AMENDED PUBLIC DRAFT

Circulated for Public Comments
Comments Due by: **October 26, 2015**

SC REVENUE RULING #15-XX [Draft – 10/12/2015]

SUBJECT:	Natural Gas Compressed for Use in a Motor Vehicle (Motor Fuel User Fee and Sales and Use Tax)
EFFECTIVE DATE:	Applies to all periods open under the statute.
REFERENCES:	S.C. Code Ann. Section 12-28-110(1) (2014) S.C. Code Ann. Section 12-28-310 (2014) S.C. Code Ann. Section 12-28-970 (2014) S.C. Code Ann. Section 12-36-2120(2),(9), and (15) (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 It is the Department's position until superseded or modified by a change in statute, regulation, court decision, or another Department advisory opinion.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

Domestic use of compressed natural gas as an alternative fuel for transportation is on the rise due to its low cost, clean burning properties, and abundant domestic supply. Natural gas is not commonly or commercially sold or known as a fuel suitable for vehicles unless it is compressed or liquefied. Compressed natural gas vehicles can either be refueled at fueling stations or refueled using on-site refueling appliances.

This advisory opinion addresses questions related to how South Carolina's motor fuel user fee and sales and use tax provisions apply to the sale and use of compressed natural gas used in motor vehicles in South Carolina.

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QUESTIONS

1. What are the sales and use tax and motor fuel user fee implications if a gas company sells natural gas to a fueling station at wholesale and the fueling station compresses the natural gas and makes a retail sale of the compressed natural gas to an end user for use in its motor vehicles in South Carolina?

2. What are the sales and use tax and motor fuel user fee implications if a gas company sells natural gas to an end user, which uses an on-site vehicle refueling appliance to compress (or otherwise compresses) natural gas for use in its motor vehicles in South Carolina?

CONCLUSIONS

1. **Sales of Natural Gas to be Compressed by Fueling Stations for Sale**

   Sales and Use Tax

   The sales and use tax implications when a gas company sells natural gas to a fueling station at wholesale and the fueling station compresses the natural gas and makes a retail sale of the compressed natural gas to an end user for use in its motor vehicles in South Carolina are:

   (a) The sale by a gas company of natural gas to a fueling station for resale is a wholesale sale and therefore, is not subject to sales or use tax.

   (b) The retail sale of compressed natural gas by a fueling station to the end user for use in its vehicles in South Carolina qualifies for the exemption from sales and use tax pursuant to Code Section 12-36-2120(15)(a).

   Motor Fuel User Fee

   The motor fuel user fee implications when a gas company sells natural gas to a fueling station at wholesale and the fueling station compresses the natural gas and makes a retail sale of the compressed natural gas to an end user for use in its motor vehicles in South Carolina are:

   (a) The sale of natural gas by the gas company is not subject to the motor fuel user fee pursuant to Code Section 12-28-310.

   (b) The sale of compressed natural gas by a fueling station to an end user for use by the end user in its vehicles in South Carolina is subject to the motor fuel user fee pursuant to Code Sections 12-28-310 and 12-28-970.

2. **Sales of Natural Gas to be Compressed by an End User**

Sales and Use Tax

The sales and use tax implications when a gas company sells natural gas to an end user which uses an on-site vehicle refueling appliance to compress (or otherwise compresses) natural gas for use in its motor vehicles in South Carolina are:

(a) The gas company's sale of natural gas (not compressed natural gas) to the end user is a retail sale of tangible personal property and, therefore, subject to sales and use tax, unless otherwise exempt.

Examples of sales of natural gas to an end user that may be otherwise exempt from sales and use tax include:

(1) sales to the federal government (exempt under Code Section 12-36-2120(2));

(2) sales to a transportation company that will compress the natural gas for use in its motor vehicles to transport persons or cargo for hire (exempt under Code Section 12-36-2120(9)); and,

(3) sales to a farm operation that will compress the natural gas for use in its farm machinery and farm tractors (exempt under Code Section 12-36-2120(15)(c)).

(b) The sale of natural gas does not qualify for the exemption from sales and use tax pursuant to Code Section 12-36-2120(15)(a) because the sale of the natural gas by the gas company is not subject to the motor fuel user fee in Chapter 28 of Title 12.

For information on other sales and use tax exemptions that may be applicable to the sale of natural gas, see Code Section 12-36-2120.

Motor Fuel User Fee

The motor fuel user fee implications when a gas company sells natural gas to an end user, which uses an on-site vehicle refueling appliance to compress (or otherwise compresses) natural gas for use in its motor vehicles in South Carolina are:

(a) The sale of natural gas by the gas company to a fueling station is not subject to the motor fuel user fee pursuant to Code Section 12-28-310.

(b) The end user compressing natural gas for use in its vehicles is subject to the motor fuel user fee pursuant to Code Sections 12-28-310 and 12-28-970.

DISCUSSION

Code Section 12-36-910 imposes a sales tax on the gross proceeds of sales on every person engaged or continuing within this State in the business of selling tangible personal property at retail. Code Section 12-36-1310 imposes a use tax on the use, storage, or consumption of tangible personal property purchased at retail for storage, use, or consumption in South Carolina, regardless of whether the retailer is engaged in business in South Carolina.

Code Section 12-36-60 defines the term "tangible personal property" and states, in part:

> "Tangible personal property" means personal property which may be seen, weighed, measured, felt, touched, or which is in any other manner perceptible to the senses.

Code Section 12-36-110 defines the terms "retail sale" and "sale at retail" to mean, in part:

> Sale at retail and retail sale mean all sales of tangible personal property except those defined as wholesale sales. The quantity or sales price of goods sold is immaterial in determining if a sale is at retail.

Code Section 12-36-120 defines the terms "wholesale sale" and "sale at wholesale" to mean, in part, the sale of:

> (1) tangible personal property to licensed retail merchants, jobbers, dealers, or wholesalers for resale, and do not include sales to users or consumers not for resale[.]

Code Section 12-36-2120(15)(a) provides an exemption from sales and use tax for the gross proceeds of sales or sales price of "motor fuel, blended fuel, and alternative fuel subject to tax under Chapter 28, Title 12."

Based on the above, a retail sale of compressed natural gas used to propel a motor vehicle on the highways is exempt from sales tax under Code Section 12-36-2120(15)(a) since it is an "alternative fuel" subject to a motor fuel user fee under Code Section 12-28-310. A retail sale of natural gas (not compressed), however, is not exempt under Code Section 12-36-2120(15)(a) and is subject to sales tax, unless otherwise exempt.

Other exemptions that may be applicable to the purchase of natural gas (not compressed) include sales to the federal government exempt under Code Section 12-36-2120(2), sales to transportation companies[1] for use as fuel for transportation exempt under Code Section 12-36-2120(9), and sales to end users for use as fuel for farm machinery and farm tractors exempt under Code Section 12-36-2120(15)(c).

[1] It is the long-standing position of the Department that for purposes of this exemption a transportation company is a company that transports persons or cargo for hire.

Code Section 12-28-310 imposes a motor fuel user fee on:

> [A]ll diesel fuel, substitute fuels, or **alternative fuels**, or blended fuels containing diesel fuel that are used or consumed in this State in producing or generating power for propelling motor vehicles.[2]

(emphasis added).

Code Section 12-28-970(A) establishes a backup motor fuel user fee to Code Section 12-28-310 that is imposed upon delivery of certain motor fuels, including alternative fuels, in South Carolina into the fuel supply tank of a motor vehicle. Code Section 12-28-970(B) further provides:

> The ultimate vendor of motor fuel subject to the user fee is jointly and severally liable for the user fee imposed by subsection (A) if the ultimate vendor knows or has reason to know that the motor fuel, as to which the user fee imposed by this chapter has not been paid, is or will be consumed in a nonexempt use.

Code Section 12-28-970(C)(2) establishes a backup motor fuel user fee to Code Section 12-28-310 for any liquid or gas not otherwise taxed pursuant to Chapter 28 of Title 12, which is commonly or commercially known or sold as fuel for use in a motor vehicle. The fee is due upon the first sale or use of the product when produced in South Carolina and is imposed on the producer of the product.

Code Section 12-28-110(1) defines "alternative fuel" as:

> [A] liquefied petroleum gas, **compressed natural gas product**, or a combination of liquefied petroleum gas and a compressed natural gas product used in an internal combustion engine or motor to propel any form of vehicle, machine, or mechanical contrivance. It includes all forms of fuel commonly or commercially known or sold as butane, propane, or compressed natural gas.

(emphasis added).

Therefore, a motor fuel user fee is imposed on compressed natural gas products used or consumed in South Carolina to propel a motor vehicle.[3] Natural gas (not compressed) is not subject to the motor fuel user fee imposed by Code Section 12-28-310.

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[2] Code Section 12-28-110(41) defines "motor vehicle" as "a vehicle that is propelled by an internal combustion engine or motor and is designed to permit the vehicle's mobile use on highways."

[3] Code Section 12-28-320 provides "a presumption that all motor fuel subject to the user fee delivered in this State into a motor vehicle fuel supply tank is to be used or consumed on the highways in this State."