

# PUBLIC DRAFT

Circulated for Public Comments  
Comments Due by: **March 4, 2020**

## SC REVENUE RULING #20-x [DRAFT – 2/19/2020]

SUBJECT:	Sales of Boats, Boat Motors, and Airplanes (Casual Excise Tax)
EFFECTIVE DATE:	July 1, 2017
SUPERSEDES:	SC Revenue Ruling #08-8, SC Revenue Ruling #92-10, and all previous advisory opinions and any oral directives in conflict herewith.
REFERENCES:	S.C. Code Ann. Section 12-36-1710 (2014; 2019 Supp.) S.C. Code Ann. Section 12-36-2110 (2014; 2019 Supp.) S.C. Code Ann. Section 12-36-1720 (2014)
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 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 It is the Department's position until superseded or modified by a change in statute, regulation, court decision, or another Department advisory opinion.

## PURPOSE OF UPDATE

As a result of legislative changes, this advisory opinion concerning the application of the casual excise tax on sales of airplanes, boats, and boat motors when the sales tax has not previously been paid is being updated.<sup>1</sup> Effective July 1, 2017, sales or purchases of motor vehicles and motorcycles were no longer subject to a sales and use tax<sup>2</sup> or casual excise tax; these transactions are now subject to an infrastructure maintenance fee upon first registering the vehicle with the South Carolina Department of Motor Vehicles. In addition, the maximum sales and use tax amount was increased to \$500 from \$300.

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<sup>1</sup> See Act 40 of 2017, "The South Carolina Infrastructure and Economic Development Reform Act."

<sup>2</sup> One exception exists for certain motor vehicle sales to nonresidents where the sales tax is remitted to the SC Department of Motor Vehicles. See South Carolina Information Letter #17-10 and Revenue Ruling #18-1 for further guidance.

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## **QUESTIONS AND ANSWERS**

### **TAX COMPUTATION, TAX RATES, AND PAYMENTS**

1. Q. What is the casual excise tax and when is it imposed on sales of boats, boat motors, or airplanes?
  - A. The casual excise tax is imposed upon the issuance of a certificate of title or other proof of ownership for every (1) boat, (2) boat motor, or (3) airplane required to be registered, titled, or licensed. It only applies to the last sale before the application for title. The casual excise tax does not apply to motor vehicles, motorcycles, trailers (including boat trailers), semitrailers, or pole trailers. See Code Sections 12-36-1710(A) and 12-36-1720.

An individual or non-retailer located in South Carolina who sold the item is not responsible for collecting the casual excise tax. The purchaser is liable for paying the casual excise tax.

2. Q. What is the casual excise tax rate?
  - A. Below is a summary of the applicable tax rate that may be imposed on transfers of boats, boat motors, and airplanes.

#### General Tax Rates:

The casual excise tax is 5% of the “fair market value” of the boat or airplane purchased. (See Question 3 for the definition of “fair market value.”) However, Code Section 12-36-2110 provides that the casual excise tax on sales of boats or airplanes may not exceed \$500 (maximum tax) on these transactions.

The casual excise tax is 6% of the “fair market value” of a boat motor that is purchased alone (not permanently attached to the boat). Since a boat motor is not a maximum tax item, the tax may exceed \$500.

#### Special Provision for Persons 85 and Older:

South Carolina sales and use tax law provides for a 1% lower state tax rate for purchases by individuals 85 years of age and older for their personal use. The lower tax rate is referred to as the 1% exclusion or reduction.

Therefore, the casual excise tax is 4% (instead of 5%) of the “fair market value” of the boat or airplane purchased by an individual 85 years or older for his personal use, not to exceed \$500 (maximum tax). The casual excise tax is 5% (instead of 6%) of the “fair market value” of a boat motor that is purchased alone (not permanently attached to the boat) by an individual 85 years or older for his personal use. See Code Section 12-36-2640.

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## Maximum Tax:

The maximum tax provisions apply to the casual excise tax in the same manner that the maximum tax provisions apply to the sales tax and the use tax.

Therefore, the maximum tax of \$500 applies to a transfer of a boat or an airplane that is subject to the casual excise tax. The maximum tax does not, however, apply to the transfer of a boat motor sold alone (i.e., not permanently attached to a boat).

## Local Sales and Use Taxes:

Local sales and use taxes administered and collected by the Department on behalf of local jurisdictions do not apply to transactions subject to the casual excise tax.

3. Q. What is the amount on which the casual excise tax is computed?
  - A. The casual excise tax is computed on the “fair market value” which is defined as: (1) the total purchase price (i.e., price agreed upon by the buyer and seller) less any trade-in allowance of the boat, boat motor, or airplane, or (2) the valuation shown in a national publication adopted by the Department. The valuation shown in a national publication of used values, however, is used only in cases of necessity, for example, when closely held stock is exchanged for a motor vehicle.

The price agreed upon by the buyer and seller, less any trade-in, includes: (1) the amount of cash paid, (2) the amount of any loan assumed, (3) the value of any property exchanges, or (4) the amount paid at delinquent property tax sales.
4. Q. When is the casual excise tax due?
  - A. The casual excise tax is due upon the issuance of a certificate of title, or other proof of ownership, of a boat, boat motor, or airplane required to be registered, titled or licensed.
5. Q. How is the casual excise tax remitted?
  - A. Department of Revenue Form ST-236, “Casual or Use Excise Tax Return,” is used to compute the casual excise tax due on the transfer of a boat, boat motor, or airplane.

The tax may be paid at the Department of Revenue or the Department of Natural Resources when registering a boat or motor.

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## APPLICABILITY OF SALES TAX, USE TAX, OR CASUAL EXCISE TAX

- 6 Q. Is the sale of a boat, boat motor, or airplane by a non-retailer (a person not in the business of selling tangible personal property at retail, e.g., a casual sale by an individual) subject to the casual excise tax?
  - A. Yes. However, an individual or non-retailer located in South Carolina who sold the item is not responsible for collecting the casual excise tax upon the sale of a boat, boat motor, or airplane. The purchaser is liable for paying the casual excise tax.
7. Q. Is the sale of a boat, boat motor, or airplane by a retailer subject to the casual excise tax?
  - A. No, however, the sale of a boat, boat motor, or airplane by a retailer is subject to the sales tax or the use tax. The South Carolina retailer collects and remits sales tax to the Department upon the sale of a boat, boat motor, or airplane.
8. Q. Does a licensed South Carolina retailer have the option of not remitting the sales tax or the use tax on the sale of a boat or a boat motor since the Department of Natural Resources has the authority to collect the casual excise tax or the use tax when the boat or boat motor is registered, titled, or licensed?
  - A. No. The retailer must remit the sales tax or the use tax on a retail sale (unless otherwise exempt) of a boat or boat motor when the delivery of the boat or boat motor is made in, or into, South Carolina.
9. Q. If a South Carolina resident or business purchases a boat, boat motor, or airplane outside of South Carolina and brings the boat, boat motor, or airplane to South Carolina for use in South Carolina, is the South Carolina resident or business liable for the use tax or the casual excise tax?
  - A. The tax to be collected (use tax or casual excise tax) depends on whether the boat, boat motor, or airplane purchased outside of South Carolina is purchased from a retailer or a non-retailer as explained below.

### Purchases from Retailer:

The use tax applies to the storage, use, or other consumption in South Carolina of boats, boat motors, and airplanes purchased from a retailer located outside South Carolina for storage, use, or other consumption in South Carolina.

If a sales or use tax was due and paid in another state on such purchases, a credit against the South Carolina use tax is allowed.

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Note: The use tax does not apply to property purchased from a retailer located outside South Carolina if the property is used substantially outside South Carolina by the purchaser before being stored, used, or consumed in South Carolina.

## Purchases from Non-Retailer:

The casual excise tax applies to the issuance of every certificate of title, or other proof of ownership, for boats, boat motors, and airplanes purchased outside South Carolina from non-retailers if a sales or use tax has not been paid on the transaction necessitating the transfer of title.

Note: The casual excise tax does not apply to property purchased outside South Carolina if the property has been substantially used outside South Carolina by the purchaser before being titled, registered, or licensed in South Carolina.

10. Q. Does the maximum tax provisions for a boat and an airplane apply to the casual excise tax, as well as the sales tax and the use tax?
  - A. Yes. Note: Since boats may be sold with a boat motor and trailer, the Department has issued an advisory opinion, SC Revenue Ruling #18-13, concerning the application of the sales tax, the use tax, and the casual excise tax to the sale of boats, boat motors, and boat trailers. See SC Revenue Ruling #18-13 for a more detailed information.

## TRANSFERS NOT SUBJECT TO THE TAX

11. Q. Does the casual excise tax apply to a boat, boat motor, or an airplane transferred to another person as a gift or as a prize?
  - A. No. The casual excise tax does not apply to property transferred as a gift or prize in that there has not been a sale to the person receiving the property. (See Code Section 12-36-1710(B) for exclusions.)
12. Q. What transactions are exempt from the casual excise tax?
  - A. The following transfers of boats, boat motors, or airplanes are specifically exempted from the casual excise tax pursuant to Code Sections 12-36-1710 and 12-36-1720:
    - Transfers to members of the immediate family (i.e., spouse, parent, child, sister, brother, grandparent, and grandchild);
    - Transfers to a legal heir, legatee, or distributee;
    - Transfers from an individual to a partnership upon formation, or from a stockholder to a corporation upon formation;

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- Transfers to a licensed motor vehicle dealer or licensed motorcycle dealer for the purpose of resale;
- Transfers to a financial institution for the purpose of resale;
- Transfers to any other secured party, as a result of repossession, for the purpose of resale;
- Transfers to the seller or secured party in partial payment (e.g., trade-ins);
- Transfers where a sales or use tax has been paid on the transaction necessitating the transfer (this includes sales tax paid to an auctioneer licensed as a retailer);
- Transfers of motor vehicles, motorcycles, or airplanes specifically exempted by Section 12-36-2120 from the sales or use tax (see Question 13 below);
- Transfers that are a gift or prize; and
- Vessels registered and documented by the United States Commissioner of Customs.

13. Q. What transfers are exempt from the casual excise tax because they are exempt from sales or use tax under Code Section 12-36-2120 or otherwise exempt or excluded under the law?

A. Below are examples of transfers of boats, boat motors, and airplanes that are exempt from sales and use tax under Code Section 12-36-2120 or otherwise exempt or excluded under the law and, therefore, exempt or excluded from the casual excise tax. These examples illustrate frequent methods of transfer, and are not intended to be all-inclusive.

Type of Transfer	Explanation of Tax Exemption
Sales of Farm Machinery	Airplanes used in planting, cultivating, or harvesting farm crops (e.g., crop dusting) are exempt. Code Section 12-36-2120(16).
Sale of Entire Business	Depreciable assets used in the operation of a business are exempt when the entire business is sold by the owner, pursuant to a written contract, and the purchaser continues operation of the business. Code Section 12-36-2120(42).
Sales by, or Sales to, the Federal Government or Federal Credit Unions	When agents of the federal government purchase a boat, boat motor, or airplane on behalf of the federal government, the purchase is not subject to tax providing the credit of the agent is not advanced or risked, the purchase order discloses the purchase is made on behalf of the federal government, title to the property vests in the federal government, and the vendor is paid directly from the federal government. Code Section 12-36-2120(1) and (2). See SC Attorney General Opinion #S-OAG-59 that concluded federally chartered credit unions are instrumentalities of the federal government.