PUBLIC DRAFT

Circulated for Public Comments
Comments Due by: **July 19, 2016**

SC REVENUE RULING #16-X [DRAFT - 6/24/2016]

SUBJECT:	Purchases by Individuals 85 Years of Age and Older (Sales and Use Tax)
EFFECTIVE DATE:	Applies to all periods open under the statute.
SUPERSEDES:	SC Revenue Ruling #08-5
REFERENCES:	Chapter 36 of Title 12 (2014; Supp. 2015)
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 It is the Department's position until superseded or modified by a change in statute, regulation, court decision, or another Department advisory opinion.

GENERAL OVERVIEW OF TAXES IMPOSED ON PURCHASES

State Sales and Use Tax.[1] South Carolina imposes a 6% sales tax on the gross proceeds of sales of every person engaged in the business of selling tangible personal property at retail. The retailer is liable for the tax. South Carolina imposes a complimentary 6% use tax on the sales price of tangible personal property purchased at retail for storage, use, or other consumption in South Carolina, regardless of whether the retailer is engaged in business in South Carolina. The use tax is the liability of the purchaser.

In addition to applying to the sale or use of tangible personal property (e.g., furniture, clothing, computers, etc.) the sales and use taxes also apply to certain communication services, laundry and drycleaning services, and the furnishing of accommodations.

Sales Tax on Accommodations and Additional Guest Charges.[2] South Carolina imposes a 7% sales tax on charges for any rooms, lodgings, or sleeping accommodations

[1] Code Sections 12-36-910, 12-36-1110, and 12-36-1310.
[2] Code Section 12-36-920(A) and (B). Code Section 12-36-1110 increased the state sales and use tax rate by 1% beginning June 1, 2007, from 5% to 6% for most items. The 1% increase did not apply to the tax on the rental of accommodations under Code Section 12-36-920(A), but the 1% increase did apply to the sales tax on additional guest charges under Code Section 12-36-920(B).

for less than 90 days to the same person and a 6% sales tax on "additional guest charges" added to the guest's room charge for certain specific amenities or services.

Local Sales and Use Taxes. Local governments have limited authority to levy local taxes and fees for various purposes. The Department administers and collects certain local sales and use taxes on behalf of local jurisdictions. The Department provides a chart listing the current local sales and use taxes collected by the Department and exemptions allowed under each tax. The most recent information is published in an Information Letter that can be found on the Department's website. In addition, some counties and municipalities administer and collect certain local taxes, such as a local hospitality tax on prepared meals and food or a local accommodations tax in addition to the state tax. These local taxes are not discussed in this document.

$300 "Cap"(Maximum Sales or Use Tax).[3] Certain sales or leases of tangible personal property are subject to a maximum sales or use tax of $300. The $300 sales or use tax amount ("cap") applies to specifically authorized items, such as motor vehicles, recreational vehicles, and boats. The maximum tax does not apply to certain items, such as golf carts, boat trailers, and all-terrain vehicles. Sales of items subject to the maximum tax are exempt from local sales and use taxes.

Casual Excise Tax.[4] Motor vehicles, boats, and boat motors purchased from a non-retailer (typically an individual) are subject to a "casual excise tax" (rather than a use tax) for the issuance of a title or proof of ownership. The casual excise tax rate is 5%[5] (not to exceed $300) for items that qualify for the maximum tax, such as a motor vehicle, and 6% for items that do not qualify for the maximum tax, such as a boat motor sold alone. Sales of items subject to the maximum tax are exempt from local sales and use taxes. Local taxes may apply to sales of items not subject to the maximum tax, such as a boat motor.

PURPOSE OF ADVISORY OPINION – Reduction in Sales, Use and Casual Excise Tax Rate for Purchases by Individuals 85 and Older.[6]

South Carolina sales and use tax law provides a lower state tax rate for purchases by individuals 85 years of age and older for their personal use. The lower sales and use tax rate, sometimes referred to as the "1% exclusion" or "1% reduction" for individuals 85 years of age and older, does not apply to local taxes administered and collected by the Department on behalf of local jurisdictions or to local sales taxes administered and collected directly by a city or county (i.e., the local hospitality tax/fee on prepared meals and food or the local accommodations tax/fee).

[3] Code Section 12-36-2110.
[4] Code Section 12-36-1710.
[5] Code Section 12-36-1110. This statute increased the state sales and use tax rate by 1% beginning June 1, 2007, from 5% to 6% for most items. The 1% increase did not apply to items subject to a maximum sales and use tax.
[6] Code Sections 12-36-2620, 12-36-2630 and 12-36-2640.

PUBLIC DRAFT

Circulated for Public Comments
Comments Due by: **July 19, 2016**

The purpose of this advisory opinion is to provide general guidance as to the requirements of the 1% reduction for qualifying individuals and the application of the 1% reduction to routine purchases made by individuals age 85 and older. It is not intended to address every issue an individual may encounter.

This question and answer document is divided into the following parts:
1. Procedure to Request and Receive Lower Tax Rate
2. Applicability to Common Purchases
3. Retailer Requirements
4. Examples and Additional Guidance

PART I – PROCEDURE TO REQUEST AND RECEIVE LOWER TAX RATE

1. Q. How does an individual 85 years of age or older request the 1% lower state sales and use tax rate?

   A. South Carolina Code Sections 12-36-2620, 12-36-2630, and 12-36-2640 provide for the 1% lower state sales and use tax rate for individuals 85 years of age or older. The law does not require the purchaser to complete any form with the Department. It only requires that:

      a. the individual purchases the tangible personal property himself;

      b. the tangible personal property is purchased for his personal use;

      c. the purchaser requests the exclusion at the time of the sale; and

      d. the purchaser provides the retailer with proof of age.

2. Q. Does the lower state sales and use tax rate apply to phone, mail order, and internet purchases by an individual 85 years of age or older?

   A. Yes, providing the individual meets the requirements in Question 1, the lower rate applies to phone, mail, or internet purchases.

3. Q. If an individual 85 years of age or older fails to request the lower state sales and use tax rate and therefore does not receive the lower tax rate at the time of purchase, may that individual subsequently request a refund of the 1% state tax?

   A. No. The lower state rate is only available if an individual 85 years of age or older requests the lower state sales and use tax rate at the time of purchase.

4. Q. If an individual 85 years of age or older fails to provide proof of age at the time of purchase and therefore does not receive the lower state sales and use tax rate, may that individual subsequently request a refund of the 1% state tax?

   A. No. The lower state rate is only available if an individual 85 years of age or older provides proof of age at the time of purchase.

5. Q. Are purchases of general use items (e.g., linens, clothes, or medical supplies not otherwise exempt) at the request of an individual age 85 and older for his own use made by another individual, such as by a family member or a caretaker, allowed the reduced tax rate?

   A. No.

6. Q. What are the reduced tax rate amounts?

   A. The general overview above discussed various taxes that may be imposed on purchases of different types of tangible personal property. A summary of the various state taxes and rate amounts and the tax rate amounts that apply to individuals 85 and older is provided below. A discussion of each of the various taxes imposed on common purchases made by individuals age 85 and older and the applicable tax rate follows in the remainder of this advisory opinion.

Tax Type on Common Purchases	**General State Tax Rate***	**Tax Rate for Individuals 85 and Older***	**Local Tax Applicable to All Ages**
Sales Tax (General purchases)	6%	5%	Yes
Use Tax (General purchases)	6%	5%	Yes
Items Specifically Exempt from Sales and Use Tax (e.g., medicine sold by prescription, electricity)	0%	0%	No
Sales Tax on Accommodations	7%	6%	Yes
Sales Tax on Additional Guest Charges	6%	5%	Yes
$300 Cap - Maximum Sales and Use Tax on Certain Items (e.g., motor vehicles)	5%, not to exceed $300	4%, not to exceed $300	No
Casual Excise Tax on Maximum Tax Items Sold by Non-retailers (e.g., motor vehicles)	5%, not to exceed $300	4%, not to exceed $300	No
Casual Excise Tax on Boat Motors Sold Alone	6%	5%	Yes

*These are the state tax rates as of the date this document was published.

7. Q. Does the lower tax rate available to individuals 85 years of age or older also apply to reduce local taxes?

   A. No. The 1% sales and use tax rate reduction does not apply to local taxes administered and collected by the Department on behalf of local jurisdictions or to local sales taxes administered and collected directly by a city or county (i.e., the local hospitality tax/fee on prepared meals and food or the local accommodations tax/fee).

PART 2 - APPLICABILITY TO COMMON PURCHASES

8. Q. If an individual 85 years of age or older purchases tangible personal property at retail for his personal use, what tax rate is applicable to the purchase?

   A. In general, an individual 85 years of age or older who purchases tangible personal property at retail for his personal use would pay a state sales and use tax rate of 5% (instead of the 6% rate applicable to all other persons), plus any applicable local sales and use tax. Certain exceptions exist to this general rule and are discussed through this document.

   Examples of purchases of tangible personal property subject to this 5% rate (instead of the general 6% sales and use tax rate applicable to all other persons) include, but are not limited to:

   - Clothing
   - Clothing accessories, such as handbags, scarves, hats and hosiery
   - Jewelry and watches
   - Cosmetics and toiletries, such as soap and tissues
   - Household supplies, such as cleaning supplies, light bulbs, and toiletries
   - Household items, such as draperies and rugs
   - Furniture, such as sofas, chairs, tables, and lamps
   - Appliances, such as refrigerators, washers, dryers, and microwave ovens
   - Electronics, such as cell phones, televisions, computers, and computer accessories
   - Car tires and batteries
   - Communication services, such as cable or internet television.

Food Purchases

9. Q. If an individual 85 years of age or older purchases “unprepared food” at retail for his personal use, what tax rate is applicable to the purchase?

A. Purchases of "unprepared food" (i.e., the type that can be purchased with food stamps)[7] by all individuals are exempt from the state sales and use tax. Such purchases, however, are subject to any applicable local sales and use tax (unless the local tax law specifically exempts the sale of unprepared food).

Examples of foods that are exempt from the state sales and use tax (i.e., "unprepared food") include:

- Any food intended to be eaten at home by people, including snacks, beverages and seasonings
- Seeds and plants intended to grow food (not birdseed or seeds to grow flowers)
- Cold items, which may include salads or sandwiches, intended to be eaten at home by people and that are not considered "prepared meals or food" as discussed below.

The term "unprepared" food does not include:

- Meals and food sold by a restaurant, cafeteria, lunch wagon, or other similar places or businesses engaged in the business of selling prepared meals or food for immediate consumption;
- Meals prepared and delivered by a meal delivery service;
- Meals sold to or at congregate meal sites; or
- Meals and food sold at a grocery store, convenience store or any other similar store for the purpose of eating at or near the store, such as meals and food sold with eating utensils (e.g., plates, knives, forks, spoons, cups, napkins) provided by the seller.

Examples of foods that are not exempt from the state sales and use tax (i.e., "prepared food") and, therefore, are subject to the state sales and use tax at the state rate of 5% for individuals 85 years of age or older (6% rate for all other persons) are:

- Hot foods ready to eat
- Hot beverages ready-to-drink, such as coffee
- Alcoholic beverages, such as beer, wine, or liquor
- Tobacco
- Foods designed to be heated in the store
- Hot and cold food to be eaten at a lunch counter, in a dining area or anywhere else in the store, or in a nearby area, such as a mall food court
- "Prepared meals or food" as defined in Regulation 117-337.2
- Vitamins and medicines not sold by prescription.

[7]See SC Code Section 12-36-2120(75) and SC Regulation 117-337, "Sales of Unprepared Food". The unprepared food item does not have to be actually purchased with food stamps to qualify for the exemption.

10. Q. If an individual 85 years of age or older purchases a prepared food or meal at retail at a restaurant or similar place for his personal use, what tax rate is applicable to the purchase?

    A. An individual 85 years of age or older who purchases a prepared food or meal at retail at a restaurant or similar place for his personal use would pay a state sales tax rate of 5% (instead of the 6% rate applicable to all other persons), plus any applicable local sales tax.

    Note: In addition to the 6% state sales tax on food purchases (5% for individuals 85 years of age and older) and any local tax administered and collected by the Department on behalf of local jurisdictions, some cities and counties impose a local hospitality tax on prepared meals and beverages that must be paid by persons of all ages.

Medicines

11. Q. If an individual 85 years of age or older purchases at retail prescription medicines from a pharmacy (as a result of a physician's prescription) for his personal use, what tax rate is applicable to the purchase?

    A. Purchases at retail of prescription medicines from a pharmacy (as a result of a physician's prescription) are exempt from state and local sales and use taxes under Code Section 12-36-2120(28). This includes purchases of prescription medicines from a mail order or internet pharmacy as well as a local pharmacy.

12. Q. If an individual 85 years of age or older purchases at retail over-the-counter medicines (e.g., aspirin) for his personal use, what tax rate is applicable to the purchase?

    A. An individual 85 years of age or older who purchases at retail over-the-counter medicines (e.g., aspirin) for his personal use would pay a state sales and use tax rate of 5% (instead of the 6% rate applicable to all other persons), plus any applicable local sales and use tax.

Diabetic Supplies

13. Q. If an individual 85 years of age or older who is a diabetic purchases at retail hypodermic needles, insulin, alcohol swabs, blood sugar testing strips, monolet lancets, dextrometer supplies, blood glucose meters, and other similar diabetic supplies under the written authorization and direction of a physician for his personal use, what tax rate is applicable to the purchase?

    A. Purchases by a diabetic of hypodermic needles, insulin, alcohol swabs, blood sugar testing strips, monolet lancets, dextrometer supplies, blood glucose meters,

and other similar diabetic supplies under the written authorization and direction of a physician are exempt from state and local sales and use taxes under Code Section 12-21-2120(28).

Other Medical Supplies, Durable Medical Equipment, and Health Care Items

14. Q. If an individual purchases medical supplies and equipment for his personal use, what tax rate is applicable to the purchase?

A. An individual 85 years of age or older who purchases medical supplies for his personal use that are not specifically exempt from sales and use tax would pay a state sales and use tax rate of 5% (instead of the 6% rate applicable to all other persons), plus any applicable local sales and use tax. See Code Section 12-36-2120(28), (38), (63), and (74) and SC Revenue Ruling #11-3 for additional guidance on specific exemptions.

Gifts

15. Q. If an individual 85 years of age or older purchases a gift for another individual or for business use, what tax rate is applicable to the purchase?

A. An individual 85 years of age or older who purchases a gift for another individual or for business use would pay a state sales and use tax rate of 6%, plus any applicable local sales and use tax. The item is not subject to the lower state rate since the gift or item purchased as a gift is not for the personal use of the individual 85 years of age or older.

16. Q. If an individual 85 years of age or older receives a gift purchased by another individual, what tax rate is applicable to the purchase?

A. An individual who purchases a gift for an individual 85 years of age or older would pay a state sales and use tax rate of 6%, plus any applicable local sales and use tax, since the item was not purchased by an individual 85 years of age or older for his own personal use.

Residential Electricity Purchases

17. Q. If an individual 85 years of age or older purchases electricity at retail for residential purposes for his personal use, what tax rate is applicable to the purchase?

A. Purchases of electricity at retail for residential purposes are exempt from state and local sales and use taxes under Code Section 12-36-2120(33) for persons of all ages.

Communications Services (Telephone, Cable TV, Etc.)[8]

18. Q. If an individual 85 years of age or older purchases communication services at retail such as telephone services, cable and satellite television services, radio or emergency services for his personal use, what tax rate is applicable to the purchase?

A. An individual 85 years of age or older who purchases communication services at retail such as telephone services, cable television services, and satellite television, radio or emergency services for his personal use would pay a state sales and use tax rate of 5% (instead of the 6% rate applicable to all other persons), plus any applicable local sales and use tax.

Examples of purchases of communication services[9] subject to this 5% rate (instead of the 6% rate applicable to all other persons) include, but are not limited to:

- Telephone services (Note: Charges for long distance calls are exempt from the sales and use tax for persons of all ages)
- Cable television services
- Satellite programming services and other programming transmission services (includes, but is not limited to, emergency communication services and television, radio, music or other programming services)
- Fax transmission services
- Email services
- Database access transmission services (online information services), such as charges to access an individual website (e.g., monthly charges to access a sports website).

Laundry and Drycleaning Purchases[10]

19. Q. If an individual 85 years of age or older purchases laundry and drycleaning services at retail for his personal use, what tax rate is applicable to the purchase?

A. An individual 85 years of age or older who purchases laundry and drycleaning services at retail for his personal use would pay a state sales and use tax rate of 5% (instead of the 6% rate applicable to all other persons), plus any applicable local sales and use tax.

Note: Some drycleaning facilities must also charge a 1% environmental surcharge on charges for laundry and drycleaning services under Code Section 44-56-450.

[8] Code Section 12-36-910(B)(3).
[9] Other charges and fees may apply that are not discussed in this document.
[10] Code Section 12-36-910(B)(1).

This surcharge paid by an individual 85 years of age and older is not eligible for the 1% sales and use tax rate reduction.

Sleeping Accommodations (Hotels, Motels, Condominium Rentals)[11]

20. Q. If an individual 85 years of age or older purchases at retail sleeping accommodations for his personal use, what tax rate is applicable to the purchase?

A. Charges for accommodations at hotels, motels, campgrounds and any other place where sleeping accommodations are furnished are subject to the sales tax; however, charges for sleeping accommodations supplied to the same person for a period of 90 or more continuous days are not subject to the sales tax on accommodations.

An individual 85 years of age or older who purchases sleeping accommodations for less than 90 continuous days for his personal use would pay a state sales and use tax rate of 6% (instead of the 7% tax rate applicable to all other persons), plus any applicable local sales and use tax.

Note: In addition to the 7% state tax (6% for individuals 85 years of age and older) and any local tax administered and collected by the Department on behalf of local jurisdictions, some cities and counties impose a local accommodations tax on sleeping accommodations.

21. Q. If an individual 85 years of age or older pays for "additional guest charges" that were for his personal use at a place that furnishes sleeping accommodations subject to the sales tax on accommodations, what tax rate is applicable to these "additional guest charges?"

A. An individual 85 years of age or older paying for "additional guest charges" that were for his personal use at a place that furnishes sleeping accommodations subject to the sales tax on accommodations would pay a state sales and use tax rate of 5% (instead of the 6% tax rate applicable to all other persons), plus any applicable local sales and use tax.

"Additional guest charges" include:

- Room service;
- Laundering and drycleaning services;
- In-room movies; and
- Telephone service.

[11] Code Section 12-36-920 and SC Regulation 117-307, "Hotels, Motels, and Similar Facilities".

Motor Vehicle Purchases, Leases and Rentals[12]

22. Q. If an individual 85 years of age or older purchases at retail a motor vehicle for his personal use, what state sales and use tax rate is applicable to the purchase?

A. An individual 85 years of age or older who purchases at retail a motor vehicle for his personal use would pay a state sales and use tax rate of 4% (instead of the 5%[13] rate applicable to all other persons purchasing this maximum tax item).

The 4% tax rate is applied to the sales price (less any applicable trade-in) of the motor vehicle and if the tax as calculated exceeds the $300 maximum tax the individual 85 years of age or older would only pay $300.

Note: Local sales and use taxes do not apply to purchases of a motor vehicle subject to the $300 maximum tax.

23. Q. If an individual 85 years of age or older leases at retail a motor vehicle for more than 90 continuous days for his personal use, what tax rate is applicable to the lease?

A. An individual 85 years of age or older who leases at retail a motor vehicle for more than 90 continuous days for his personal use would pay a state sales and use tax rate of 4% (instead of the 5% tax rate applicable to all other persons leasing a motor vehicle for more than 90 continuous days) and would pay no more than the $300 maximum tax, provided the lease was in writing, stated a term of more than 90 continuous days, and remained in force for more than 90 continuous days. Local sales and use taxes do not apply to leases of motor vehicles that meet these requirements.

The 4% tax rate is applied to each lease payment until the total tax paid equals $300; however, the law allows the entire $300 to be paid at the time the lease is executed.

Note: If the lease is not in writing, or does not state a term of more than 90 continuous days, or does not remain in force for more than 90 continuous days, then the individual 85 years of age or older would pay a state sales and use tax rate of 5% (instead of the 6% tax rate applicable to all other persons) and the applicable local sales and use taxes. In addition, the $300 maximum tax would not apply to the lease.

[12] Code Section 12-36-2110.
[13] Code Section 12-36-1110 increased the state sales tax rate from 5% to 6% beginning June 2007. This provision, however, does not apply to the sale or lease of tangible personal property subject to the maximum tax.

24. Q. If an individual 85 years of age or older rents at retail a motor vehicle for 90 or less continuous days for his personal use, what tax rate is applicable to the rental?

    A. An individual 85 years of age or older who rents at retail a motor vehicle for 90 or less continuous days for his personal use would pay a state sales and use tax rate of 5% (instead of the 6% tax rate applicable to all other persons), plus any applicable local sales and use tax.

PART 3 – RETAILER REQUIREMENTS

25. Q. What responsibilities does a retailer have with respect to the law that provides the lower state sales and use tax rate for sales to individuals 85 years of age or older?

    A. Retailers are required to post a sign at each entrance or each cash register which advises individuals 85 years of age or older of the lower state sales and use tax rate available to them. The signs posted will generally refer to a "1% reduction" from the state sales and use tax.

26. Q. What if a retailer fails to post the sign?

    A. A retailer who fails to post the required signs is subject to a penalty of up to $100 for each month or portion of the month the sign or signs are not posted. Continued failure to post the signs after a written warning from the Department may result in revocation of the retailer's retail license.

    Note: Failure to post the signs does not give rise to a cause of action by an individual 85 years of age or older who failed to request the exclusion and provide proof of age at the time of sale.

PART 4 –EXAMPLES AND ADDITIONAL GUIDANCE

27. Q. Where can additional information be obtained about the lower state tax rates?

    A. The chart below provides a summary of general information about the 1% rate reduction. For further information about South Carolina's sales and use tax, see the Department's website at www.dor.sc.gov.

PUBLIC DRAFT

Circulated for Public Comments
Comments Due by: **July 19, 2016**

SUMMARY CHART

This chart is intended only as general guidance. Any purchases that come within a specific exemption are not subject to the tax (e.g., prescription medicine, purchases of clothing or computers during the annual sales tax holiday, and residential electricity).

State Sales and Use Tax Rates for Purchases by Individuals 85 Years of Age and Older

Type of Purchase	Examples	State Rate	State Rate for Individuals 85 Years of Age and Older	Local Sales and Use Tax
General Items (Except as noted below)	clothes, household items, cosmetics, appliances, electronics, cleaning supplies, etc.	6%	5%	Applicable
Unprepared Food	grocery staples, canned goods, meat, milk, breads, soft drinks, etc.	0%	0%	Applicable, unless otherwise exempt under the local law
Prepared Food	restaurant foods and meals	6%	5%	Applicable
Medicines	prescription medicines sold by prescription over-the-counter medicines	0% 6%	0% 5%	0% Applicable
Residential Electricity and Gas	----------	0%	0%	0%
Communications Services	local telephone service, cable TV service	6%	5%	Applicable
Drycleaning	store pick-up or home delivery	6%	5%	Applicable
Accommodations Charges	room charges additional guest charges	7% 6%	6% 5%	Applicable Applicable
Items Subject to the $300 Maximum Tax	cars, boats	5%, but no more than $300	4%, but no more than $300	0%