

SC INFORMATION LETTER #08-3

SUBJECT: Regulations Approved by the General Assembly

DATE: February 25, 2008

AUTHORITY: S. C. Code Ann. Section 12-4-320 (2000)
S.C. Code Ann. Section 1-23-10(4) (2000)
SC Revenue Procedure #05-2

SCOPE: An Information Letter is a written statement issued to the public to announce general information useful in complying with the laws administered by the Department. An Information Letter has no precedential value.

The following regulation proposals were approved by the General Assembly on January 29, 2008 and became official regulations upon publication in the State Register on **February 22, 2008**. However, the provisions of Regulation 117-318.8 concerning the sales and use tax and restocking fees will not become effective until October 1, 2008.

Each regulation is attached as published in the State Register.

<u>Regulation No.</u>	<u>Subject</u>	<u>Document</u>	<u>Page No.</u>
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Document No. 3109
DEPARTMENT OF REVENUE
CHAPTER 117
Statutory Authority: 1976 Code Section 12-4-320

117-1720.1. Property Taxation and Fees in Lieu of Property Taxes

Synopsis:

The South Carolina Department of Revenue is considering repealing SC Regulation 117-1720.1 concerning the responsibilities of the Department of Revenue and the Comptroller General with respect to property taxation and fees in lieu of property taxes. Generally speaking, the Department of Revenue (DOR) has jurisdiction over the duties involved with the proper assessment of property for tax purposes and the proper calculation of property taxes, while the Comptroller General supervised the collection of taxes and penalties, and administered the Homestead Tax Exemption Program, including the exemption from school operations found in Section 12-37-251, except for those functions specifically reserved to the DOR. There were "gray" areas as to when the assessment of property for tax purposes and the proper calculation of property taxes ends (DOR) and the collection jurisdiction (Comptroller General) began. These areas which were not clearly assigned by the statutes were divided by agreement between the two agencies. This regulation formalized this agreement.

The responsibilities of the Comptroller General discussed in this regulation have now been moved to the Department of Revenue pursuant to Act 386, Section 55, of 2006. Therefore, SC Regulation 117-1720.1 is no longer needed.

Instructions: Repeal SC Regulation 117-1720.1 concerning the responsibilities of the Department of Revenue and the Comptroller General with respect to property taxation and fees in lieu of property taxes.

Text:

117-1720.1. Reserved.

Fiscal Impact Statement:

There will be no impact on state or local political subdivisions expenditures in complying with this proposed legislation.

Statement of Rationale:

The purpose of this proposal is to repeal SC Regulation 117-1720.1 concerning the responsibilities of the Department of Revenue and the Comptroller General with respect to property taxation and fees in lieu of property taxes. Since the responsibilities of the Comptroller General discussed in this regulation have now been moved to the Department of Revenue pursuant to Act 386, Section 55, of 2006, SC Regulation 117-1720.1 is no longer needed.

The proposal to repeal this regulation is needed to reduce any taxpayer confusion that may result from having a regulation that no longer reflects how these tax issues are handled and is therefore no longer needed. The proposal to repeal this regulation is also reasonable in that it is the department's responsibility to maintain regulations that are up-to date.

Document No. 3110
DEPARTMENT OF REVENUE
CHAPTER 117
Statutory Authority: 1976 Code Section 12-4-320

117-318.8. Returned Merchandise and Restocking Fees

Synopsis:

The South Carolina Department of Revenue is considering adding SC Regulation 117-318.8 concerning the application of the sales and use tax with respect to returned merchandise and restocking fees. The Department has followed a 1967 Commission Decision concerning returned merchandise and restocking fees, but believes it is an incorrect interpretation of the statute and is considering adding a regulation to provide that the sales price of property returned by a customer is not subject to the tax only if the "full sales price" is refunded in cash or by credit.

Instructions: Add SC Regulation 117-318.8 concerning the application of the sales and use tax with respect to returned merchandise and restocking fees.

Text:

117-318.8. Returned Merchandise and Restocking Fees (Effective October 1, 2008)

The sales tax is imposed upon a retailer's "gross proceeds of sales" which is defined at Code Section 12-36-90. Code Section 12-36-90(2)(b) specifically states that "gross proceeds of sales" does not include "the sales price of property returned by customers when the full sales price is refunded in cash or by credit."

The use tax is based upon the "sales price" of tangible personal property and the term "sales price" is defined at Code Section 12-36-130. Code Section 12-36-130(2)(b) specifically states that "sales price" does not include "an amount charged for property, which is returned by the purchaser, and the full amount is refunded in cash or by credit."

Therefore, the price ("gross proceeds" or "sales price") charged for property which is returned to the retailer by the purchaser is not subject to the sales tax or the use tax provided the full price is refunded to the purchaser in cash or by credit. If a purchaser returns merchandise to the retailer and receives a refund or credit that is less than the price originally paid because the retailer retains a portion of the price paid as a "restocking" or "handling" fee or for any other reason, then the original price is subject to the tax.

Fiscal Impact Statement:

There will be no impact on state or local political subdivisions expenditures in complying with this proposed legislation. There will be a minimal increase to general fund collections.

Statement of Rationale:

The purpose of this proposal is to add SC Regulation 117-318.8 concerning the application of the sales and use tax with respect to returned merchandise and restocking fees. Presently, Code Section 12-36-90 defines the term “gross proceeds of sales,” the measure or basis for the sales tax, in part as “... the value proceeding or accruing from the sale, lease, or rental of tangible personal property... without any deduction for... the cost of materials, labor, or service... [or] any other expenses ...” Further, the definition specifically states that the term “gross proceeds of sales” does not include “the sales price of property returned by customers when the full sales price is refunded in cash or by credit.” However, a 1967 Commission Decision states that the sales price of property returned by a customer is not subject to the tax even if a restocking fee is charged and the “full sales price” is not refunded in cash or by credit.” The Department has followed this Commission Decision, but believes it is an incorrect interpretation of the statute and is considering adding a regulation to provide that the sales price of property returned by a customer is not subject to the tax only if the “full sales price” is refunded in cash or by credit. The proposal to add this regulation is needed to reduce any taxpayer confusion that may result from having a published regulation that is in conflict with the law. The proposal to amend this regulation is also reasonable in that it is the department’s responsibility to maintain regulations that are up-to date and consistent with the law. The regulation would be effective on October 1, 2008.