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Comments Due by: **January 25, 2018**

SC REVENUE RULING #18-X {DRAFT – 1/04/2018}

SUBJECT: Motor Vehicles, Motorcycles, Trailers, Semitrailers, Pole Trailers and Other Vehicles
(Sales and Use Tax)

EFFECTIVE DATE: July 1, 2017

REFERENCES: Title 12, Chapter 36 of the S.C. Code of Laws (2014, Supp. 2016)
Act 40 of 2017, Sections 5 and 7 (Enacted May 10, 2017)

AUTHORITY: S.C. Code Ann. Section 12-4-320 (2014)
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. 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 It is the Department’s position until superseded or modified by a change in statute, regulation, court decision, or another Department advisory opinion.

INTRODUCTION:

South Carolina imposes a sales and use tax on persons engaged in the business of selling tangible personal property at retail, including motor vehicles, motorcycles, trailers, semitrailers, and pole trailers. However, effective July 1, 2017, sales or purchases of most motor vehicles, motorcycles, trailers, semitrailers, and pole trailers are subject to a new Infrastructure Maintenance Fee instead of a sales and use tax or a casual excise tax.

Infrastructure Maintenance Fee

The General Assembly recently enacted the South Carolina Infrastructure and Economic Development Reform Act to address the needs of South Carolina’s transportation infrastructure system. As part of its effort to improve the State’s transportation infrastructure network, a new infrastructure maintenance fee became effective July 1, 2017.

Registration in South Carolina upon Purchase or Lease: The owner of each vehicle, trailer, semitrailer or other item that must be registered pursuant to Chapter 3 of Title 56 must pay the infrastructure maintenance fee upon first registering the vehicle, trailer, semitrailer or other item with the SC Department of Motor Vehicles (“SCDMV”). The infrastructure maintenance fee is

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remitted to SCDMV and is imposed at a rate of 5% of the gross proceeds of the sale, not to exceed \$500, for a sale by a licensed SCDMV dealer, or 5% of the vehicle's fair market value, not to exceed \$500, for a sale by a person who is not a SCDMV licensed dealer.

Sales that are subject to the new infrastructure maintenance fee are exempt from state and local sales and use taxes (Code Section 12-36-2120(83)).

If a dealer has a South Carolina retail license or offers to license and register the item, then the dealer must collect the infrastructure maintenance fee and remit it to SCDMV. Generally, based on information from SCDMV, a dealer is a person in the business of selling motor vehicles (e.g., cars, trucks, motorcycles, and motor homes) that is licensed with SCDMV. A dealer also includes, effective November 19, 2018, a person licensed with SCDMV in the business of selling mopeds.

Registration in South Carolina after First Registration in Another State: The infrastructure maintenance fee is also imposed when a vehicle, trailer, semitrailer or other item required to be registered under Chapter 3 of Title 56 was first registered in another state by the owner and is subsequently registered for the first time in South Carolina by the same owner. This infrastructure maintenance fee is \$250, but it does not apply to active duty members of the military, their spouses, and their dependents

Sales and Use Tax and Casual Excise Tax

Sales of vehicles by persons engaged in the business of selling tangible personal property at retail that are not required to be registered with SCDMV under Chapter 3 of Title 56 are subject to the sales and use tax. The tax due on such sales depends on whether the vehicle is subject to the maximum tax provisions of Code Section 12-36-2110 and whether the vehicle will be registered by the purchaser in his state of residence.

If the sale of a vehicle is subject to the maximum tax provisions of Code Section 12-36-2110, then the sales and use tax is imposed at a rate of 5% of "gross proceeds of sales" or "sales price," not to exceed \$500. Local sales and use taxes do not apply.

If the sale of a vehicle is not subject to the maximum tax provisions of Code Section 12-36-2110, then the sales and use tax is imposed at a rate of 6% of "gross proceeds of sales" or "sales price," plus any applicable local sales and use tax.

However, if the vehicle is a motor vehicle, or a trailer, semitrailer, or pole trailer of a type to be registered and licensed, and is sold to a nonresident for registration in his state of residence, then the sales tax is imposed at the lesser of the sales tax due in the purchaser's state of residence or the sales tax due in South Carolina, unless the sale is otherwise excluded or exempted from the South Carolina sales and use tax. However, no sales tax is due in South Carolina if the nonresident purchaser cannot receive a credit in his state of residence for sales tax paid to South Carolina.

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The casual excise tax, which is imposed upon the issuance of a certificate of title or other proof of ownership for certain items, no longer applies to motor vehicles and motorcycles effective July 1, 2017.

GENERAL SUMMARY:

The application of the new infrastructure maintenance fee or the sales and use tax on the sale or purchase of a vehicle can generally be summarized as follows (unless the transaction is otherwise exempt):

General Rule:

- If the vehicle is required to be registered under Chapter 3 of Title 56 and is registered with the SCDMV, the infrastructure maintenance fee applies and is remitted to the SCDMV. The sale or purchase of a vehicle that is subject to the infrastructure maintenance fee is exempt from state and local sales and use taxes.
- If the vehicle is of a type that is not required to be registered with the SCDMV, then the sales and use tax would apply and is remitted to the Department of Revenue (e.g., a utility trailer purchased for personal use).

Sales to Nonresidents:

Maximum Tax Items

- If the vehicle is subject to the maximum tax provisions of Code Section 12-36-2110(A)(1) (e.g., motor vehicle, motorcycle, recreational vehicle), is of a type that would be registered in South Carolina if not for it being registered out-of-state, and is sold by an SCDMV licensed dealer to a nonresident who will register it in his home state, then the sales tax applies and is remitted to the SCDMV. (Note: The sales tax imposed on such sales to a nonresident by a person who is not a licensed SCDMV dealer are remitted to the Department of Revenue.)

However, based on Code Section 12-36-930 and Code Section 12-36-2120, the sales tax is not due if (1) the purchaser's state of residence does not impose a sales tax on the motor vehicle, trailer, semitrailer or pole trailer, (2) the purchaser's state of residence does not allow a credit for sales tax paid in South Carolina on the motor vehicle, trailer, semitrailer or pole trailer, or (3) the sale is otherwise exempt from the sales tax.

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Items Not Subject to the Maximum Tax

- If the vehicle is a trailer, semitrailer or pole trailer that is not subject to the maximum tax provisions of Code Section 12-36-2120(A)(1), is of a type required to be licensed and registered, and is sold to a nonresident who will register it in his home state, then the sales tax applies and it is remitted to the Department of Revenue.

However, based on Code Section 12-36-930 and Code Section 12-36-2120, the sales tax is not due if (1) the purchaser's state of residence does not impose a sales tax on the trailer, semitrailer or pole trailer, (2) the purchaser's state of residence does not allow a credit for sales tax paid in South Carolina on the trailer, semitrailer or pole trailer, or (3) the sale is otherwise exempt from the sales tax.

- If the vehicle is a trailer, semitrailer or pole trailer that is not subject to the maximum tax provisions of Code Section 12-36-2110(A)(1), is of a type not required to be licensed and registered, and is sold to a nonresident, then the sales tax applies and it is remitted to the Department of Revenue, unless the sale is otherwise exempt from the sales tax.

Casual Excise Tax:

- The casual excise tax no longer applies to motor vehicles and motorcycles. Effective July 1, 2017, the casual excise tax only applies to aircraft, boats and boat motors. The infrastructure maintenance fee, however, is paid on motor vehicles and motorcycles at the time of registration with SCDMV under the above rules.

Note: SC Information Letter #17-10 provides charts that include the applicable rate for the infrastructure maintenance fee or the sales and use tax for each of the above scenarios and also provides general information, including information on exemptions for active duty military members.

PURPOSE:

The purpose of this advisory opinion is to provide additional guidance in a question and answer format with respect to the application of the sales and use tax to sales or purchases of motor vehicles, motorcycles, trailers, semitrailers and pole trailers on or after July 1, 2017. It will address issues involving sales to residents and nonresidents, sales of farm trailers, sales by nonretailers (*i.e.*, casual sales), leases and short-term rentals of motor vehicles, and sales to resident and nonresident members of the military and their spouses.

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DEFINITIONS:

For purposes of this document, the terms “dealer”, “retailer”, and “nonretailer” are defined as follows:

Dealer: A person in the business of selling motor vehicles (e.g., cars, trucks, motorcycles, and motor homes) that is licensed with SCDMV.

Retailer: A person engaged in the business of selling tangible personal property (including, but not limited to motor vehicles, motorcycles, and motor homes) at retail. A person engaged in the business of selling tangible personal property at retail in South Carolina must obtain a retail license from the Department of Revenue.

Nonretailer: A person not engaged in the business of selling tangible personal property at retail. However, a nonretailer may sell tangible personal property on a casual and isolated basis, such as an individual who may sell his 20-year-old car because he plans to purchase a new car from a dealer. For more information on casual and isolated sales, see SC Regulation 117322.

QUESTIONS AND ANSWERS:

General Guidance

1. Are sales of motor vehicles by a retailer licensed as a “dealer” with the SCDMV subject to the sales and use tax?

For sales on or after July 1, 2017, the application of the sales and use tax on sales of motor vehicles by a retailer licensed as a “dealer” with the SCDMV is as follows:

- (a) Sales of motor vehicles to residents for registration in South Carolina are exempt from the sales and use tax under Code Section 12-36-2120(83) since such sales are subject to an infrastructure maintenance fee (“IMF”) upon registration of the motor vehicle at the SCDMV. The IMF is remitted by the dealer to the SCDMV.
- (b) Sales of motor vehicles to nonresidents who will register the motor vehicle in South Carolina with the SCDMV are exempt from the sales and use tax under Code Section 12-36-2120(83) since such sales are subject to an IMF upon registration of the motor vehicle at the SCDMV. The IMF is remitted by the dealer to the SCDMV.
- (c) Sales of motor vehicles to nonresidents who will register the motor vehicle in their state of residence are subject to the sales tax in South Carolina at the lesser of the sales tax due in the purchaser’s state of residence or 5% of the gross proceeds of sales, but no more than \$500. This sales tax is paid to the SCDMV.

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Note: If the purchaser's state of residence does not impose a sales tax on the purchase of a motor vehicle or does not allow the purchaser a credit against its use tax for a sales tax paid on the motor vehicle in South Carolina, then the sale of the motor vehicle is not subject to the South Carolina sales tax. See SC Information Letter #14-2.

2. Are sales by a retailer of trailers, semitrailers, and pole trailers subject to the sales and use tax?

The application of the state sales and use tax on sales of trailers, semitrailers, and pole trailers by a retailer depends on the type and use of the trailer, semitrailer, and pole trailer. For information concerning specific trailers, semitrailers and pole trailers, see the questions below.

3. What is the rate of the IMF?

The IMF is calculated as follows:

- (a) For purchases or leases from a person licensed as a dealer with the SCDMV, the IMF is 5% of the "gross proceeds of sales" of the purchase or lease, but no more than \$500. The term "gross proceeds of sales" is defined in the same manner as in Code Section 12-36-90 of the sales and use tax law.¹
- (b) For purchases or leases from a person not licensed as a dealer with the SCDMV, the IMF is 5% of the "fair market value" of the vehicle, but no more than \$500.²

The IMF is remitted to the SCDMV upon registration of the motor vehicle at the SCDMV.

Note: An IMF in the amount of \$250 is also due on motor vehicles and other items required to be registered with the SCDMV that were first registered in another state but which were subsequently registered in South Carolina by the same owner. For example, if a person is a resident of Virginia and his motor vehicle is registered with the State of Virginia, and that person later moves to South Carolina, the registration by that person of that same motor vehicle in South Carolina is subject to an IMF of \$250.

¹ Generally, the term "gross proceeds of sales" is defined in Code Section 12-36-90 as the value proceeding or accruing from the sale of tangible personal property, without any deductions for the cost of goods sold; the cost of materials, labor, or service; interest paid; losses; transportation costs; manufacturers or importers excise taxes imposed by the United States; or any other expenses. It does not, however, include the value of any trade-in.

² "Fair market value" is defined in Code Section 56-3-627(C)(4) to mean the total purchase price less any trade-in, or the valuation shown in a national publication of used values adopted by the Department, less any trade-in.

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4. Are motor vehicles, motorcycles, trailers and semitrailers subject to a maximum sales and use tax?

The sales and use taxes are imposed at the rate of 5% for the sale or lease of certain tangible personal property subject to a maximum tax. Local taxes administered and collected by the Department on behalf of local jurisdictions do not apply to the sale or lease of tangible personal property subject to a maximum tax.

A \$500 maximum tax applies to each sale or each lease of the following items:

- motor vehicles;
- motorcycles (on-road or off-road);
- recreational vehicles, including tent campers, travel trailers, park trailers, motor homes and fifth wheels;
- boats;
- aircraft;
- trailers or semitrailers capable of being pulled only by a truck tractor;
- self-propelled light construction equipment with compatible attachments limited to a maximum of 160 net engine horsepower;
- fire safety education trailers; and
- horse trailers.

In order for the lease of any of the above items to qualify for the \$500 maximum tax, the lease must be in writing and must specifically state the term of, and remain in force for, a period in excess of 90 continuous days. In addition, the sales or use tax applies to each renewal of the lease, and the maximum tax for that renewal will only apply if (1) the lease renewal is in writing and (2) the lease renewal specifically states a term of, and remains in force for, a period in excess of 90 continuous days.

A maximum tax does not apply to the sale or lease of the following items:

- trailers or semitrailers capable of being pulled by a vehicle other than a truck tractor;
- pole trailers;
- boat trailers;
- self-propelled light construction equipment with compatible attachments with a net engine horsepower that exceeds 160; and
- all-terrain vehicles, legend race cars, golf carts and any other items not meeting the definition of a motor vehicle.

Sales or leases of these items not subject to the maximum tax are subject to a state tax rate of 6%, plus any applicable local sales and use tax.

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Note: If an item subject to the maximum sales and use tax is required to be registered with the SCDMV under Chapter 3 of Title 56, then the sale on that item is exempt from the sales and use tax and is subject to the IMF.

Sales by a Retailer of Motor Vehicles, Motorcycles, Mopeds, Trailers, and Semitrailers to Residents of South Carolina

5. Are sales by a retailer of motor vehicles and motorcycles to residents of South Carolina for registration in South Carolina subject to the sales and use tax?

No. However, such motor vehicles and motorcycles are subject to an IMF upon registration at the SCDMV.

Note: See Question #30 concerning dirt bikes.

6. Are sales by a retailer of trailers and semitrailers that can only be pulled by a truck tractor to residents of South Carolina for registration in South Carolina subject to the sales and use tax?

No. However, the trailer or semitrailer is subject to an IMF upon registration at the SCDMV.

7. Are sales by a retailer of pole trailers to residents of South Carolina for registration in South Carolina subject to the sales and use tax?

No. However, the pole trailer is subject to an IMF upon registration at the SCDMV.

8. Are sales by a retailer of utility trailers and boat trailers that will be used for business purposes to residents of South Carolina subject to the sales and use tax?

No. However, utility trailers and boat trailers that will be used for business purposes in South Carolina must be registered with the SCDMV and are therefore subject to an IMF upon registration at the SCDMV.

9. Are sales by a retailer of utility trailers and boat trailers that will be used for personal purposes to residents of South Carolina subject to the sales and use tax?

Yes. Since utility trailers and boat trailers that will be used for personal purposes are not required to be registered with the SCDMV, such sales are subject to the sales and use tax and are not subject to an IMF. The sales and use tax is imposed on sales of utility trailers and boat trailers used for personal purposes at a rate of 6%, plus any applicable local sales and use tax.

10. Are sales by a retailer of recreational vehicles that are pulled by a motor vehicle (e.g., tent campers, travel trailers, park models, park trailers, and fifth wheels) to residents of South Carolina for registration in South Carolina subject to the sales and use tax?

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No. However, recreational vehicles that are pulled by a motor vehicle, such as tent campers, travel trailers, park models, park trailers, and fifth wheels, are subject to an IMF upon registration at the SCDMV.

11. Are sales by a retailer of mopeds to residents of South Carolina for registration in South Carolina subject to the sales and use tax?

For sales of mopeds prior to November 19, 2018, the sale of a moped is subject to the sales and use tax. The tax is imposed at a rate of 6%, plus any applicable local sales and use tax.

For sales of mopeds on or after November 19, 2018, the sale of a moped is not subject to the sales and use tax. The sale of a moped on or after November 19, 2018 is subject to the IMF upon registration with the SCDMV.

Sales by a Retailer of Motor Vehicles, Motorcycles, Mopeds, Trailers, and Semitrailers to Nonresidents

12. Are sales by a retailer of motor vehicles for registration in South Carolina subject to the sales and use tax?

No. However, the motor vehicle is subject to an IMF upon registration at the SCDMV.

13. Are sales by a retailer of motor vehicles to nonresidents for registration in their state of residence subject to the sales and use tax?

Yes. However, the calculation of the tax depends on the purchaser's state of residence. Sales of motor vehicles to nonresidents who will register the motor vehicle in their state of residence are subject to the sales tax at the lesser of the sales tax due in the purchaser's state of residence or 5%, but no more than \$500. **When purchased from a licensed SCDMV dealer, this sales tax is paid to the SCDMV.**

If the purchaser's state of residence does not impose a sales tax on the purchase of a motor vehicle or does not allow the purchaser a credit against its use tax for a sales tax paid on the motor vehicle in South Carolina, then the sale of the motor vehicle is not subject to the South Carolina sales tax.

For additional information on sales to nonresidents of motor vehicles, see SC Information Letter #14-2.

Note: If the seller delivers the motor vehicle to the nonresident at a point outside of South Carolina, or delivers the vehicle to a common carrier who will deliver the motor vehicle to the nonresident at a point outside South Carolina, then the sale is exempt from the tax under Code Section 12-36-2120(36).

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14. Are sales by a retailer to nonresidents of trailers and semitrailers of a type required to be registered for registration in their state of residence subject to the sales and use tax?

Yes. However, the calculation of the tax depends on the purchaser's state of residence and whether the trailer or semitrailer is subject to the maximum sales and use tax in Code Section 12-36-2110.

- (a) If the trailer or semitrailer is subject to the maximum tax of \$500 under Code Section 12-36-2110, then the sale is subject to the sales tax at the lesser of the sales tax due in the purchaser's state of residence or 5%, but no more than \$500. **When purchased from a licensed SCDMV dealer, this sales tax is paid to the SCDMV.**
- (b) If the trailer or semitrailer is not subject to the maximum tax of \$500 under Code Section 12-36-2110, then the sale is subject to the sales tax at the lesser of the sales tax due in the purchaser's state of residence or 6% plus any applicable local sales tax. **This sales tax is paid to the Department of Revenue.**

If the purchaser's state of residence does not impose a sales tax on the purchase of a trailer or semitrailer of a type required to be registered or does not allow the purchaser a credit against its use tax for a sales tax paid on the trailer or semitrailer in South Carolina, then the sale of the trailer or semitrailer is not subject to the South Carolina sales tax.

For additional information on sales to nonresidents of trailers and semitrailers of a type required to be registered, see SC Information Letter #14-2.

Note: If the seller delivers the trailer or semitrailer to the nonresident at a point outside of South Carolina, or delivers the vehicle to a common carrier who will deliver the trailer or semitrailer to the nonresident at a point outside South Carolina, then the sale is exempt from the tax under Code Section 12-36-2120(36).

15. Are sales by a retailer to nonresidents of trailers and semitrailers of a type that are not required to be registered subject to the sales and use tax?

Yes. Sales to nonresidents of trailers and semitrailers of a type that are not required to be registered are subject to the sales and use tax at a rate of 6% plus any applicable local sales tax.

Note: If the seller delivers the trailer or semitrailer to the nonresident at a point outside of South Carolina, or delivers the vehicle to a common carrier who will deliver the trailer or semitrailer to the nonresident at a point outside South Carolina, then the sale is exempt from the tax under Code Section 12-36-2120(36).

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16. Is the guidance provided in SC Information Letter #14-2 the most recent sales tax guidance available from the Department of Revenue regarding purchases by nonresidents from surrounding states?

Yes, as of the date of this advisory opinion, SC Information Letter #14-2 is the most recent sales tax guidance available from the Department of Revenue regarding purchases by nonresidents from surrounding states. However, sellers should monitor the “Law and Policy” section of the Department’s website from time to time to determine if a new information letter has been issued with respect to motor vehicles, and trailers, semitrailers, and pole trailers of a type to be licensed and registered, which are sold to nonresidents.

17. Can SC Form ST-385, the “Affidavit for Intent to License Motor Vehicle, Trailer, Semitrailer or Pole Trailer Purchased in South Carolina in Purchaser’s State of Residence,” still be used for sales to nonresidents by licensed SCDMV dealers of motor vehicles and trailers, semitrailers, and pole trailers of a type to be registered and licensed?

Yes, as of the date of this advisory opinion, SC Form ST-385 can still be used with respect to such sales to nonresidents.

Sales by a Retailer of Farm Trailers for Use in Farming Crops for Sale

18. Are sales by a retailer of farm trailers that will be used in farming crops for sale subject to the sales and use tax?

Sales of flatbed trailers or stock trailers for use in farming in hauling farm crops (e.g., hay, corn, peaches) are exempt under Code Section 12-36-2120(16) if the flatbed trailer or stock trailer will be used solely in the “planting, cultivating, or harvesting” of farm crops for sale in their “original state of production or preparation for sale.”

Sales of flatbed trailers or stock trailers are **not** exempt under Code Section 12-36-2120(16) if the flatbed trailer or stock trailer will be used solely for a purpose other than the “planting, cultivating, or harvesting” of farm crops (e.g., hay, corn, peaches) for sale in their “original state of production or preparation for sale.” For example, sales of flatbed or stock trailers for use solely in:

- (a) hauling tractors, harvesting equipment, or cattle; or
- (b) hauling farm crops (e.g., hay, corn, peaches) from a storage area to market or to a buyer

are **not** exempt from the sales and use tax under Code Section 12-36-2120(16).

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Sales of flatbed trailers or stock trailers that will be used for both exempt and nonexempt purposes are exempt from the sales and use tax if used substantially (not merely incidentally) in the “planting, cultivating, or harvesting” of farm crops (i.e., hay, corn, peaches) for sale in their “original state of production or preparation for sale.”

For more detail regarding this exemption, see SC Revenue Ruling #99-3.

Note: If a farm trailer is exempt from the sales and use tax under Code Section 12-36-2120(16), then it is exempt from the IMF.

Sales by a Nonretailer of Motor Vehicles, Motorcycles, Mopeds, Trailers, and Semitrailers (Casual Sales)

19. Are sales by a nonretailer of motor vehicles and motorcycles subject to the sales and use tax or casual excise tax?³

No. However, such motor vehicles and motorcycles are subject to an IMF upon registration of the motor vehicle or motorcycle at the SCDMV.

20. Are sales by a nonretailer of mopeds subject to the sales and use tax or casual excise tax?

No. However, mopeds sold by a nonretailer on or after November 19, 2018 are subject to an IMF upon registration of the moped at the SCDMV.

21. Are sales by a nonretailer of trailers and semitrailers subject to the sales and use tax or casual excise tax?

No. However, trailers and semitrailers of a type required to be registered with the SCDMV under Chapter 3 of Title 56 are subject to an IMF upon registration of the trailer and semitrailer at the SCDMV.

Leases and Short-Term Rentals of Motor Vehicles

22. Are leases of motor vehicles by a retailer licensed as a “dealer” with the SCDMV, which upon leasing the motor vehicles must be registered with the SCDMV, subject to the sales and use tax?

For leases executed on or after July 1, 2017, the application of the state sales and use tax on the lease of a motor vehicle by a retailer licensed as a “dealer” with the SCDMV is as follows:

³ The casual excise tax is imposed under Code Section 12-36-1710 on the issuance of a certificate of title or other proof of ownership of a boat, boat motor, or airplane. It is intended to apply to the sale by a nonretailer of a boat, boat motor, or airplane. Prior to July 1, 2017, the casual excise tax also applied to the sale by a nonretailer of a motor vehicle or motorcycle. On or after July 1, 2017, the sale of a motor vehicle or a motorcycle for registration in South Carolina is subject to the IMF upon registration at the SCDMV.

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- (a) Leases of motor vehicles to residents for registration in South Carolina are exempt from the state sales and use tax under Code Section 12-36-2120(83) since such leases are subject to the IMF upon registration of the motor vehicle at the SCDMV.
- (b) Leases of motor vehicles to nonresidents who will register the motor vehicle in South Carolina with the SCDMV are exempt from the state sales and use tax under Code Section 12-36-2120(83) since such leases are subject to an IMF upon registration of the motor vehicle at the SCDMV.
- (c) Leases of motor vehicles to nonresidents who will register the motor vehicle in their state of residence are subject to the sales tax at the lesser of the sales tax due in the purchaser's state of residence or 5%, but no more than \$500. **This sales tax is paid to the SCDMV.** (Local sales and use taxes do not apply to sales or lease of motor vehicles subject to the IMF or to the maximum sales tax.)

Note: If the lessee's state of residence does not impose a sales tax on the lease of a motor vehicle or does not allow the lessee a credit against its use tax for a sales tax paid on the motor vehicle in South Carolina, then the lease of the motor vehicle is not subject to the South Carolina sales tax. See SC Information Letter #14-2.

23. Are motor vehicle lease payments paid to a retailer after July 1, 2017 for a motor vehicle registered in South Carolina subject to the sales tax for leases executed prior to July 1, 2017?

Since the lease was executed prior to July 1, 2017, all lease payments are subject to the sales tax and the maximum sales tax remains at \$300 for the lease. If the \$300 maximum sales tax on the lease of the motor vehicle had not been paid in full prior to July 1, 2017, then the tax must be remitted by the retailer to the Department of Revenue with each lease payment until the maximum sales tax of \$300 has been paid in full for that lease. The lessor, however, has the option to remit the remainder of the tax due (up to \$300) in one payment.

Note: If the lease is renewed on or after July 1, 2017, then lease payments made as a result of the renewal of the lease are not subject to the sales tax.

24. Are short-term rentals (e.g., daily, weekly) of motor vehicles subject to the sales tax?

Yes. The exemption for sales of motor vehicles subject to an IMF upon registration of the motor vehicle at the SCDMV does not apply since short-term rentals are not registered by the customer and therefore are not subject to an IMF.

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For example, if a person rents a motor vehicle for a week while in South Carolina on business, or a person rents a motor vehicle to move furniture from one location to another, then the rental payments are subject to the sales tax and not subject to the IMF.

Note: For information on what is included in “gross proceeds” (the basis or measure of the sales tax) for purposes of short-term motor vehicle rentals, see SC Revenue Ruling #93-1.

Sales of Motor Vehicles and Motorcycles to Members of the Military

25. Are sales of motor vehicles and motorcycles to members of the military, or to spouses of members of the military, who are residents of South Carolina for registration in South Carolina subject to the sales tax?

No. However, the motor vehicle is subject to an IMF upon registration at the SCDMV.

26. Are sales of motor vehicles (excluding trucks) and motorcycles to nonresident members of the military subject to the sales tax?

No, provided the nonresident member of the military is located in South Carolina by reason of orders of the U.S. Armed Forces. Under South Carolina law, sales of motor vehicles (excluding trucks) and motorcycles to nonresident members of the military located in South Carolina by reason of orders of the U.S. Armed Forces are exempt from the sales tax under Code Section 12-36-2120(25), regardless of the state in which the motor vehicle or motorcycle will be registered.

However, for this exemption under Code Section 12-36-2120(25) to apply, the purchaser must provide the vendor within ten days of the sale either:

- (a) a statement from a commissioned officer of the Armed Forces of a higher rank than the purchaser certifying that the buyer is a member of the Armed Forces on active duty and a resident of another state; or
- (b) a leave and earnings statement from the appropriate department of the armed forces which designates the state of residence of the purchaser.

This exemption does not apply to spouses of members of the military when the spouse purchases a motor vehicle or motorcycle in his or her name only. However, if the motor vehicle (excluding trucks) or motorcycle is purchased in the name of both spouses, the exemption in Code Section 12-36-2120(25) applies.

Note: See Question #27 below for information concerning sales of motor vehicles and motorcycles to spouses of nonresident members of the Armed Forces and sales of trailers and semitrailers to nonresident members of the military and their spouses.

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27. Are sales of motor vehicles, motorcycles, trailers, and semitrailers to nonresident members of the military, or to spouses of nonresident members of the military, subject to the sales tax?

No. Under federal law known as the Servicemembers Civil Relief Act,⁴ sales of motor vehicles (including trucks), motorcycles, trailers, and semitrailers to nonresident members of the military, or to spouses of nonresident members of the military, who are in South Carolina by reasons of orders from the U.S. Armed Forces are not subject to the sales tax provided:

- (a) the motor vehicle or motorcycle will not be used in a trade or business; and,
- (b) a license, fee, or excise tax is paid by the servicemember or the servicemember's spouse in the servicemember's state of domicile or residence.

For purposes of the Servicemembers Civil Relief Act, a "motor vehicle" means a vehicle driven or drawn by mechanical power and manufactured primarily for use on public streets, roads and highways, but does not include a vehicle operated only on a rail line.⁵

Note: See Question #26 above for information on the South Carolina sales and use tax exemption for sales of motor vehicles (excluding trucks) and motorcycles to nonresident members of the military.

Dealers Filing of Sales Tax Returns

28. Are sales of motor vehicles and other items subject to the IMF required to be reported on the sales and use tax return filed with the Department of Revenue?

Yes. All sales of tangible personal property, whether or not exempt from the sales and use tax, are required to be reported on the sales and use tax return. The return includes a Worksheet on which the retailer reports all sales of tangible personal property and also reports as a deduction all sales exempt from the sales and use tax. By taking a deduction for exempt sales, such as sales of motor vehicles subject to the IMF, the retailer will not pay a sales tax on any exempt sales.

For example, if a retailer who is licensed as a dealer with the SCDMV sells \$1,000,000 in cars during the month and all sales were to residents for registration with the SCDMV, then the dealer would report the \$1,000,000 as part of his "gross proceeds of sales," but also take a deduction for the \$1,000,000 for exempt sales (sales of motor vehicles subject to the IMF). As such, no sales tax would be due with respect to these motor vehicle sales. Note, however, that the dealer would still owe sales tax on the sale of parts sold at retail, short-term rentals of motor vehicles, and other transactions not subject to the IMF and not otherwise exempt from the sales and use tax.

⁴ 50 U.S.C. Section 3901 et.seq.

⁵ See 50 U.S.C. Section 3911(8); 49 U.S.C. Section 30102(a)(7).

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Note: The licensed SCDMV dealer is, however, responsible for collecting and remitting the IMF to the SCDMV.

Low-Speed Vehicles, Dirt Bikes, All-Terrain Vehicles, Golf Carts, and Go-Carts

29. Are sales by a retailer of low-speed vehicles subject to the sales and use tax?

Low-speed vehicles are subject to registration with the SCDMV in the same matter as a motor vehicle. Therefore, sales of low-speed vehicles are:

- (a) Subject to an IMF if sold to residents or nonresidents for registration in South Carolina; or
- (b) Subject to the sales tax if sold to nonresidents for registration in the purchaser's state of residence.

For sales to residents and nonresidents subject to the IMF, see Questions #5 and #12 of this advisory opinion. For sales to nonresidents subject to a sales tax, see Question #13.

30. Are sales by a retailer of dirt bikes subject to the sales and use tax?

Yes. Since a dirt bike cannot be used on the roads and highways, it is not subject to registration with the SCDMV and, therefore, not subject to an IMF. As such, sales of dirt bikes are subject to the sales and use tax at the rate of 5% of gross proceeds of sales, but no more than \$500.

31. Are sales by a retailer of all-terrain vehicles ("ATVs") subject to the sales and use tax?

Yes. Since ATVs are not required to be registered with the SCDMV, sales of ATVs are subject to the sales and use tax at a rate of 6%, plus any applicable local sales and use taxes.

32. Are sales of golf carts and go-carts subject to the sales and use tax?

Yes. Since golf carts and go-carts are not required to be registered with the SCDMV, sales of golf carts and go-carts are subject to the sales and use tax at a rate of 6%, plus any applicable local sales and use taxes.

Additional Information:

The Department, in SC Information Letter #17-10, issued several charts to provide guidance regarding the application of either the sales and use tax or the IMF to sales of motor vehicles, motorcycles, and various types of trailers, semitrailers, pole trailers, and other items.

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If you have questions regarding the new IMF remitted to the SCDMV, or sales taxes remitted by licensed SCDMV dealers to the SCDMV on certain sales to nonresidents, please contact the SCDMV at cartaxes@scdmv.net.

If you have questions regarding all other sales and use tax matters, please contact the SCDOR at (803) 898-5000 or salesandusetax@dor.sc.gov.