
State of South Carolina
Department of Revenue
301 Gervais Street, P.O. Box 125, Columbia, South Carolina 29214

SC REVENUE ADVISORY BULLETIN #00-8

SUBJECT: Sales Tax Rate Reduction on Food Purchased by Persons 85 Years of Age and Older
(Sales and Use Tax)

EFFECTIVE DATE: January 1, 2001

SUPERSEDES: All previous advisory opinions and any oral directives in conflict herewith.

REFERENCES: House Bill 3649, Part 1B, Section 32

AUTHORITY: S. C. Code Ann. Section 12-4-320 (Supp. Year)
S. C. Code Ann. Section 1-23-10(4) (Supp. Year)
SC Revenue Procedure #99-4

SCOPE: The purpose of a Revenue Advisory Bulletin is to provide guidance to the public and to Department personnel. It is a written statement issued to apply principles of tax law to a specific set of facts or a general category of taxpayers. A Revenue Advisory Bulletin does not have the force or effect of law, and is not binding on the public. It is, however, the Department's position and is binding on agency personnel until superseded or modified by a change in statute, regulation, court decision, or advisory opinion.

Questions:

1. When the State sales and use tax rate on food items eligible for purchase with United States Department of Agriculture food coupons is reduced to 4% beginning January 1, 2001, what will be the State sales and use tax rate on sales of such food items to persons 85 years of age or older?
2. When the State sales and use tax rate on food items eligible for purchase with United States Department of Agriculture food coupons is reduced to 4% beginning January 1, 2001, what will be the local sales and use tax rate on sales of such food items in counties that impose a local sales and use tax on food items eligible for purchase with United States Department of Agriculture food coupons?

Conclusions:

1. When the State sales and use tax rate on food items eligible for purchase with United States Department of Agriculture food coupons is reduced to 4% beginning January 1, 2001, the

state sales and use tax rate on sales of such food items to persons 85 years of age or older will be 3%.

Note: If the State sales and use tax rate on food items eligible for purchase with United States Department of Agriculture food coupons is reduced further in subsequent years in accordance with House Bill 3649, Part 1B, Section 32, the State sales and use tax rate on sales of such food items to persons 85 years of age or older will be as follows:

<u>Year Beginning</u>	<u>Reduced State Rate</u>	<u>Reduced State Rate for Persons 85 or Older</u>
1/1/2002	3%	2%
1/1/2003	2%	1%
1/1/2004	1%	Exempt
1/1/2005	Exempt	Exempt

See Conclusion #2 for information on the tax rate with respect to food items eligible for purchase with United States Department of Agriculture food coupons for the various local sales and use taxes collected by the department on behalf of the counties.

2. When the State sales and use tax rate on food items eligible for purchase with United States Department of Agriculture food coupons is reduced to 4% beginning January 1, 2001, the local sales and use tax rate on sales of such food items in counties that impose a local sales and use tax on food items eligible for purchase with United States Department of Agriculture food coupons will not change.

However, if the food items eligible for purchase with United States Department of Agriculture food coupons become exempt from State sales and use taxes on January 1, 2005 (or January 1, 2004 in the case of sales to individuals 85 years of age or older) in accordance with House Bill 3649, Part 1B, Section 32, then sales of such food items in counties that presently impose a local sales and use tax on food items eligible for purchase with United States Department of Agriculture food coupons will also be exempt from the local sales and use tax.

Discussion:

1. The General Assembly, in House Bill 3649, Part 1B, Section 32, enacted legislation to reduce the State sales and use tax rate, beginning January 1, 2001, on food items eligible for purchase with United States Department of Agriculture food coupons.

Beginning on January 1, 2001, the State sales and use tax rate on food items eligible for purchase with United States Department of Agriculture food coupons will be 4% instead of 5%. If the funds are available and such is authorized by the General Assembly, the State tax

rate of food items eligible for purchase with United States Department of Agriculture food coupons will be reduced in subsequent years until the tax on such food items is eliminated.

House Bill 3649, Part 1B, Section 32 states:

(a) The General Assembly finds that it is appropriate to provide certain forms and levels of tax reduction when at the same time it has determined that every reasonable effort has been made and accomplished to fund, to the fullest extent possible, adequate and comprehensive programs in education and health care which are fundamental to progress, growth, and economic development. The General Assembly herein provides for a twenty percent reduction in the rate of sales tax imposed on the gross proceeds of sales, or the sale price of food items eligible for purchase with United States Department of Agriculture food coupons, beginning in January 1, 2001. Eighty percent of the revenues from sales taxes raised subsequent to imposition of the special sales tax rates provided by this section must be credited to the general fund of this State and used as sales taxes are used, and the remainder must be credited to the Education Improvement Act Fund. It is the further intent of the General Assembly that, provided the funds are authorized for the fiscal year in which the following schedule is eligible to be implemented, and notwithstanding the rate of tax imposed pursuant to Chapter 36, Title 12 of the 1976 Code, the rate of tax imposed pursuant to that chapter on the gross proceeds of sales, or the sale price of food items eligible for purchase with United States Department of Agriculture food coupons, is four percent for sales from January 1, 2001, through December 31, 2001; three percent for such sales from January 1, 2002, through December 31, 2002; two percent for such sales from January 1, 2003, through December 31, 2003; one percent for such sales from January 1, 2004, through December 31, 2004; and on and after January 1, 2005, the gross proceeds of sales, or the sale price of food items eligible for purchase with United States Department of Agriculture food coupons shall be exempt from the tax imposed pursuant to Chapter 36, Title 12 of the 1976 Code.

(b) General fund appropriations for any fiscal year made for the support of the public school system of the State must be greater than or equal to the revenues that would have been derived from the general retail sales tax, if the exemption provided for herein had not been authorized, from the soft drinks tax, the state's portion of the alcoholic liquors tax, and cable television fees as forecasted in the general fund revenue estimate of the Board of Economic Advisors. General fund revenues in an amount equal to the revenue that would have been derived from the sales tax if the exemption provided for herein had not been authorized for food items which may be purchased lawfully with USDA food coupons must be deposited from the state general fund by the Comptroller General to the Educational Improvement Act fund established in Section 59-21-1010 and for appropriations for the support of the public school system which shall include the following: Department of Education; State Board for Technical and Comprehensive Education, Educational Television Commission, Wil Lou Gray Opportunity School, School for the Deaf and the Blind, John de la Howe School, debt service on capital improvement bonds applicable to the above agencies, debt service on school bonds, and other school purposes provided by law. The revenue that would have been derived from the sales tax if the exemption provided for herein had not been authorized for food items which may be purchased lawfully with USDA food coupons shall nevertheless be considered as general retail sales tax revenue for purposes of this section.

Code Section 12-36-2620 concerns the composition of both the State sales and use tax and sales to persons 85 years of age or older and states:

The taxes imposed by Sections 12-36-910, 12-36-920(B), 12-36-1310, and 12-36-1320 are composed of two taxes as follows:

- (1) a four percent tax, which must be credited as provided in Section 59-21-1010(A), and
- (2) a one percent tax, which must be credited as provided in Section 59-21-1010(B). The one percent tax specified in this item (2) does not apply to sales to an individual eighty-five years of age or older purchasing tangible personal property for his own personal use. (Emphasis added.)

Based on the above, the portion of the State sales and use tax which must be credited to the Education Improvement Act does not apply to sales to persons 85 years of age or older. In addition, Section 32(b) of House Bill 3649, Part 1B, ensures that the Education Improvement Act will be fully funded.

Therefore, it is the department's opinion that, beginning January 1, 2001, sales of food items eligible for purchase with United States Department of Agriculture food coupons to persons 85 years of age or older shall be taxed at a State rate of 3%. If the State sales and use tax rate on food items eligible for purchase with United States Department of Agriculture food coupons is reduced further in subsequent years in accordance with House Bill 3649, Part 1B, Section 32, the State sales and use tax rate on sales of such food items to persons 85 years of age or older will be as follows:

<u>Year Beginning</u>	<u>Reduced State Rate</u>	<u>Reduced State Rate for Persons 85 or Older</u>
1/1/2002	3%	2%
1/1/2003	2%	1%
1/1/2004	1%	Exempt
1/1/2005	Exempt	Exempt

2. The General Assembly has authorized several types of local sales and use taxes that are to be collected by the department on behalf of the counties imposing such taxes. These taxes include:

Local Option: The local option sales and use tax is authorized under Code Section 4-10-10 et. seq. This tax is a general sales and use tax on all sales at retail (with a few exceptions) taxable under the state sales and use tax. This tax is imposed to reduce the property tax burden on persons in the counties that impose this type of local tax and is collected by the Department of Revenue on behalf of these counties.

Capital Projects: The local capital projects sales and use tax is authorized under Code Section 4-10-300 et. seq. This tax is a general sales and use tax on all sales at retail (with a few exceptions) taxable under the state sales and use tax. This tax is imposed specifically to defray the debt service on bonds issued for various capital projects in the counties that impose this type of local tax and is collected by the Department of Revenue on behalf of these counties.

Transportation: The local transportation projects sales and use tax is authorized under Code Section 4-37-30 et. seq. This tax is a general sales and use tax on all sales at retail (with a few exceptions) taxable under the state sales and use tax. This tax is imposed specifically to defray the debt service on bonds issued for various transportation projects in the counties that impose this type of local tax and are collected by the Department of Revenue on behalf of these counties.

Cherokee School: The Cherokee County School District One School Bond-Property Tax Relief Act provided, that upon public approval in a referendum conducted by the Cherokee County Election Commission, a 1% sales and use tax be imposed in Cherokee County for not more than 20 years. The revenue from this sales and use tax is used to pay debt service on general obligation bonds which were issued to defray the costs of specified improvements for Cherokee County School District One.

Union School: The School District of Union County School Bond-Property Tax Relief Act provided, that upon public approval in a referendum conducted by the Union County Election Commission, a sales and use tax (not to exceed 2%) be imposed in Union County for not more than 25 years. The revenue from this sales and use tax will be used to pay debt service on general obligation bonds which were issued pursuant to the School Bond Act or to pay directly costs of acquisition or construction of specified improvements for the School District of Union County. **As of the date of this advisory opinion, the sales and use tax authorized under School District of Union County School Bond-Property Tax Relief Act has not been imposed in Union county.**

Colleton School: The Colleton County School District School Bond-Property Tax Relief Act provided, that upon public approval in a referendum conducted by the Colleton County Election Commission, a 1% sales and use tax be imposed in Colleton County for not more than 20 years. The revenue from this sales and use tax is used to pay debt service on general obligation bonds which were issued pursuant to the School Bond Act **As of the date of this advisory opinion, the sales and use tax authorized under the Colleton County School District School Bond-Property Tax Relief Act has not been imposed in Colleton county.**

Chesterfield School: The Chesterfield County School District School Bond-Property Tax Relief Act provided, that upon public approval in a referendum conducted by the Chesterfield County Election Commission, a sales and use tax (not to exceed 1%) be imposed in Chesterfield County for not more than 25 years. The revenue from this sales and use tax is used to pay debt service on general obligation bonds which were issued pursuant to the School Bond Act, or to pay directly the cost of acquisition or construction of any of the improvements identified in the school board's resolution.

Berkeley School: The Berkeley County School District School Bond-Property Tax Relief Act provided, that upon public approval in a referendum conducted by the Berkeley County Board of Elections and Registration, a 1% sales and use tax be imposed in Berkeley County for not more than 20 years. The revenue from this sales and use tax is used to pay debt service on general obligation bonds which were issued pursuant to the School Bond Act. **As of the date of this advisory opinion, the sales and use tax authorized under the Berkeley County School District School Bond-Property Tax Relief Act has not been imposed in Berkeley county.**

Each one of these local taxes exempts sales exempt from the State sales and use tax. In addition, some these local taxes already exempt sales of food which are eligible to be purchased with United States Department of Agriculture food stamps.

Therefore, the local sales and use tax on sales of food eligible for purchase with United States Department of Agriculture food stamps shall remain the same. However, in counties where such food sales are presently subject to a local sales and use tax, such sales will also be exempt from that local sales and use tax beginning January 1, 2005 (or January 1, 2004 in the case of sales to individuals 85 years of age or older) if the food items eligible for purchase with United States Department of Agriculture food coupons become exempt from State sales and use taxes on January 1, 2005 in accordance with House Bill 3649, Part 1B, Section 32.

SOUTH CAROLINA DEPARTMENT OF REVENUE

s/Elizabeth A. Carpentier

Elizabeth A. Carpentier, Director

December 4, 2000
Columbia, South Carolina