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Comments Due by: **June 19, 2019**

SC REVENUE RULING 19-x [DRAFT – 6/11/2019]

- SUBJECT:** Sales Tax Holiday – Frequently Asked Questions and List of Eligible Items (Sales and Use Tax)
- DATE:**
- SUPERSEDES:** SC Revenue Ruling #10-7
SC Revenue Ruling #10-8
- REFERENCES:** S.C. Code Ann. Section 12-36-2120(57) (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. 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 It is the Department’s position until superseded or modified by a change in statute, regulation, court decision, or another Department advisory opinion.

OVERVIEW AND PURPOSE OF UPDATE

South Carolina law suspends the collection of sales and use tax on retail sales of qualifying items by retailers for three full days each August. This annual sales tax holiday allows resident and nonresident shoppers an opportunity to purchase certain items free of South Carolina’s 6% State sales and use tax and free of any local sales and use taxes collected by the Department on behalf of local jurisdictions. The tax holiday applies to certain items specified by statute and includes school supplies used for school assignments, apparel, electronics, and bed and bath items. It applies to eligible items purchased for use by any age, from infant to senior citizen, to new or used items, and to items of any dollar amount.

The sales tax holiday has been in effect since 2000. The purpose of this advisory opinion is to update the Department’s guidance on South Carolina’s annual tax free holiday. This document combines the prior question and answer document and the list of examples of exempt and non-exempt items into one document. This advisory opinion now contains frequently asked questions regarding the sales tax holiday and a list of examples of exempt and non-exempt items by category.

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LAW

Code Section 12-36-2120(57) exempts from the sales and use tax:

- (a) sales taking place during a period beginning 12:01 a.m. on the first Friday in August and ending at twelve midnight the following Sunday of:
 - (i) clothing;
 - (ii) clothing accessories including, but not limited to, hats, scarves, hosiery, and handbags;
 - (iii) footwear;
 - (iv) school supplies including, but not limited to, pens, pencils, paper, binders, notebooks, books, bookbags, lunchboxes, and calculators;
 - (v) computers, printers and printer supplies, and computer software;
 - (vi) bath wash cloths, blankets, bed spreads, bed linens, sheet sets, comforter sets, bath towels, shower curtains, bath rugs and mats, pillows, and pillow cases.

- (b) The exemption allowed by this item does not apply to:
 - (i) sales of jewelry, cosmetics, eyewear, wallets, watches;
 - (ii) sales of furniture;
 - (iii) a sale of an item placed on layaway or similar deferred payment and delivery plan however described;
 - (iv) rental of clothing or footwear;
 - (v) a sale or lease of an item for use in a trade or business.

- (c) Before July tenth of each year, the department shall publish and make available to the public and retailers a list of those articles qualifying for the exemption allowed by this item.

GENERAL QUESTIONS

- 1. Q. When is the sales tax holiday?
 - A. South Carolina's sales tax holiday is a three day (72 hour) event taking place each August. It begins at 12:01 a.m. on the first Friday morning in August and goes through the following Sunday night.

- 2. Q. What items may be purchased tax free during the sales tax holiday?
 - A. The sales tax holiday applies to purchases of eligible items of any dollar amount for use by any age. The following items qualify for the sales tax holiday:
 - Clothing (including custom-made clothes) & clothing accessories
 - Footwear
 - School supplies used for school assignments
 - Computers, computer software, printers, and printer supplies (whether purchased or leased)
 - Certain bed and bath supplies

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The following items are specifically not exempt during the sales tax holiday by law:

- Items for use in a trade or business
- Items placed on layaway or similar deferred payment and delivery plan
- Clothing and footwear rentals (e.g., tuxedo rentals, bowling shoe rentals)
- Cosmetics
- Eyewear (prescription or nonprescription)
- Furniture
- Jewelry, wallets, and watches

A list of examples of exempt and non-exempt items is provided in this advisory opinion. The list is not all-inclusive.

3. Q. Does the tax holiday apply to sales of qualifying items by out-of-state sellers (e.g., internet or mail order sellers) or marketplace facilitators?
 - A. Yes. The sales tax holiday suspends the collection of sales and use tax on retail sales of qualifying items by all retailers (in-state and out-of-state retailers).
4. Q. What time zone determines the authorized time period for the sales tax holiday?
 - A. The time zone in South Carolina determines the authorized time period for the sales tax holiday when the purchaser and the seller are located in different time zones.
5. Q. Does the sales tax holiday exempt eligible purchases from both state and local sales and use taxes?
 - A. Yes. Eligible items are exempt from both the 6% State sales and use tax and the local sales and use taxes collected by the Department on behalf of local jurisdictions. The local tax rate varies by county and can be up to 3% as of the date of this advisory opinion. A complete list of current local tax rates is published on the Department's website.
6. Q. Can a retailer "opt out" of the sales tax holiday?
 - A. No. The Department may impose penalties and other enforcement provisions on a retailer who does not make a good faith effort to suspend the sales and use tax collection on eligible items during the tax holiday period. See Code Sections 12-54-196 and 12-54-90.
7. Q. What should a consumer do if a retailer charges sales and use tax on an exempt item during the tax holiday period?
 - A. The Department recommends the purchaser refer the retailer to this advisory opinion. After reviewing the law and the Department's guidance, the retailer should refund the tax paid on an eligible item to the purchaser.

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8. Q. When is the “sale date” of an eligible item deemed to occur?
- A. The sale of an item is deemed to occur during the tax holiday period, and therefore exempt from sales and use tax when:
- a. The item is both delivered to and paid for by the customer during the tax holiday period, or
 - b. The customer orders and pays for the item and the retailer accepts the order during the tax holiday period for immediate shipment, even if delivery is made after the tax holiday period.

An order is accepted by the retailer when the retailer has taken action to fill the order for immediate shipment (e.g., assigns an “in date” to a mail order or assigns an “order number” to an internet or telephone order). An order is for immediate shipment even if the shipment may be delayed because stock is currently unavailable to, or on back order by, the retailer or because of a backlog of orders. An order is not for immediate shipment when the customer requests to delay shipment.

The examples below illustrate when the “sale date” of an eligible item is deemed to occur.

| Transaction Type | Tax Treatment |
|--|---|
| <u>Special or Custom Order.</u> (e.g., a custom made suit, a special order bedspread) The customer orders and pays for the eligible item and the retailer accepts the order during the tax holiday period. The customer does not request a delay in shipment, but the order is not delivered until September. | The sale is deemed to take place during the tax holiday period. The sale is tax free, whether delivery is made during or after the tax free period. |
| <u>Use of a “90 days same as cash” Financing Plan.</u> During the tax holiday period, the customer signs a financing contract obligating himself to pay for an eligible item over time. Either delivery is made during the holiday period or the retailer accepts the order during the tax holiday period for immediate shipment. | The sale is deemed to take place during the tax holiday period. The sale is tax free since the obligation to pay was agreed to during the tax free period. |
| <u>Purchase with Rain Check.</u> During the tax holiday period, the customer uses a rain check that was issued before the tax holiday period to purchase an eligible item. | The sale is deemed to take place during the tax holiday period. The sale is not subject to sales and use tax. |
| <u>Layaway Sales.</u> The customer selects eligible items and places them on layaway. The retailer accepts the order during the tax holiday period. | The sale is subject to sales and use tax. The tax holiday statute specifically does not apply to layaway sales. |

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9. Q. How does the sales tax holiday exemption apply to exchanges and rain checks taking place after the sales tax holiday period?
- A. The sales tax holiday exemption applies to exchanges taking place after the sales tax holiday period and rain checks used after the sales tax holiday period as follows:

| Transaction Type and Time | Tax Treatment |
|---|---|
| <u>Exchange for Same Type Item for Same or Lower Price.</u> The exchange of an eligible item purchased during the tax holiday period for the same type item for the same or a lower price (e.g., exchanged for a different size or color) after the tax holiday period. | The new item received after the tax holiday period is not subject to sales and use tax since no additional amount was paid for the new item. For example, a \$25 shirt purchased during the tax holiday is exchanged after the tax holiday for a \$25 shirt. |
| <u>Exchange for Same Type Item for Higher Price.</u> The exchange of an eligible item purchased during the tax holiday period for the same type item for a higher price (e.g., exchange a dress for a higher price dress) after the tax holiday period. | The sale of the new item after the tax holiday period is subject to sales and use tax based on the sales price of the new item. For example, a \$60 dress purchased during the tax holiday is exchanged after the tax holiday for a new \$100 dress. Sales and use tax is due on \$100. ¹ |
| <u>Exchange for Different Type Item.</u> The exchange of, or credit for, an eligible item purchased during the tax holiday for a different type item after the tax holiday period (e.g., exchange pants for shoes). | The sale of the new item received after the tax holiday is subject to sales and use tax based on the sales price of the new item. For example, a \$50 pair of pants purchased during the tax holiday is exchanged after the tax holiday for a \$30 pair of shoes. Sales and use tax is due on the \$30 new pair of shoes. |
| <u>Rain Check Issued.</u> A rain check is issued during the tax holiday period but is used after the tax holiday period to purchase the out-of-stock item at the sales price. The item would have been eligible to be tax free. | The purchase of the item is subject to sales and use tax. |

10. Q. Does the sales tax holiday also apply to delivery charges, service charges for alterations or monogramming, and similar charges associated with the purchase of an exempt item?

¹ The trade-in provision in Code Section 12-36-90(2)(c) applies only to “second hand property” and, therefore, is not applicable to this example.

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- A. Yes. The sales tax holiday also applies to delivery charges, service charges, and similar charges associated with the purchase of an exempt item. The examples below illustrate the application of the exemption to additional charges generally included in the tax base.

| Additional Charges | Tax Treatment |
|---|--|
| Shipping, Handling, or Delivery Charges | A retailer sells a pair of eligible shoes during the tax holiday for \$100. A shipping and handling charge of \$15 is added to the price. The entire charge of \$115 is exempt from sales and use tax. |
| Alteration and Monogramming Charges | A retailer sells a pair of pants during the tax holiday for \$75 and charges \$10 to hem the pants. The entire charge of \$85 is exempt from sales and use tax. |
| Extended Computer Warranty | A retailer sells a computer during the tax holiday for \$2,000 and charges a \$75 delivery fee. The customer also purchases an extended warranty contract at the same time for \$200. The entire charge of \$2,275 is exempt from sales and use tax. |

SPECIFIC EXAMPLES OF EXEMPT AND TAXABLE ITEMS

11. Q. What are “school supplies” for purposes of the sales tax holiday?

- A. “School supplies” are items used in the classroom or at home with respect to school assignments. The term “school supplies” includes computer supplies and musical instruments, such as pianos, when used in the classroom or at home with respect to school assignments. The term “school supplies” does not include items such as refrigerators, bicycles, tissues, hand sanitizer, and storage containers since they are not used for school assignments.

Note: Since a permanent exemption in Code Section 12-36-2120(2)(a) exempts books used as part of a course of study in elementary schools, high schools and institutions of higher learning from tax, the sales tax holiday exemption in Code Section 12-36-2120(57) for “books” applies to other books used for school purposes, such as dictionaries, thesauruses, encyclopedias, and books used for science projects or book reports.

12. Q. Does the tax holiday exemption for computers apply to the separate purchase of computer supplies, such as a monitor, keyboard, or mouse?

- A. Since the tax holiday law exempts computers, but does not exempt computer supplies, the sale of a computer monitor, keyboard, or mouse by itself is taxable during the holiday period, unless the computer supply is a “school supply” (i.e., is used in the classroom or at home with respect to school assignments).

Note: The purchase of a packaged unit that includes the central processing unit (e.g., central processing unit, monitor, keyboard, and mouse) is exempt during the tax holiday period.

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13. Q. Does the tax holiday exemption for “computers” apply to smartphones, cell phones, e-readers, video gaming systems, and other similar devices?
- A. No. Smartphones, cell phones, and other handheld devices that allow users to make telephone calls are not exempt during the tax holiday. In addition, the tax holiday does not apply to video gaming systems or to handheld devices that are primarily used to download and (a) listen to music, (b) watch videos, or (c) read books.
14. Q. Does the tax holiday exemption apply to purchases of fabric and sewing supplies used to sew eligible clothing or bedding?
- A. Yes. Sales of fabric, thread, lace, zippers, buttons, and other sewing materials that become part of the clothing or bedding are exempt during the tax holiday period. However, sewing equipment and supplies (e.g., sewing machines, patterns, tape measures, needles, and thimbles) are not exempt.
15. Q. Does the tax holiday exemption apply to purchases of items for use in a “trade or business”?
- A. No. The tax holiday does not apply to the sale or lease of an item for use in a trade or business. The term “trade or business” includes activities carried on for the production of income from selling goods or performing services. The facts and circumstances of each case determine whether or not an activity is a trade or business. The regularity of activities and transactions and the production of income are important elements.
16. Q. Does the tax holiday exemption for “clothing,” “clothing accessories,” and “footwear” apply to eligible items purchased by an employee to wear for work?
- A. Yes. An employee is not considered engaged in a trade or business in connection with his work as an employee. Purchases of uniforms, footwear, or other eligible items by an employee during the tax holiday period are exempt from sales and use tax, provided the employee is not reimbursed by the employer for the purchases. However, uniforms, work footwear, protective gloves, breathing masks, helmets, tool belts, and other items purchased by an employer for its employees’ use at work (or if reimbursed by the employer to the employee) are not exempt during the tax holiday period.

Note: See a permanent exemption under Code Section 12-36-2120(54) exempting clothing and other attire required for working in a Class 100 or better as defined in Federal Standard 209E clean room environment.

EXHIBIT A: SOUTH CAROLINA SALES TAX HOLIDAY – DRAFT 6/10/19

Examples of Exempt and Taxable Items (Not All Inclusive)

| I. CLOTHING and CLOTHING ACCESSORIES | | |
|--|--|--|
| The tax holiday applies to purchases of new or used clothing and clothing accessories for use by any age and of any dollar amount. It does not apply to clothing and accessories used in a trade or business or rented. | | |
| Examples of Exempt Items | | |
| <ul style="list-style-type: none"> ◆ Everyday <ul style="list-style-type: none"> Belts & suspenders Dresses & skirts Leggings Neckties & scarves Pants, jeans & shorts Shirts & blouses Suits & blazers Sweaters & sweatshirts ◆ Outer Wear <ul style="list-style-type: none"> Coats (all types) Ear muffs Gloves & mittens Hats & caps Rainwear & umbrellas Vests | <ul style="list-style-type: none"> ◆ School Wear <ul style="list-style-type: none"> Graduation caps & gowns Gym suits Uniforms (band, school & sports) ◆ Sleepwear ◆ Underwear <ul style="list-style-type: none"> Bras, panties, slips, & T-shirts Diapers (cloth & disposable) Hosiery, socks & tights Incontinent underwear ◆ Sports/Exercise Wear <ul style="list-style-type: none"> Exercise clothing Gloves (batting & golf) Hunting & ski clothing Leotards Swim wear & water apparel | <ul style="list-style-type: none"> ◆ Miscellaneous/Specialty <ul style="list-style-type: none"> Belt buckles Bibs Choir robes Costumes Fabric for custom clothing Formal wear Hair accessories & wigs Handkerchiefs Maternity clothing Pet coats & sweaters Pocketbooks & purses Scout uniforms Work uniforms purchased by the employee |
| Examples of Taxable Items | | |
| <ul style="list-style-type: none"> ◆ Clothing Placed on Layaway ◆ Costume Rentals ◆ Formal Wear Rentals ◆ Safety Equipment (hard hats & ear protectors) ◆ Uniforms Purchased by Employers for Employees | <ul style="list-style-type: none"> ◆ Sports Equipment <ul style="list-style-type: none"> Helmets (bicycle & football) Hockey & baseball mitts Protective wear (masks, mouth guards, knee pads & swim goggles) Life jackets | <ul style="list-style-type: none"> ◆ Miscellaneous/Specialty <ul style="list-style-type: none"> Cosmetics Eyewear (contacts & glasses) Fitness tracking devices Jewelry Phone cases Wallets & billfolds Watchbands Watches & smartwatches |

| II. FOOTWEAR | | |
|--|---|--|
| The tax holiday applies to purchases of new or used footwear for use by any age and of any dollar amount. It does not apply to footwear used in a trade or business or rented. | | |
| Examples of Exempt Items | | |
| <ul style="list-style-type: none"> ◆ Everyday <ul style="list-style-type: none"> Boots (cowboy & hunting) Flip flops Sandals Shoes (all types) Slippers | <ul style="list-style-type: none"> ◆ Sports/Exercise <ul style="list-style-type: none"> Cleats Dance shoes (ballet & tap) Hiking shoes & boots Sports shoes (golf & bicycle) Ski boots | <ul style="list-style-type: none"> ◆ Miscellaneous/Specialty <ul style="list-style-type: none"> Diabetic shoes Orthopedic shoes Rain boots & over shoes Skates (ice & in-line) |
| Examples of Taxable Items | | |
| <ul style="list-style-type: none"> ◆ Bowling Shoe Rentals ◆ Shoes Placed on Layaway | <ul style="list-style-type: none"> ◆ Footwear Accessories <ul style="list-style-type: none"> Shoe inserts Shoe laces | <ul style="list-style-type: none"> ◆ Work/Safety Shoes Provided to Employees by the Employer |

III. SCHOOL SUPPLIES

The tax holiday applies to purchases of “school supplies” used in the classroom or at home for school assignments of any dollar amount, whether purchased or leased.

Examples of Exempt Items

| | | |
|---|---|---|
| <ul style="list-style-type: none"> ◆ Art Supplies ◆ Book Bags & Backpacks ◆ Binders ◆ Books ◆ Calculators ◆ Calendars ◆ Compasses & Protractors ◆ Computer Bags ◆ Computer Supplies (earbuds, headphones, stylus & flash drives) | <ul style="list-style-type: none"> ◆ Crayons ◆ Erasers ◆ Folders ◆ Glue & Glue Sticks ◆ Highlighters ◆ Index Cards ◆ Lunchboxes ◆ Markers ◆ Music Instruments Used for School Assignments, including rentals | <ul style="list-style-type: none"> ◆ Music Supplies (sheet music) ◆ Notebooks ◆ Paper (typing, graph, construction & poster board) ◆ Pencil Sharpeners ◆ Pencils & Pencil Cases ◆ Pens ◆ Rulers ◆ Scissors ◆ Stapler & Staples ◆ Tape |
|---|---|---|

Examples of Taxable Items

| | | |
|---|---|---|
| <ul style="list-style-type: none"> ◆ Backpacks for camping ◆ Batteries ◆ Bicycles ◆ Briefcases ◆ Cleaning Supplies | <ul style="list-style-type: none"> ◆ Clocks ◆ Dorm Supplies (housewares, refrigerator & toiletries) ◆ Furniture (desks & bookcases) ◆ Hand Sanitizers & Tissues | <ul style="list-style-type: none"> ◆ Office Supplies ◆ Smartphones & Cell Phones ◆ Stationery ◆ Strollers & Car Seats ◆ Toys |
|---|---|---|

IV. COMPUTERS, COMPUTER SOFTWARE, PRINTERS, AND PRINTER SUPPLIES

The tax holiday applies to computers, computer software, printers, and printer supplies of any dollar amount, whether purchased or leased. It does not apply to items used in a trade or business.

Examples of Exempt Items

| | |
|--|---|
| <ul style="list-style-type: none"> ◆ Computers & Computer Software Computer supplies (monitor, keyboard, mouse, & speakers) when sold as a package with a central processing unit (CPU) Laptop, desktop, or tablet computer systems having a CPU Warranty and service agreements | <ul style="list-style-type: none"> ◆ Printers & Printer Supplies Cartridges Printers Printer Inks Printer Papers Toners |
|--|---|

Examples of Taxable Items

| | | |
|--|---|--|
| <ul style="list-style-type: none"> ◆ Computer Supplies Sold Separately (mouse & speakers) for Business Use (see “school supply” examples of exempt items) ◆ Computers Used in a Business | <ul style="list-style-type: none"> ◆ E-readers ◆ Music & Video Players ◆ Phone Chargers ◆ Replacement Parts | <ul style="list-style-type: none"> ◆ Scanners ◆ Smartphones & Phones ◆ Televisions ◆ Video Game Consoles |
|--|---|--|

V. BED AND BATH SUPPLIES

The tax holiday applies to bed and bath supplies for use by any age and of any dollar amount. It does not apply to items used in a trade or business.

Examples of Exempt Items

| | |
|--|---|
| <ul style="list-style-type: none"> ◆ Bath Mats & rugs Shower curtains & liners Towels & wash cloths (bath, beach, kitchen & sport towels) | <ul style="list-style-type: none"> ◆ Bedding Bed skirts Bed spreads & comforters Blankets & throws Bumper pads & crib linens Mattress pads & toppers Pillows (all types) Sheets & pillow cases |
|--|---|

Examples of Taxable Items

| | |
|---|---|
| <ul style="list-style-type: none"> ◆ Bath Accessories (soap dish, towel holder, shower curtain rings & rod) Cleaning supplies Toiletries Trashcans | <ul style="list-style-type: none"> ◆ Bed Dorm items (ironing boards, rugs, clothes racks, hangers, storage containers & lamps) Furniture (bed frames, cribs & chairs) Mattresses & box springs Sleeping bags Window treatments |
|---|---|