



301 Gervais Street, P.O. Box 125, Columbia, South Carolina 29214

SC REVENUE PROCEDURE #89-5

SUBJECT: Sales Tax Exemption for Certain Organizations

EFFECTIVE DATE: July 1, 1989

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

REFERENCE: S.C. Code Section 12-35-550 [As Amended June, 1989]

AUTHORITY: S.C. Code Ann. Section 12-3-130 (1976)
S.C. Revenue Procedure #87-3

SCOPE: A Revenue Procedure is a statement describing agency procedures and is applicable only to employees of the South Carolina Tax Commission.

PURPOSE: To provide guidelines for determining whether an organization qualifies for an exemption certificate issued pursuant to Code Section 12-35-550(48); and, the use of such certificate.

Code Section 12-35-550(48), effective July 1, 1989, exempts from the sales tax:

The gross proceeds of sales or purchases for resale by organizations exempt under Section 12-37-220A(3) and (4) and B(5), (6), (7), (8), (12), (16), (19), (22), and (24) if the net proceeds are used exclusively for exempt purposes and no benefit inures to any individual. An organization whose sales or purchases are exempted by this item is also exempt from the retail license tax provided in Article 3 of this chapter.

In summary, the exemption only applies to sales and purchases for resale by organizations which meet three requirements: (1) be exempt from the property tax under one of the enumerated property tax code sections; (2) net proceeds from the organization's sales must be used for exempt purposes; and, (3) no benefit may inure to any individual.

It is important to note that issuance of an exemption certificate under the above code section does not allow the organization to purchase property tax-free, which is not for resale.

HOW TO DETERMINE IF AN ORGANIZATION QUALIFIES FOR THE EXEMPTION:

IMPORTANT: To enjoy the exemption at Code Section 12-35-550(48), organizations are required to complete and file Form ST-387 (copy attached). An organization is not deemed to be exempt under the subject code section unless application has been made and an exemption certificate issued.

I. An organization is considered to be "automatically" qualified for an exemption certificate if it is:

A. Selling tangible personal property;

B. Exempt from property tax under one of the property tax code sections listed in Code Section 12-35-550(48);and,

C. Exempt from Federal income tax under Internal Revenue Code Section 501(c)(3) or (19). The purpose of this provision is to meet the requirement that the organization's net proceeds must be used for an exempt purpose and to insure that no benefit inures to any individual.

NOTE: To be considered as "automatically" qualified, an organization must meet all of the above requirements and file Form ST-387.

II. An organization is not qualified for an exemption certificate if it is:

A. Only purchasing tangible personal property for its own use or consumption, and not for resale; or,

B. Exempt from property tax, but under a code section not listed in Code Section 12-35-550(48). For example, the following organizations, or associations, do not qualify for the sales tax exemption:

1. The State, counties, municipalities, school districts and other political authorities or subdivisions;
2. All schools, colleges and other institutions of learning, whether public or private;
3. Nonprofit hospitals, and nonprofit institutions which care for the infirmed, the handicapped, the aged, children or indigent persons; or
4. Nonprofit museums.

NOTE: An organization will fail to qualify, if either one of the above is true.

III. Organizations, other than those in categories I And II (above), may qualify for an exemption certificate, if the following criteria are met:

- A. The organization must be selling, or will sell, tangible personal property;
- B. The organization must be a type referred to in Code Section 12-35-550(48) [i.e, a church, veterans' organization, YMCA, Scouts, etc.]; and,
- C. Documents provided by the organization must conclusively demonstrate that the net proceeds of the organization are used, or will be used, exclusively for exempt purposes; and, that no benefit inures, or will inure, to any individual.

ISSUANCE AND USE OF THE EXEMPTION CERTIFICATE:

The exemption certificate will have imprinted upon its face the following statement:

CERTIFICATE VALID ONLY IF ALL APPLY

- (1) PURCHASES WILL BE RESOLD
- (2) PROCEEDS ARE USED FOR AN EXEMPT PURPOSE
- (3) NO PROFIT WILL INURE TO ANY INDIVIDUAL

Upon issuance of the certificate, a letter is to be forwarded to the organization explaining how the certificate may and may not be used. Also, the letter will instruct the organization to keep the Commission informed of any events which may have a bearing upon its status under Code Section 12-35-550(48) [for example - the organization discontinues making sales of tangible personal property]. The Commission may, when deemed necessary, reissue information concerning this exemption.

An exemption certificate issued pursuant to this Revenue Procedure may not be used to purchase tangible personal property which will be used by the organization, and is not for resale.

IMPROPER USE OF AN EXEMPTION CERTIFICATE:

Organizations, or individuals, using an exemption certificate improperly will be subject to all applicable taxes, interest and civil or criminal penalties.