use tax.

Note: If separately stated, the amount allowed by the retailer for the salvage value of the old appliance (if any) that is "traded in" as part of the sales transaction is not subject to the tax.

Note: For information concerning the application of the sales tax to an amount charged the customer for delivery and fuel surcharges, see SC Regulation 117-310 and SC Revenue Ruling #05-1. For information concerning the application of the sales tax to an amount charged the customer for a warranty, maintenance or similar service contract, see SC Revenue Ruling #06-9. For information concerning the application of the sales tax to an amount charged the customer for installation labor, see SC Regulation 117-313.3.

Facts:

The South Carolina Appliance Rebate Program will launch March 31, 2010 and will continue until all funds are exhausted. This program is funded by South Carolina's share of federal stimulus funds being distributed to each state for appliance rebates and is being implemented in South Carolina by the State Energy Office. Rebates will not apply to online purchases or purchases or installations made prior to March 31, 2010.

Since a total of only \$3.9 million will be available in rebates to South Carolina residents, it is expected that the rebate program will only last a few weeks. The rebate money will be divided into two groups: white goods and whole-house goods. Whole-house goods consist of HVACs and water heaters. All other products fall into the white goods category.

Customers must make their purchase during the program period to get a rebate. Rebates for "white goods" will be instant and rebates for whole-house appliances must be reserved at the time of purchase.

The rebates are limited to appliances for primary residential use and are not available for rental or commercial property. The appliance must be purchased from a South Carolina based retailer or contractor that has been approved by the State Energy Office.

For appliances purchased in a store, the rebate will be applied instantly at the register. The retailer will subsequently apply online at the point of sale for a reimbursement of the rebate. Installers of whole-house equipment, such as water heaters and HVAC systems, will reserve rebates online and then provide customers with mail-in forms. The customer will mail in the required paperwork in order to receive the rebate.

Customers participating in this program will be required to let retailers and installers recycle their old, inefficient appliances to ensure that they are taken off the power grid.

The authorized rebates are as follows:

Clothes washers	\$100
Dishwashers	\$50
Refrigerators	\$50
Room Air Conditioning Units	\$50
Central Air Conditioning Units	\$200
Heat Pump	\$500
Gas Furnace	\$500
Gas-Condensing Water Heater	\$400
Electric Heat Pump Water Heater	\$400
Hi-Efficiency Gas Storage Water Heater	\$100
Hi-Performance Gas Storage Water Heater	\$200
Gas Tankless Water Heater	\$400
Solar Electric Water Heater	\$400
Solar Gas Water Heater	\$400

For more details on the requirements of this program, visit the SC Appliance Rebate Program website at www.appliancerebates.sc.gov.

Discussion:

Code Section 12-36-910(A) imposes “a sales tax, equal to [six]¹ percent 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:

¹ Code Section 12-36-1110 increased the general sales and use tax rate by 1% from 5% to 6%.

- (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;

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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, a rebate, ranging from \$50.00 to \$500.00, authorized under the State Energy Office's Appliance Rebate Program for the purchase of a new, Energy Star appliance, as described in the facts, is a part of the measure of the sales tax – "gross proceeds of sales" – and is subject to the sales tax.

However, any separately stated amount allowed for the salvage value of the old appliance (if any) "traded-in" as part of the sale transaction is not a part of "gross proceeds of sales" and not subject to the sales tax.

Note: For information concerning the application of the sales tax to an amount charged the customer for delivery and fuel surcharges, see SC Regulation 117-310 and SC Revenue Ruling #05-1. For information concerning the application of the sales tax to an amount charged the customer for a warranty, maintenance or similar service contract, see SC Revenue Ruling #06-9. For information concerning the application of the sales tax to an amount charged the customer for installation labor, see SC Regulation 117-313.3.

SOUTH CAROLINA DEPARTMENT OF REVENUE

s/Ray N. Stevens

Ray N. Stevens, Director

March 1 _____, 2010
Columbia, South Carolina