

PUBLIC DRAFT

Circulated for Public Comments

Comments Due by: **September 18, 2023**

SC REVENUE RULING #23-XX [PUBLIC DRAFT – 8/28/2023]

SUBJECT: Motor Vehicles, Motorcycles, Recreational Vehicles, and Self-Propelled Light Construction Equipment (Sales and Use Tax)

EFFECTIVE DATE: April 26, 2023

SUPERSEDES: SC Revenue Advisory Bulletin #00-03 and all previous advisory opinions, tax manuals, and any oral directives in conflict herewith.

MODIFIES: SC Revenue Ruling #18-1¹

REFERENCES: Title 12, Chapter 36 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) (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 It is the Department’s position until superseded or modified by a change in statute, regulation, court decision, or another Department advisory opinion.

PURPOSE:

In *Jack's Custom Cycles, Inc. v. S.C. Dep't of Revenue*, 439 S.C. 35, 885 S.E.2d 433 (Ct. App. 2023), reh'g denied (Apr. 26, 2023), the South Carolina Court of Appeals held that the term “motor vehicle” includes certain vehicles that the Department of Revenue previously excluded from the maximum tax provisions in S.C. Code Ann. § 12-36-2110. The purpose of this advisory opinion is to update guidance concerning which vehicles are motor vehicles subject to the partial tax exemption pursuant to S.C. Code Ann. § 12-36-2110.²

¹ Supersedes Questions #4, 31, 32, and 33 of South Carolina Revenue Ruling #18-1.

² This updated guidance concerning the term “motor vehicle” is limited solely to the partial tax exemption under S.C. Code Ann. § 12-36-2110.

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LAW AND DISCUSSION:

The sales and use taxes are transactional taxes imposed upon the privilege of the business of selling at retail, or using, storing, or consuming personal property in South Carolina. The sales and use tax is imposed at a rate of 6% of “gross proceeds of sales” or “sales price,” plus any applicable local sales and use tax.³

The sale of any means of transportation that is enumerated in S.C. Code Ann. § 12-36-2110(A)(1) is subject to a partial sales or use tax exemption, which limits the tax rate to 5% of “gross proceeds of sales” or “sales price,” not to exceed \$500.⁴ Local sales and use taxes do not apply.

A “motor vehicle” is one such means of transportation.⁵ Historically, the Department of Revenue restricted the term “motor vehicle” to only engine-powered vehicles capable of being driven upon the highway. To determine which vehicles were capable of being driven on the highway, the Department looked to those vehicles that were required to be licensed by the Department of Motor Vehicles. However, in its opinion in *Jack’s Custom Cycles*, the Court of Appeals held that the term “motor vehicle” does not “restrict or condition the exemption to motor vehicles that are used on highways.”⁶ Instead, the term includes “motorized, self-propelled, wheeled” vehicles that “do not run on rails.”⁷

CONCLUSION:

Effective April 26, 2023, for purposes of the maximum tax provisions of S.C. Code Ann. § 12-36-2110, the term “motor vehicle” includes any motorized, self-propelled, and wheeled vehicle that does not run on rails.⁸ Therefore, all-terrain vehicles, utility task vehicles, golf carts, and legend race cars are subject to the maximum tax provisions.

³ See S.C. Code §12-36-910(A) for the 5% sales tax, S.C. Code § 12-36-1310(A) for the 5% use tax, and S.C. Code § 12-36-1110 for the additional 1% sales and use tax rate.

⁴ Effective after June 30, 2017, the maximum sales and use tax imposed pursuant to Chapter 36 of Title 12 on the sale, lease, or registration of an item enumerated in S.C. Code Ann. § 12-36-2110(A)(1) is increased from \$300 to \$500. S.C. Code Ann. § 12-36-2110(A)(4).

⁵ S.C. Code Ann. § 12-36-2110(A)(1)(b).

⁶ *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).

⁷ *Id.* at 47, 885 S.E.2d at 440.

⁸ This change in the term “motor vehicle” applies to all periods open under the statute.