

# PUBLIC DRAFT

Circulated for Public Comments

Comments Due by: **January 23, 2025**

## SC REVENUE RULING #25-x [DRAFT – 1/02/2025]

- SUBJECT:** Sales of Boat Trailers, Farm Trailers, and Other Utility Trailers  
(Sales and Use Tax)
- EFFECTIVE DATE:** Applies to all periods open under the statute.
- SUPERSEDES:** Relevant portions of IL #22-17 and other advisory opinions and any oral directives in conflict herewith.
- REFERENCES:** Title 12, Chapter 36 of the S.C. Code of Laws (2014, Supp. 2022)  
Title 56, Chapter 3 of the S.C. Code of Laws (2014, Supp. 2022)
- AUTHORITY:** S.C. Code Ann. Section 12-4-320 (2014)  
S.C. Code Ann. Section 1-23-10(4)  
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 It is the Department’s position until superseded or modified by a change in statute, regulation, court decision, or another Department advisory opinion.

### **PURPOSE:**

The purpose of this advisory opinion is to update the Department’s guidance concerning which boat trailers, farm trailers, and other utility trailers are subject to sales or use tax rather than the Infrastructure Maintenance Fee (“IMF”).<sup>1</sup>

### **LAW AND DISCUSSION:**

#### **Sales/Use Tax Compared with the Infrastructure Maintenance Fee**

Code Section 12-36-910(A) states:

A sales tax, equal to [six]<sup>2</sup> percent of the gross proceeds of sales, is imposed upon

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<sup>1</sup> Previously, the Department advised the following regarding the sale of “boat trailers,” “farm trailers,” and “utility trailers”: 1) such trailers purchased for “Personal Use” were subject to sales/use tax when purchased from a licensed retailer, and 2) such trailers purchased for “Business Use” are subject to the IMF and exempt from sales/use tax per § 12-36-2120(83).

<sup>2</sup> S.C. Code Ann. § 12-36-910(A) imposes a 5% sales tax. S.C. Code § 12-36-1110 imposes an additional 1% sales and use tax rate by 1% beginning June 1, 2007.

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every person engaged or continuing within this State in the business of selling tangible personal property at retail.

Code Section 12-36-1310(A) reads:

A use tax is imposed on the storage, use, or other consumption in this State of tangible personal property purchased at retail for storage, use, or other consumption in this State, at the rate of [six] percent of the sales price of the property, regardless of whether the retailer is or is not engaged in business in this State.

Thus, unless an exemption applies, either sales or use tax is imposed at a rate of 6% on all retail sales of tangible personal property.

Items that are subject to the Infrastructure Maintenance Fee are exempt from sales tax. S.C. Code Ann. § 12-36-2120(83). Items that must be registered with the Department of Motor Vehicles are subject to the IMF upon registration. The IMF equals 5% of the gross proceeds of the sale, not to exceed \$500 for a sale by a dealer with a SCDMV license, or 5% of the vehicle's fair market value, not to exceed \$500, for a sale by a person who is not a licensed dealer. Among other things, the IMF applies to sales of vehicles, trailers, and semitrailers. S.C. Code Ann. § 56-3-627.

Chapter 3 of Title 56 generally requires registration of vehicles, trailers, semitrailers, and other items, but expressly exempts from registration boat trailers under twenty-five hundred pounds, farm trailers, and other utility trailers, which are privately owned and not for hire. S.C. Code Ann. § 56-3-130. Because there is no registration requirement, these items are not subject to the IMF. Therefore, sales of boat trailers under twenty-five hundred pounds, farm trailers,<sup>3</sup> and other utility trailers, which are privately owned and not for hire, are subject to the sales or use tax.<sup>4</sup> The dealer must charge sales tax or the purchaser must pay use tax, whichever is applicable.

## **What are the meanings of farm trailer, utility trailer, privately owned, and not for hire?**

To determine the applicability of the IMF compared to the sales/use tax, it is necessary to determine the meaning of each of the above terms. To define these terms, the Department first looks to Title 12 and the applicable tax regulations; the Department also looks to Title 56.<sup>5</sup> Unfortunately, neither Title 12 nor Title 56 defines any of them. However, related terms are defined in the Code and are helpful in determining the intent of the legislature with respect to the application of either the IMF or the sales/use tax. Finally, because the Code and Regulations are

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<sup>3</sup> Farm trailers are not specifically exempted from the sales and use tax according to the IMF exemption. S.C. Code § 12-36-2120(83). However, farm machinery is exempt from sales tax pursuant to S.C. Code § 12-36-2120(16) and this would likely include many farm trailers. See SC Revenue Ruling #23-4.

<sup>4</sup> These trailers are not subject to the maximum tax provisions in S.C. Code Ann. § 12-36-2110.

<sup>5</sup> Unlike *Jack's Custom Cycles, Inc. v. S.C. Dep't of Revenue*, 439 S.C. 35, 47, 885 S.E.2d 433, 440 (Ct. App. 2023), reh'g denied (Apr. 26, 2023), the Department considered the definitions of "trailer" found in both Title 12 and Title 56 to ensure the "ordinary and popular meaning" was the outcome.

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not fully determinative, the Department looks to the ordinary and popular meaning afforded to these terms.

Code Section 56-3-20(13) defines “trailer” as follows:

every vehicle with or without motive power, other than a pole trailer, designed for carrying persons or property and for being drawn by a motor vehicle and constructed so that no part of its weight rests upon the towing vehicle.

S.C. Regulation § 117-301.5(i), which provides guidance related to trailers that qualify for the farm machinery sales tax exemption, is relevant to the Department’s effort to define “farm trailer”:

a flatbed trailer or a stock trailer used for hauling farm crops (i.e. hay, corn, peaches) if the flatbed trailer or stock trailer is used substantially in planting, cultivating, or harvesting such farm crops for sale in their original state of production or preparation for sale.

Finally, S.C. Code Ann. § 12-36-2110(A)(1) lists the types of trailers subject to the partial sales tax exemption, which is commonly known as the “max tax”:

trailer or semitrailer, pulled by a truck tractor, as defined in Section 56-3-20, and horse trailers, but not including house trailers or campers as defined in Section 56-3-710 or a fire safety education trailer [ . . . ] recreation vehicles, including tent campers, travel trailer, park model, park trailer, motor home, and fifth wheel.

Neither Title 12 nor Title 56 provide definitions for the terms “privately owned” and “not for hire.” Therefore, it is necessary to determine their “ordinary and popular meaning.” The Second College Edition of the American Heritage Dictionary provides the following definitions:

- “Private” - Belonging to a particular person or persons, as opposed to the public or the government
- “Owned” - That which belongs to one

While the term “for hire” is not defined in the Second College Edition of the American Heritage Dictionary, the Code of Federal Regulations defines a “for-hire motor carrier” as “a person engaged in the transportation of goods or passengers for compensation.” 49 CFR § 390.5T. There are a variety of states that define the term similarly. Therefore, the term “for hire” means “used to transport persons or the property of another for compensation.”<sup>6</sup>

The Department, interpreting S.C. Code Ann. § 56-3-130 in conjunction with Titles 12 and 56, tax regulations, Second College Edition of the American Heritage Dictionary, and federal regulations

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<sup>6</sup> In an opinion dated October 7, 2024, the South Carolina Attorney General agreed with the Department’s asserted meaning for this term.

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will use the following definitions for “farm trailer,” “utility trailer,” “privately owned,” and “not for hire,” when determining whether sales/use tax should apply to a transaction:

- “farm trailer” – a trailer, as defined in S.C. Code Ann. § 56-3-20(13), used substantially in the planting, cultivating, or harvesting of farm crops (e.g., hay, corn, peaches) for sale in their original state of production or preparation for sale
- “utility trailer” – a trailer, as defined in S.C. Code § 56-3-20(13), that is not a recreational vehicle, fire safety education trailer, horse trailer, boat trailer, or farm trailer
- “privately owned” – belonging to a particular person<sup>7</sup> (or persons), as defined in S.C. Code Ann. § 56-1-10(22)
- “not for hire” – the use of a trailer for purposes other than transporting persons or the property of another for compensation

## **Purchases by Nonresidents of South Carolina**

Retail sales of boat trailers under 2,500 pounds, farm trailers, and utility trailers by South Carolina retailers to a nonresident who will register it in another home state are subject to state and local sales tax. The sales tax imposed on sales to a nonresident is remitted to the Department of Revenue.<sup>8</sup>

No sales tax is due in South Carolina if a nonresident purchaser cannot receive a credit in the state of registration for sales tax paid to South Carolina.

## **CONCLUSION**

In Information Letter #22-17, the Department suggested that boat trailers under 2,500 pounds, farm trailers, and utility trailers were subject to the IMF if they were for “business use.” Alternatively, according to IL #22-17, those same types of trailers were subject to sales/use tax if they were for “personal use.” The governing statute, however, does not distinguish between business and personal use. It instructs that these sorts of trailers are exempt from registration (and, thus, not subject to the IMF) if they are “privately owned and not for hire.” S.C. Code Ann. § 56-3-130.

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<sup>7</sup> Per S.C. Code Ann. § 56-1-10(22), “person” means “every natural person, firm, partnership, trust, company, firm, association, or corporation. Where the term “person” is used in connection with the registration of a motor vehicle, it includes any corporation, association, partnership, trust, company, firm, or other aggregation of individuals which owns or controls the motor vehicle as actual owner, or for the purpose of sale or for renting, as agent, salesperson, or otherwise.”

<sup>8</sup> See S.C. Code Ann. § 12-36-930.

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Therefore, the following trailers, if they belong to a “person”<sup>9</sup> and are not used to transport persons or property for a consideration are subject to state and local sales or use tax, rather than the Infrastructure Maintenance Fee:

- boat trailers under twenty-five hundred pounds;
- trailers, as defined in S.C. Code Ann. § 56-3-20(13), used substantially in the planting, cultivating, or harvesting of farm crops for sale in their original state of production for sale;<sup>10</sup> and
- trailers, as defined in S.C. Code Ann. § 56-3-20(13), that are not recreational vehicles, fire safety education trailers, horse trailers, or boat trailers.

If a taxpayer’s only business is renting trailers, then the gross proceeds, or sales price, from the rental to its customer are subject to state and local sales or use tax. The taxpayer will not owe sales tax upon purchase of the trailers in its inventory because those are wholesale purchases.

As a reminder, each retailer’s records must be able to substantiate whether the sale of a trailer described in this Advisory Opinion was subject to or exempt from the sales or use tax.

The attached charts provide both general information and the applicable rate for the infrastructure maintenance fee or the sale and use tax for each of the above scenarios.

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<sup>9</sup> The applicable definition of “person” is found at S.C. Code Ann. § 56-1-10(22).

<sup>10</sup> See footnote 4.

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<b>CHART 1: UTILITY TRAILERS, BOAT TRAILERS UNDER 2,500 POUNDS, AND FARM TRAILERS PURCHASED IN SOUTH CAROLINA BY A SOUTH CAROLINA RESIDENT</b>			
<b>ITEM PURCHASED</b>	<b>PURCHASED FROM A LICENSED RETAILER WITH SCDOR WHO IS A LICENSED DEALER WITH SCDMV</b>	<b>PURCHASED FROM A LICENSED RETAILER WITH SCDOR WHO IS NOT A LICENSED DEALER WITH SCDMV</b>	<b>PURCHASED FROM A NONRETAILER (A person not in the business of selling tangible personal property at retail - e.g., a casual sale by an individual)</b>
Boat Trailers under 2,500 pounds, Farm Trailers, and Utility Trailers - Not Privately Owned and For Hire	No Sales Tax Due Since Transaction is Exempt Under S.C. Code § 12-36-2120(83) or S.C. Code § 12-36-2120(16)  No IMF Collected by Retailer  IMF Remitted by Buyer to DMV Upon Registration 5% up to \$500 (However, if Payment of a Sales Tax can be Documented, No IMF is Due)		No Sales Tax or Casual Excise Tax Due on Transaction and No IMF Collected by Seller  IMF Remitted by Buyer to DMV Upon Registration 5% up to \$500
Boat Trailers under 2,500 pounds, Farm Trailers, and Utility Trailers - Privately Owned and Not For Hire	Sales Tax Remitted by Retailer to DOR 6% + Local (Unless Exempt Under S.C. Code Ann. §12-36-2120(16))		No Sales Tax, Casual Excise Tax, or IMF Due on Transaction
Boat Trailers under 2,500 pounds, Farm Trailers, and Utility Trailers - Not Privately Owned and Not For Hire	No Sales Tax Due Since Transaction is Exempt Under S.C. Code § 12-36-2120(83) or S.C. Code § 12-36-2120(16)  No IMF Collected by Retailer  IMF Remitted by Buyer to DMV Upon Registration 5% up to \$500 (However, if Payment of a Sales Tax can be Documented, No IMF is Due)		No Sales Tax or Casual Excise Tax Due on Transaction and No IMF Collected by Seller  IMF Remitted by Buyer to DMV Upon Registration 5% up to \$500

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<b>CHART 1: UTILITY TRAILERS, BOAT TRAILERS UNDER 2,500 POUNDS, AND FARM TRAILERS PURCHASED IN SOUTH CAROLINA BY A SOUTH CAROLINA RESIDENT</b>			
<b>ITEM PURCHASED</b>	<b>PURCHASED FROM A LICENSED RETAILER WITH SCDOR WHO IS A LICENSED DEALER WITH SCDMV</b>	<b>PURCHASED FROM A LICENSED RETAILER WITH SCDOR WHO IS NOT A LICENSED DEALER WITH SCDMV</b>	<b>PURCHASED FROM A NONRETAILER (A person not in the business of selling tangible personal property at retail - e.g., a casual sale by an individual)</b>
Boat Trailers under 2,500 pounds, Farm Trailers, and Utility Trailers – Privately Owned and For Hire	No Sales Tax Due Since Transaction is Exempt Under S.C. Code § 12-36-2120(83) or S.C. Code § 12-36-2120(16)  No IMF Collected by Retailer  IMF Remitted by Buyer to DMV Upon Registration 5% up to \$500 (However, if Payment of a Sales Tax can be Documented, No IMF is Due)		No Sales Tax or Casual Excise Tax Due on Transaction and No IMF Collected by Seller  IMF Remitted by Buyer to DMV Upon Registration 5% up to \$500

### Sales and Use Tax Exemptions

Chart 1 provides the tax rate for various sales and use tax transactions. Notwithstanding the above, some sales may be exempt under S.C. Code Ann. § 12-36-2120 (e.g., farm trailers used in planting, cultivating, and harvesting of farm crops - S.C. Code § 12-36-2120(16)) and therefore not subject to the tax.

### Purchases by Nonresidents for First Registration or Use in South Carolina

Chart 1 pertains to boat trailers under 2,500 pounds, farm trailers, and utility trailers that are purchased and registered in South Carolina by South Carolina residents. However, Chart 1 also applies to boat trailers under 2,500 pounds, farm trailers, and utility trailers when purchased by nonresidents for use in South Carolina (sales or use tax), unless otherwise exempt.

### Out-of-State - Delivery by a Retailer or by a Common Carrier on Behalf of a Retailer

Notwithstanding the above, a sale is exempt from state and local sales and use tax if the seller, by contract of sale, is obligated either (1) to deliver the item to the buyer (or an agent or donee of the buyer) at a point outside of South Carolina or (2) to deliver the item to a common carrier or the U.S. mail for transportation to the buyer (or an agent or donee of the buyer) at a point outside of South Carolina. See S.C. Code § 12-36-2120(36).

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## Active Duty Military Members

See Chart 2 for information on the taxes and fees imposed on active duty military members, if any.

<b>CHART 2: UTILITY TRAILERS, BOAT TRAILERS UNDER 2,500 POUNDS, AND FARM TRAILERS PURCHASED IN SOUTH CAROLINA BY A NONRESIDENT TO BE REGISTERED OR USED OUTSIDE OF SOUTH CAROLINA</b>			
ITEM PURCHASED	PURCHASED FROM A LICENSED RETAILER WITH SCDOR WHO IS A LICENSED DEALER WITH SCDMV	PURCHASED FROM A LICENSED RETAILER WITH SCDOR WHO IS NOT A LICENSED DEALER WITH SCDMV	PURCHASED FROM A NONRETAILER (A person not in the business of selling tangible personal property at retail - e.g., a casual sale by an individual)
Boat Trailers under 2,500 pounds	Sales Tax Remitted by Retailer to DOR  Lesser of sales tax imposed in the Purchaser's state of residence or 6% + Local  See Notes 1 and 2 for exceptions		No Sales Tax, Casual Excise Tax, or IMF Due on Transaction
Utility Trailers	Sales Tax Remitted by Retailer to DOR  Lesser of sales tax imposed in the Purchaser's state of residence or 6% + Local  See Notes 1 and 2 for exceptions		No Sales Tax, Casual Excise Tax, or IMF Due on Transaction
Farm Trailers	Sales Tax Remitted by Retailer to DOR  Lesser of sales tax imposed in the Purchaser's state of residence or 6% + Local  See Notes 1 and 2 for exceptions		No Sales Tax, Casual Excise Tax, or IMF Due on Transaction
Nonresident Military and Spouse Trailers Purchased by a Non-Resident Member of the Military ( <u>including Spouse</u> ) Located in South Carolina by	No IMF or Sales Tax Remitted on Transaction if the license, fee, or excise is paid by the servicemember in the servicemember's state of domicile or residence.		No Sales Tax, Casual Excise Tax, or IMF Due on Transaction



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<b>CHART 2: UTILITY TRAILERS, BOAT TRAILERS UNDER 2,500 POUNDS, AND FARM TRAILERS PURCHASED IN SOUTH CAROLINA BY A NONRESIDENT TO BE REGISTERED OR USED OUTSIDE OF SOUTH CAROLINA</b>			
<b>ITEM PURCHASED</b>	<b>PURCHASED FROM A LICENSED RETAILER WITH SCDOR WHO IS A LICENSED DEALER WITH SCDMV</b>	<b>PURCHASED FROM A LICENSED RETAILER WITH SCDOR WHO IS NOT A LICENSED DEALER WITH SCDMV</b>	<b>PURCHASED FROM A NONRETAILER (A person not in the business of selling tangible personal property at retail - e.g., a casual sale by an individual)</b>
Reason of Orders of the US Armed Forces	Exempt Under Servicemember Civil Relief Act See §§ 3911 (Definitions), 4001 (Exemption for Personal Property), and 49 U.S. Code § 30102 (Definition of Motor Vehicle) Servicemember Civil Relief Act		No IMF due on Transaction if the license, fee, or Excise is paid by the Servicemember in the Servicemember’s State of Domicile or residence.

## CHART 2 GENERAL INFORMATION

### Sales and Use Tax Exemptions

Chart 1 provides the tax rate for various sales and use tax transactions. Notwithstanding the above, some sales may be exempt under S.C. Code Ann. § 12-36-2120 (e.g., farm trailers used in planting, cultivating, and harvesting of farm crops - S.C. Code § 12-36-2120(16)) and therefore not subject to the tax.

### Purchases by Nonresidents for First Registration or Use in South Carolina

Chart 1 pertains to boat trailers under 2,500 pounds, farm trailers, and utility trailers that are purchased and registered in South Carolina by South Carolina residents. However, Chart 1 also applies to boat trailers under 2,500 pounds, farm trailers, and utility trailers when purchased by nonresidents for use in South Carolina (sales or use tax), unless otherwise exempt.

### Information on Surrounding States

Certain surrounding states offer credit for any sales tax paid in South Carolina. To further assist, a list of the surrounding states Revenue and Taxation departments are listed below:

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<u>State</u>	<u>Website</u>
Alabama	<a href="https://revenue.alabama.gov">https://revenue.alabama.gov</a>
Florida	<a href="https://floridarevenue.com">https://floridarevenue.com</a>
Georgia	<a href="https://dor.georgia.gov">https://dor.georgia.gov</a>
North Carolina	<a href="https://www.ncdor.gov">https://www.ncdor.gov</a>
Tennessee	<a href="https://www.tn.gov/revenue.html">https://www.tn.gov/revenue.html</a>
Virginia	<a href="https://www.tax.virginia.gov/">https://www.tax.virginia.gov/</a>

## **Out-of-State - Delivery by a Retailer or by a Common Carrier on Behalf of a Retailer**

Notwithstanding the above, a sale is exempt from state and local sales and use tax if the seller, by contract of sale, is obligated either (1) to deliver the item to the buyer (or an agent or donee of the buyer) at a point outside of South Carolina or (2) to deliver the item to a common carrier or the U.S. mail for transportation to the buyer (or an agent or donee of the buyer) at a point outside of South Carolina. See S.C. Code § 12-36-2120(36).

## **Active Duty Military Members**

*Resident Military Members:* See Chart 1 for registration or purchases by military members who are residents of South Carolina.

*Nonresident Military Members:* See Chart 2 for information on the taxes and fees imposed on active duty military members, if any.

## **CHART 2 NOTES**

### **Note 1: Purchases by Nonresidents for Registration in the Purchaser's State of Residence**

Code Section 12-36-930 provides that the sales tax due on a sale to a nonresident of a motor vehicle, trailer, semitrailer, or pole trailer that is to be registered and licensed in the nonresident purchaser's state of residence, is the lesser of (1) the sales tax which would be imposed on the sale in the purchaser's state of residence or (2) the tax that would be imposed in South Carolina.

No sales tax is due in South Carolina if (1) a nonresident purchaser cannot receive a credit in his resident state for sales tax paid to South Carolina or (2) the nonresident's state does not impose a sales tax on the sale of a motor vehicle, trailer, semitrailer, or pole trailer.

### **Note 2: Out-of-State Delivery by a Retailer or by a Common Carrier on Behalf of a Retailer**

Notwithstanding the above, a sale is exempt from state and local sales and use tax if the seller, by contract of sale, is obligated either (1) to deliver the item to the buyer (or an agent or donee of the buyer) at a point outside of South Carolina, or (2) to deliver the item to a common carrier or the US mail for transportation to the buyer (or an agent or donee of the buyer) at a point outside of South Carolina. See S.C. Code § 12-36-2120(36).

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<b>CHART 3: UTILITY TRAILERS, BOAT TRAILERS UNDER 2,500 POUNDS, AND FARM TRAILERS PREVIOUSLY REGISTERED OUTSIDE OF SOUTH CAROLINA</b>	
<b>Item Previously Registered Outside of South Carolina</b>	<b>Infrastructure Maintenance Fee (IMF)</b>
Boat Trailers under 2,500 pounds, Farm Trailers, and Utility Trailers Previously Registered Out-of-State by the Owner and Subsequently Registered in SC for the first time by the Same Owner –  Not Privately Owned and For Hire	IMF Remitted by Owner to DMV  \$250
Boat Trailers under 2,500 pounds, Farm Trailers, and Utility Trailers Previously Registered Out-of-State by the Owner and Subsequently Registered in SC for the first time by the Same Owner –  Privately Owned and Not For Hire	No IMF Due on Registration in South Carolina  Exempt Under S.C. Code § 56-3-627(D)(1)
Boat Trailers under 2,500 pounds, Farm Trailers, and Utility Trailers Previously Registered Out-of-State by the Owner and Subsequently Registered in SC for the first time by the Same Owner –  Not Privately Owned and Not For Hire	IMF Remitted by Owner to DMV  \$250

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<p><b>CHART 3:</b></p>	<p><b>UTILITY TRAILERS, BOAT TRAILERS UNDER 2,500 POUNDS, AND FARM TRAILERS PREVIOUSLY REGISTERED OUTSIDE OF SOUTH CAROLINA</b></p>
<p><b>Item Previously Registered Outside of South Carolina</b></p>	<p><b>Infrastructure Maintenance Fee (IMF)</b></p>
<p>Boat Trailers under 2,500 pounds, Farm Trailers, and Utility Trailers Previously Registered Out-of-State by the Owner and Subsequently Registered in SC for the first time by the Same Owner –  Privately Owned and For Hire</p>	<p>IMF Remitted by Owner to DMV  \$250</p>
<p><i>Active Duty Military Member and Family (Resident or Nonresident):</i> Trailer Previously Registered Out-of-State by Active Duty Military or Spouse/ Dependent and Subsequently Registered for the <u>first</u> time in SC by Same Owner</p>	<p>No IMF Due on Registration in South Carolina  Exempt Under S.C. Code § 56-3-627(D)(2)</p>