



301 Gervais Street, P.O. Box 125, Columbia, South Carolina 29214

SC INFORMATION LETTER #92-7

TO: Vicki Ringer  
Public Information Director

FROM: Steve Hallman, Tax Analyst  
Tax Policy and Appeals Department

DATE: January 22, 1992

SUBJECT: Local Option Tax - Contractors  
(Purchases of Building Materials)

REFERENCE: S.C. Code Ann. Section 4-10-20 (Supp. 1990)  
S.C. Code Ann. Section 4-10-25 (Supp. 1990)  
SC Revenue Ruling #91-17

SUPERSEDES: SC Information Letter #91-13

AUTHORITY: S.C. Code Ann. Section 12-4-320 (Enacted June, 1991)  
SC Revenue Procedure #87-3

SCOPE: An Information Letter is a temporary document issued for the purpose of disseminating general tax information and to respond to technical questions from within the Commission which are not related to a specific set of facts.

THIRTEEN COUNTIES HAVE IMPOSED THE ONE PERCENT (1%) LOCAL SALES AND USE TAXES:

Effective May 1, 1992, an additional one percent (1%) local sales and use tax will be imposed in the following counties - Abbeville, Allendale, Bamberg, Edgefield, Lancaster, Marlboro, and Saluda.

Effective July 1, 1991, the one percent (1%) tax was imposed in the counties of Charleston, Colleton, Hampton, Jasper, Marion, and McCormick.

The tax may be imposed in other counties in the future.

PURCHASES BY CONSTRUCTION CONTRACTORS WHICH ARE EXEMPT FROM THE LOCAL SALES AND USE TAXES:

- I. Exemption. Purchases of building materials for use under a construction contract are exempt from the one percent (1%) tax, if both the following conditions are met:
- A. 1. the construction contract is executed before the imposition date or
2. a written bid is submitted before the imposition date, culminating in a construction contract entered into before or after the imposition date, and
- B. a verified copy of the contract is mailed, within six (6) months of the imposition date, to:

South Carolina Tax Commission  
Office Services Division  
License and Registration Section  
P.O. Box 125  
Columbia, S.C. 29214-0109

A "verified copy" is a copy accompanied by a statement, signed under penalties of perjury, that it is true and correct. If the contractor is a corporation, the statement is to be signed by an officer of the corporation or an employee authorized to sign. If the contractor is a partnership, the statement is to be signed by a general partner. If the contractor is a sole proprietorship, the owner is to sign.

- II. Special Exemption Certificate. In order for a contractor to purchase building materials for a particular contract free of the one percent (1%) tax, the contractor must complete Form ST-10-C ("Application for Exemption from Local Option Tax") and submit it to the Tax Commission. If the Commission determines the contract in question meets the requirements contained in Section I of this document, the contractor will be issued a special exemption certificate (Form ST-35). The certificate may only be used to purchase building materials for the contract for which it is issued and may not be used to purchase anything other than building materials. If the contractor uses this certificate to make purchases free of the one percent (1%) tax, upon which the tax should have been paid, then the contractor will be held liable for the tax. Also, the certificate does not allow the contractor to make purchases of building materials free of the five percent (5%) state tax.

An exemption certificate issued by the Tax Commission to a prime contractor may not be used by a subcontractor nor may a prime contractor use a subcontractor's exemption certificate. Each contractor must obtain his or her own certificate for each construction contract.

III. Important Dates:

- A. Contracts Executed Before July 1, 1991. Those contracts executed before July 1, 1991, or for which a written bid was submitted before July 1, 1991, are

exempt from the 1% tax in all local option tax counties (those imposing the tax July 1, 1991 and those imposing the tax May 1, 1992), if:

1. a "verified copy" of the contract was mailed to the Tax Commission by December 31, 1991; and
2. the Tax Commission has issued an exemption certificate for the contract.

Exemption certificates issued for contracts described in this section are numbered, with the first two digits being "35" (i.e. 35XXXXXX).

B. Contracts Executed After June 30, 1991, But Before May 1, 1992. Those contracts executed after June 30, 1991 and before May 1, 1992, or for which a written bid was submitted between those dates, are exempt from the 1% tax in Abbeville, Allendale, Bamberg, Edgefield, Lancaster, Marlboro and Saluda counties, if:

1. a "verified copy" of the contract is mailed to the Tax Commission by October 31, 1992; and
2. the Tax Commission issues an exemption certificate for the contract.

Exemption certificates issued for contracts described in this section are numbered, with the first two digits being "40" (i.e. 40XXXXXX). Such certificates are not valid for Charleston, Colleton, Hampton, Jasper, Marion and McCormick counties.

C. Contracts Executed After May 1, 1992. Those contracts executed after May 1, 1992, or for which a written bid is submitted after May 1, 1992, are not exempt from the 1% tax in Abbeville, Allendale, Bamberg, Edgefield, Lancaster, Marlboro, Saluda, Charleston, Colleton, Hampton, Jasper, Marion or McCormick counties. In other words, they are not exempt in those counties imposing the tax on July 1, 1991 or on May 1, 1992.

However, if the necessary requirements are met, such contracts may qualify for exemption from the 1% tax in those counties which impose the tax after May 1, 1992.

**PURCHASES OF BUILDING MATERIALS FOR CONSTRUCTION CONTRACTS NOT MEETING THE REQUIREMENTS FOR EXEMPTION:**

Purchases of building materials for construction contracts not meeting the requirements under Section I of this document are subject to the one percent (1%) tax as follows:

1% Sales Tax:

If the property is delivered within the county in which the supplier is located, and that county has imposed the 1% tax, then the 1% sales tax is due. If the property is delivered within the county in which the supplier is located, and that county has not imposed the tax, then the 1% sales tax is not due.

#### 1% Use Tax:

The liability for the 1% use tax, as with the 5% state use tax, is on the contractor. The supplier may, however, be required to collect the tax from the contractor.

If the contractor takes delivery in one local option tax county and pays that county's 1% sales tax to the supplier, he is not liable for the 1% use tax if he takes the property to another local option tax county and stores, uses, or consumes the property in that county.

Also, the contractor is relieved of the liability for the 1% use tax if he has a receipt from the supplier showing the supplier has collected the 1% use tax from the contractor.

#### "MANUFACTURER/CONTRACTORS":

A so-called "manufacturer/contractor" is a construction contractor who produces his own building materials.

Pursuant to Code Section 12-36-110(1)(d), "manufacturer/contractors" are to report the additional 1% tax by county and municipality where they use or consume the building materials which they have produced - in other words, the location of the construction site. Therefore, if the property is used or consumed in a county which has imposed the 1% local tax, then the tax is due. If the property is used or consumed in a county which has not imposed the 1% local tax, then the tax is not due. It does not matter where the "manufacturer/contractor's" business location is situated.

"Manufacturer/contractors" may also apply for the special exemption certificate provided for in this document.

#### DEFINITION OF THE TERM "BUILDING MATERIALS":

Pursuant to S.C. Regulation #117-174.45, the term "building materials" refers to tangible personal property which becomes a part of real property (e.g. lumber, bricks, nails, steel, wiring, etc.). Therefore, the term does not refer to such items as machinery, tools, fuel, supplies, etc. which do not become a part of real property.

#### ADDITIONAL INFORMATION:

For additional information concerning the local option sales and use taxes, refer to S.C. Revenue Ruling #91-17. A copy of the ruling may be obtained by calling (803) 737-4405. If you have other questions concerning the local option tax and how it pertains to construction contractors, you may call Jerry Knight at (803) 737-4437, John McCormack at (803) 737-4438, or Steve Hallman at (803) 737-4433.