
State of South Carolina
Department of Revenue
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SC REVENUE RULING #05-7

SUBJECT: Motion Picture Production Company Exemption
(Sales & Use Tax)

EFFECTIVE DATE: May 9, 2005

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

REFERENCES: S. C. Code Ann. Section 12-62-30 (House Bill 3152 of 2005)
S. C. Code Ann. Section 12-62-40 (House Bill 3152 of 2005)
S. C. Code Ann. Section 12-36-2120(43) (2000)

AUTHORITY: S. C. Code Ann. Section 12-4-320 (2000)
S. C. Code Ann. Section 1-23-10(4) (Supp. 2004)
SC Revenue Procedure #03-1

SCOPE: The purpose of a Revenue Ruling 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 Ruling 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 It is, however, the Department's position and is binding on agency personnel until superseded or modified by a change in statute, regulation, court decision, or advisory opinion.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 South Carolina Motion Picture Incentive Act (S.C. Code Ann. Section 12-62-10 et seq., as amended by House Bill 3152 of 2005) provides tax incentives for motion picture production companies spending monies in South Carolina. One of these incentives is a sales and use tax exemption in Code Section 12-62-30.

Code Section 12-36-2120(43) also contains a less expansive sales and use tax exemption that is available to motion picture companies for use in filming or producing motion pictures.

The purpose of this document is to provide the Department's opinions with respect to some of the common questions that have arisen concerning these sales and use tax incentives.

Law:

The sales and use tax provisions of the South Carolina Motion Picture Incentive Act are found in Chapter 62 of Title 12 and are quoted below.

Code Section 12-62-30 states:

A motion picture production company that intends to expend in the aggregate two hundred fifty thousand dollars or more in connection with the filming or production of one or more motion pictures in the State of South Carolina within a consecutive twelve-month period, upon making application for, meeting the requirements of, and receiving written certification of that designation from the department as provided in this chapter, shall be relieved from the payment of state and local sales and use taxes administered and collected by the Department of Revenue on funds expended in South Carolina in connection with the filming or production of a motion picture or pictures. The production of television coverage of news and athletic events is specifically excluded from the provisions of this chapter.

Code Section 12-62-40 states:

(A) A motion picture production company that intends to film all or parts of a motion picture in South Carolina and desires to be relieved from the payment of the state and local sales and use taxes, administered and collected by the Department of Revenue, as provided in this chapter shall provide an estimate of total expenditures expected to be made in South Carolina in connection with the filming or production of the motion picture. The estimate of expenditures must be filed with the department before the commencement of filming in South Carolina.

(B) At the time the motion picture production company provides the estimate of expenditures to the department, it also shall designate a member or representative of the motion picture production company to work with the department and the Department of Revenue on reporting of expenditures and other information necessary to take advantage of the tax relief afforded by this chapter.

(C)(1) An application for the tax relief provided by this chapter must be accepted only from those motion picture production companies that report anticipated expenditures in the State in the aggregate equal to or exceeding two hundred fifty thousand dollars in connection with the filming or production of one or more motion pictures in the State within a consecutive twelve-month period.

(2) The application must be approved by the secretary [of Commerce].

(3) Once the application is approved by the secretary, the Department of Revenue shall issue a sales and use tax exemption certificate to the motion picture production company as evidence of the exemption. The exemption is effective on the date the application is approved by the secretary.

(D) A motion picture production company that is approved and receives a sales and use tax exemption certificate but fails to expend two hundred fifty thousand dollars within a consecutive twelve-month period is liable for the sales and use taxes that would have been paid had the approval not been granted; except, that the motion picture production company must be given a sixty-day period in which to pay the sales and use taxes without incurring penalties. The sales and use taxes are considered due as of the date the tangible personal property was purchased in or brought into South Carolina for use, storage, or consumption.

(E) Upon completion of the motion picture, the motion picture production company must return the sales and use tax exemption certificate to the Department of Revenue and submit a report to the department of the actual expenditures made in South Carolina in connection with the filming or production of the motion picture.

Code Section 12-62-20 provides definitions for various terms used in the above statutes and states:

For purposes of this chapter:

(1) 'Company' means a corporation, partnership, limited liability company, or other business entity.

(2) 'Department' means the South Carolina Department of Commerce.

(3) 'Motion picture' means a feature-length film, video, television series, or commercial made in whole or in part in South Carolina, and intended for national theatrical or television viewing or as a television pilot produced by a motion picture production company. The term 'motion picture' does not include the production of television coverage of news and athletic events or a production produced by a motion picture production company if records, as required by 18 U.S.C. 2257, are to be maintained by that motion picture production company with respect to any performer portrayed in that single media or multimedia program.

(4) 'Motion picture production company' means a company engaged in the business of producing motion pictures intended for a national theatrical release or for television viewing. 'Motion picture production company' does not mean or include a company owned, affiliated, or controlled, in whole or in part, by a company or person that is in default on a loan made by the State or a loan guaranteed by the State.

* * * *

(6) 'Secretary' means the Secretary of the Department of Commerce or his designee.

If a motion picture production company does not meet the requirements of the exemption in Code Section 12-62-30, it may still be eligible for the sales and use tax exemption in Code Section 12-36-2120(43). Code Section 12-36-2120(43) exempts from the tax:

all supplies, technical equipment, machinery, and electricity sold to motion picture companies for use in filming or producing motion pictures. For the purposes of this item, “motion picture” means any audiovisual work with a series of related images either on film, tape, or other embodiment, where the images shown in succession impart an impression of motion together with accompanying sound, if any, which is produced, adapted, or altered for exploitation as entertainment, advertising, promotional, industrial, or educational media; and a “motion picture company” means a company generally engaged in the business of filming or producing motion pictures.

It is also important to note two other aspects of the sales and use tax law:

1. The South Carolina sales and use tax applies to rentals, leases and licenses to use as well as sales and purchases. See the definition of the term “sale” in Code Section 12-36-100.
2. The South Carolina sales and use tax law defines “tangible personal property” in Code Section 12-36-60 to mean personal property that may be seen, weighed, measured, felt, touched, or is in any manner perceptible to the senses. Also included in this definition are certain services and intangibles subject to the tax under Code Sections 12-36-910(B), 12-36-920, 12-36-1310(B), and 12-36-2645. The services and intangibles included in the definition of “tangible personal property” and subject to the tax under these sections include:

Communication services, such as

Answering services

Cable and satellite programming televisions services

Database access transmission services (On-line information services)

E-mail services

Fax transmission services

Paging services

Prepaid wireless calling arrangements

Teleconferencing services

Telephone services, including cell phone service

Additional guest charges at places furnishing sleeping accommodations, such as

Amenities

Entertainment

In-room movies

Laundry and dry cleaning services

Rental of meeting rooms

Room Service

Special items in promotional tourist packages

Telephone charges

Other Guest Services

Electricity
Laundering, dry cleaning, dyeing or pressing services
Sleeping/lodging accommodations/services (7% state rate)
900/976 telephone services (10% state rate)

Questions and Answers - Sales and Use Tax Exemption

Since the sales and use tax applies to sales, purchases, rentals, leases, licenses to use and other agreements in which title or possession of tangible personal property is transferred for a consideration, the use of the terms “sale” or “purchase” in this document includes rentals, leases, licenses to use, and other such agreements.

1. Q. What is the sales and use tax incentive available to a motion picture production company under Code Section 12-62-30?
 - A. Code Section 12-62-30 exempts sales to, or purchases by, a qualifying motion picture production company from sales and use taxes on purchases expended in South Carolina in connection with the filming or production of motion pictures in South Carolina. See Questions #2, #12, and #13 for more information.

2. Q. Does the exemption apply to both state sales and use taxes and local sales and use taxes?
 - A. This exemption applies to the following taxes:
 1. The state sales and use tax (*i.e.*, 5% sales and use tax imposed under Code Sections 12-36-910, 12-36-1310, and 12-36-1320; 7% sales tax on accommodations imposed under Code Section 12-36-920; 5% rental surcharge imposed under Code Section 56-31-50; and 10% sales and use tax on 900/976 telephone numbers imposed under Code Section 12-36-2645), and
 2. Any local sales and use tax (*e.g.*, local option tax, capital projects tax, transportation tax, various school district taxes, etc.) that is administered and collected by the Department of Revenue on behalf of a local jurisdiction.

Taxes this exemption does not apply to include:

1. any local sales tax administered and collected directly by a local government jurisdiction (*i.e.*, local hospitality tax and local accommodations tax),
2. the 1% drycleaning surcharge imposed under Code Section 44-56-430 since it is not a sales tax, and
3. the solid waste excise taxes imposed on motor oils under Code Section 44-96-160(W), tires under Code Section 44-96-170(N), lead-acid batteries under Code Section 44-96-180(F), and white goods (refrigerators, ranges, etc.) under Code Section 44-96-200(E). For purposes of this tax, the definitions for motor oil, tires, lead-acid batteries and white goods can be found in Code Section 44-96-40.

Note: The Department of Revenue publishes a chart with the various types of local sales and use taxes collected by the Department of Revenue and the exemptions allowed under each tax. As of the date of this document, SC Information Letter #05-15 contains the most recently published information; updated information will be published on the Department of Revenue's website <http://www.sctax.org/Tax+Policy/Policy/salesdx.htm> as warranted.

3. Q. What requirements must be met to qualify as a motion picture production company eligible for the sales and use tax exemption in Code Section 12-62-30?
 - A. A motion picture production company as defined in Code Section 12-62-20(4) (See Question #4) qualifies for the exemption in Code Section 12-62-30 if the company:
 1. Intends to spend \$250,000 or more in South Carolina in connection with the filming or production of all or part of one or more motion pictures as defined in Code Section 12-62-20(3) (See Question #5) in South Carolina within a consecutive 12 month period;
 2. Submits an application to the South Carolina Department of Commerce;
 3. Files an estimate of expenditures with the South Carolina Department of Commerce before the commencement of filming in South Carolina;
 4. Designates (at the same time the estimate of expenditures is filed) a member or representative to work with the South Carolina Department of Commerce and the Department of Revenue on reporting of expenditures and other information necessary to take advantage of the exemption;
 5. Receives written certification as a qualifying company from the South Carolina Department of Commerce. Code Section 12-62-30; and,
 6. Upon approval of the Secretary of the South Carolina Department of Commerce, receives a sales and use tax exemption certificate (Form ST-433) from the South Carolina Department of Revenue. See Question #10. The exemption is effective on the date the application is approved by the Secretary of the South Carolina Department of Commerce. Code Section 12-62-40(C)(3).

Note: Upon completion of the motion picture, the motion picture production company must return the sales and use tax exemption certificate to the Department of Revenue and must submit a report to the South Carolina Department of Commerce of the actual expenditures made in South Carolina in connection with the filming or production of the motion picture. Code Section 12-62-40(E).

4. Q. What is a "motion picture production company" ?
 - A. A "motion picture production company" is a company engaged in the business of producing motion pictures intended for a national theatrical release or for television

viewing. It does not include a company owned, affiliated, or controlled, in whole or in part, by a company or person that is in default on a loan made by the State or a loan guaranteed by the State. Code Section 12-62-20(4).

5. Q. What is a “motion picture”?
 - A. A “motion picture” is a feature-length film, video, television series, or commercial made in whole or in part in South Carolina, and intended for national theatrical or television viewing or as a television pilot produced by a motion picture production company. It does not include the production of television coverage of news and athletic events or a production produced by a motion picture production company if records, as required by 18 U.S.C. 2257, are to be maintained by that motion picture production company with respect to any performer portrayed in that single media or multimedia program. Code Section 12-62-20(3).

6. Q. What information must the company provide to the South Carolina Department of Commerce to request approval for the exemption?
 - A. As of the date of this document, the South Carolina Department of Commerce has informed the Department of Revenue that the following information must be provided to the South Carolina Department of Commerce to obtain approval for this exemption:
 1. Submit a “South Carolina Motion Picture Incentives Application” for approval by the Secretary of the South Carolina Department of Commerce. Code Section 12-62-40(C).
 2. Provide an estimate of total expenditures expected to be made in South Carolina in connection with the filming or production of the motion picture with the South Carolina Department of Commerce before beginning filming in South Carolina. Code Section 12-62-40(A).
 3. Designate a member or representative to work with the South Carolina Department of Commerce and South Carolina Department of Revenue on reporting of expenditures and other necessary information. Code Section 12-62-40(B).
 4. Other information required by the South Carolina Department of Commerce.

7. Q. How do I contact the South Carolina Department of Commerce for additional information or an application form?
 - A. Contact the SC Film Commission, which is a part of the South Carolina Department of Commerce, by phoning 803-737-0490. Their mailing address is:

South Carolina Department of Commerce
1201 Main Street, Suite 1600
Columbia, SC 29201

8. Q. What expenditures meet the \$250,000 requirement?

A. Expenditures that qualify toward the \$250,000 requirement include:

1. Purchases of services or intangibles in South Carolina
2. Purchases or rentals of tangible personal property in South Carolina
3. Purchases or rentals of real property located in South Carolina.

9. Q. What if the minimum expenditure requirement is not met?

A. If a company does not spend the required \$250,000 in the 12 month period, then it is liable for sales and use taxes that would have been paid had the approval not been granted by the Secretary of the South Carolina Department of Commerce. The company is given a 60 day period to pay the taxes without incurring penalties. However, the motion picture production company would be liable for interest due on such taxes as imposed under Code Section 12-54-25. The sales and use taxes are considered due as of the date the tangible personal property was purchased in or brought into South Carolina for use, storage, or consumption. Code Section 12-62-40(D).

10. Q. How are purchases made tax free using the exemption certificate by a qualified motion picture production company?

A. Upon approval of the Secretary of the South Carolina Department of Commerce, the Department of Revenue will issue the motion picture production company a Form ST-433, the sales and use tax exemption certificate. The exemption is effective on the date the application is approved by the Secretary of the South Carolina Department of Commerce. Code Section 12-62-40(C)(3).

A copy of Form ST-433 is given to the retailer by the motion picture production company at the time of purchase.

The retailer may maintain a copy of the certificate on file; therefore, it is not necessary to provide a copy each time a purchase is made from the same retailer. By maintaining a copy on file, the retailer is able to verify with each sale that the sale is being made to a motion picture production company that meets the requirements of the exemption.

Note: The exemption certificate (Form ST-433) issued to a motion picture production company will have an expiration date. Sales to, or purchases by, a motion picture production company after this date are not exempt. However, if filming and production is expected to extend beyond the original expiration date, a revised exemption certificate with a new expiration date can be issued by contacting the Department of Revenue's License and Registration Section at (803) 898-5391.

11. Q. Who can use the exemption certificate?

The exemption certificate may only be used by the motion picture production company in whose name the exemption certificate has been issued since the exemption only applies to sales to, or purchases by, the motion picture production company.

Examples of persons who are not authorized to use the exemption certificate include:

1. Cast and crew purchasing items for their personal use.
2. Subcontractors or others providing services to the motion picture production company.

12. Q. What purchases may be made tax free using Form ST-433?

- A. The purchase of tangible personal property, or any service that subject to the sales and use tax, is exempt from all state and local sales and use tax that are administered and collected by the Department of Revenue if purchased by a motion picture production company meeting the requirements of the incentive and used in connection with the filming or production of a motion picture in South Carolina. The exemption applies to such purchases made in South Carolina and purchases made in another state for first use in South Carolina. For examples of exempt purchases, see Question #13.

13. Q. What are examples of purchases that qualify for the exemption under Code Section 12-62-30?

- A. The following provides examples of exempt purchases, *provided such purchases are used in connection with the filming or production of a motion picture, purchased by the motion picture production company, and all other requirements of the statute are met.*

Examples of exempt tangible personal property¹ include:

- Aircraft
- Animals
- Automobiles and other vehicles²
- Cameras and camera parts
- Catering
- Cleaning supplies

¹ As stated in question #11, the exemption only applies to purchases by the motion picture production company. For example, the purchase of hairstyling supplies by a motion picture production company are exempt, but the purchase of such supplies by an independently owned hairstyling service company that has been hired by a motion picture production company to provide hairstyling services are subject to the tax. See footnote #4.

² The rental for periods of thirty-one days or less of private passenger vehicles, trucks under 26,001 pounds gross vehicle weight (for non-business purposes), and trailers with a gross weight of not more than 6,000 pounds are subject to state and local sales and use taxes and a 5% rental surcharge. By statute, the 5% rental surcharge is a sales tax. Therefore, motion picture production companies meeting the requirements of the incentive in Code Sections 12-62-30 and 12-62-40 are also exempt from the 5% rental surcharge.

Cleanup equipment
Computer equipment
Construction and hardware materials
Copies
Copy machines
Filming supplies (*e.g.*, film stock, flats (panels of scenery), sandbags, etc.)
Food
Gasoline and other fuels (however, motor fuel taxes may apply)³
Generators/grip and lighting equipment
Hairstyle supplies
Hand tools
Make-up
Office supplies and equipment
Portable dressing rooms and offices
Portable toilets
Production supplies (*e.g.*, editing supplies)
Props (*e.g.*, vehicles, furniture, books, paintings, clothing, shrubbery)
Technical equipment and machinery (*e.g.*, boom, cables, cranes, dolly, editing equipment, grip truck, matte, tape, teleprompter)
Telephones
Vehicles (*e.g.*, props, dressing room vehicles, camera cars, equipment vehicles)
Walkie talkies
Wardrobe

Examples of exempt services and charges⁴ include:

Communication services, such as

Answering services
Cable and satellite programming televisions services
Database access transmission services (On-line information services)
E-mail services
Fax transmission services
Paging services
Prepaid wireless calling arrangements
Teleconferencing services

³ As a general rule, gasoline and undyed diesel fuel are subject to the \$0.16 a gallon motor fuel tax and are exempt from sales and use taxes and dyed diesel fuel and dyed kerosene are subject to sales and use taxes (unless otherwise exempt under the law) and exempt from the \$0.16 a gallon motor fuel tax. As such, the exemption certificate (Form ST-433) issued to the motion picture production company does not need to be presented upon the purchase of gasoline and undyed diesel fuel, but should be presented to the retailer to purchase dyed diesel fuel and dyed kerosene exempt from the sales and use tax. The statute does not provide an exemption for the motor fuel tax for motion picture production companies.

⁴ The services and charges listed in this category are normally subject to the tax under Code Sections 12-36-910(B), 12-36-920, 12-36-1310(B), and 12-36-2645, but are exempt when purchased by a motion picture production company meeting the requirements of the South Carolina Motion Picture Incentive Act for use in connection with the filming or production of a motion picture.

Telephone services, including cell phone service

Additional guest charges at places furnishing sleeping accommodations, such as

- Amenities
- Entertainment
- In-room movies
- Laundering and dry cleaning services
- Rental of meeting rooms
- Room Service
- Special items in promotional tourist packages
- Telephone charges
- Other Guest Services

- Electricity
- Laundering, dry cleaning, dyeing or pressing services⁵
- Sleeping/lodging accommodations/services
- 900/976 telephone services

Note: For more detailed information concerning the taxation of additional guest charges at places furnishing sleeping accommodations, see SC Regulation 117-307.1. For more detailed information concerning the taxation of certain communication services, see SC Revenue Ruling #04-15.

14. Q. What are examples of other purchases that South Carolina does not tax under its sales and use tax laws?

The following are examples of professional and other personal services, intangibles, and real property transactions upon which the South Carolina sales and use tax is not imposed.

Examples of nontaxable services, nontaxable intangibles, and nontaxable real property transactions⁶, include:

- Services
- Accounting services

⁵ Certain drycleaning facilities are participating in the Drycleaning Facility Restoration Trust Fund and are subject to a 1% drycleaning surcharge. While this surcharge is administered and collected in the same manner as the state sales and use tax, it is not a sales tax. As such, drycleaning services purchased by a motion picture production company are not exempt from the 1% drycleaning surcharge.

⁶ These are examples of professional and other personal services, intangibles, and real property transactions upon which the South Carolina sales and use tax is not imposed. Since the film industry operates in many states and must deal with varying sales and use tax laws, this list merely provides examples of services, intangibles, and real property transactions the charges for which are not taxable in South Carolina. However, it is important to note that purchases by persons providing these services to a motion picture production company or any other person are subject to the tax. For example, charges by a janitorial service company to a motion picture production company or any other person are not subject to the tax; however, the sale to, or purchase by, the janitorial service company of the supplies (mops, floor cleaners, trash bags, etc.) it uses in providing its service are subject to the sales and use tax.

- Airline and aircraft charter services
- Casting services
- Chauffeured limousine services
- Clerical services
- Construction services
- Filming and production services provided by the director, the actors, the crew, writers, editors, choreographers, stunt persons, dialog coaches, musicians, technical advisors, designers, hairstylists, makeup artists, wardrobe persons, and similar persons providing services
- Garbage disposal services
- Hairstyling/cosmetic services
- Janitorial services
- Legal services
- Meteorological services
- Musical services
- Payroll services
- Research services
- Scouting services
- Security services
- Taxi services
- Typing services

Intangibles

- Music royalties
- Story rights payments

Real Property Transactions

- Auditorium rentals
- Back lot rentals
- Casting facility rentals
- Dressing room rentals
- Location rentals or fees
- Office space rentals
- Parking lot rentals
- Screening room rentals
- Stage rentals
- Warehouse rentals

15. Q. If a motion picture company does not meet the requirements of the exemption in Code Section 12-62-30, could it be eligible for another sales and use tax exemption in Code Section 12-36-2120(43)?
- A. Yes. Code Section 12-36-2120(43) provides a sales and use tax exemption for supplies, technical equipment, machinery, and electricity sold to a motion picture company (i.e., a company generally engaged in the business of filming or producing motion pictures) for use in filming or producing a motion picture.

This exemption only applies to supplies, technical equipment, machinery, and electricity purchased by a motion picture company and used and consumed directly and predominantly in filming or producing a motion picture. It does not apply to purchases of property for administrative purposes, such as sales promotions, general office work, ordering and receiving materials, making travel arrangements, the preparation of shooting schedules, and preparation of work and payroll records. It does not apply to purchases by the cast and crew of items for their own personal use or to purchases by subcontractors or others providing services to the motion picture company.

This exemption applies to the 5% state sales and use tax and to all local sales and use taxes administered and collected by the Department of Revenue on behalf of a local jurisdiction. It does not apply to the sales taxes imposed upon communication services, additional guest charges at places furnishing accommodations, laundering, drycleaning, dyeing and pressing services, sleeping/lodging accommodations services, and 900/976 telephone services since such services do not constitute supplies. It does not apply to the 5% rental surcharge on the rental of certain vehicles since the rental surcharge is not a sales tax that is imposed under Chapter 36 of Title 12.

16. Q. How does a motion picture company make purchases under the exemption in Code Section 12-36-2120(43)?

- A. The statute does not require a motion picture company to obtain an exemption certificate in order to take advantage of the exemption for supplies, technical equipment, machinery, and electricity in the exemption in Code Section 12-36-2120(43). However, the Department of Revenue recommends that motion picture companies apply for the exemption certificate. If a motion picture company is issued a certificate, this will simplify for the motion picture company the purchase from suppliers of items exempt under Code Section 12-36-2120(43). Otherwise, suppliers may be reluctant to sell items tax-free (exempt) to a motion picture company that does not have an exemption certificate.

In order to obtain an exemption certificate for the exemption in Code Section 12-36-2120(43), the motion picture company files a Form ST-10 (Application for Certificate) with the Department of Revenue. If approved by the Department of Revenue, the motion picture company will be issued a Form ST-9, the sales and use tax exemption certificate. This exemption does not require the filing of an application with, or the approval of, the South Carolina Department of Commerce.

A copy of Form ST-9 is given to the retailer by the motion picture company at the time of purchase. The retailer may maintain a copy of the certificate on file; therefore, it is not necessary to provide a copy each time a purchase is made from the same retailer. By maintaining a copy on file, the retailer is able to verify with each sale that the sale is being made to a motion picture company that meets the requirements of the exemption in Code Section 12-36-2120(43). (See discussion of this exemption in Question #15.)

Note: If a motion picture company uses an ST-9 to purchase items that are not supplies, technical equipment, machinery, and electricity used and consumed directly and predominantly in filming or producing a motion picture, then the motion picture company is liable for the tax due on such purchases as well as any applicable penalties and interest.

SOUTH CAROLINA DEPARTMENT OF REVENUE

s/Burnet R. Maybank III
Burnet R. Maybank III, Director

June 16, 2005
Columbia, South Carolina