



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

SC REVENUE PROCEDURE #91-1

SUBJECT: Retail Licenses and Special Events Returns
(Sales and Use Tax)

TAX MANAGER: John P. McCormack

EFFECTIVE DATE: January 1, 1991

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

REFERENCE: S.C. Code Section 12-36-510 (As Enacted June, 1990)

AUTHORITY: S.C. Code Section 12-3-130 (1976)
SC 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 establish guidelines to assist Commission employees in
determining which retailers may use a special events return in lieu
of obtaining a retail license.

LAW:

Code Section 12-36-510 reads, in part:

- (A) Before engaging in business:
- (1) Every retailer shall obtain a retail license for each permanent branch, establishment, or agency and pay a license tax of fifty dollars for each retail license at the time of application.
 - (2) Every artist and craftsman selling at arts and crafts shows and festivals, products they have created or assembled, shall obtain a retail license and pay a license tax of twenty dollars at the time of application. This license may be used only for one location at a time.

- (3) Every retailer operating a transient or temporary business within this State shall obtain a retail license and pay a license tax of fifty dollars at the time of application. This license may be used only for one location at a time. For purposes of this item, 'transient business' means a business, other than one licensed under item (2) of this section, which does not have a permanent retail location in this State, but otherwise makes retail sales within this State. 'Temporary business' means a business which makes retail sales in this State for no more than thirty consecutive days at one location.

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- (C) Retailers making sales at a special event, in lieu of the licensing requirements of this section and discount provisions of Section 12-36-2610, shall file a special events sales tax return. For purposes of this subsection, the special event sales tax return may be used only for one special event and must be filed with the commission together with the tax due within five days of the completion of the special event. However, the commission may require payment upon demand. 'Special event' means any promotional show, trade show, fair, or carnival for which an admissions fee is required for entering the event. In addition, the event must be operated for a period of less than twelve consecutive days. The provisions of this subsection do not apply to retailers licensed under item (2) or (3) of subsection (A) of this section.
- (D) The commission may determine which retail license or licenses a retailer must obtain.

PROCEDURES:

Permanent Location: Every retailer intending to operate at one or more fixed locations within this State must obtain a permanent retail license under Code Section 12-36-510(A)(1) for each fixed location.

Artists and Craftsmen: Artists and craftsmen intending to sell products they create or assemble at art shows, craft shows and festivals within this State must obtain a retail license under Code Section 12-36-510(A)(2). This license is valid for any such shows or festivals held in South Carolina; however, it may be only used for one show or festival at a time.

Artists and craftsmen who also sell their products at a permanent location, whether or not in addition to sales made at shows or festivals, must obtain a permanent retail license for that location in accordance with Code Section 12-36-510(A)(1). The artists and craftsmen license authorized by Code Section 12-36-510(A)(2) is only valid for sales at art shows, craft shows and festivals and therefore is not valid for any permanent, fixed locations.

Temporary Business: Every retailer intending to operate at a specific location within this State for no more than thirty consecutive days, and who does not intend to operate at the same location in the near future, must obtain a retail license in accordance with Code Section 12-36-510(A)(3). If the retailer does intend to operate at the same location in the near future (within 90 days), the location is considered a permanent location which must be licensed in accordance with Code Section 12-36-510(A)(1).

Transient Business: Every retailer traveling from location to location making retail sales within this State, and who does not have a permanent retail location in this State, must obtain a retail license in accordance with Code Section 12-36-510(A)(3). This license, however, is only valid for one location at a time.

Special Events Returns: These returns were authorized by the Legislature to allow taxpayers to make retail sales at special promotional shows, trade shows, fairs and carnivals, at which an admissions fee is charged for entering the event, without obtaining a retail license. With respect to the special event return, the following guidelines are established:

- (1) Retailers making retail sales from a permanent location in South Carolina, but who from time to time will make sales at a special promotional show, trade show, fair or carnival (which qualifies as a special event), should be issued a special event return in order to report those sales made at the event. Sales made by the retailer at the permanent location should be reported on the retailer's monthly tax return and not the special event return.

If, however, the retailer temporarily closes his permanent location in order to operate at a special event (e.g., a boat dealer closing in order to operate at a local boat show), the retailer must use the license from the permanent location to operate at the special event. The retailer must bring the license to the special event and, if required by a Commission representative, sign an affidavit under penalties of perjury that the permanent location is closed for the duration of the special event. All sales made under these circumstances are to be reported by the retailer on his monthly return, using an addendum to the return (Form ST-389) to report the sales by county and municipality if the special event is in a different county or municipality from the permanent location.

- (2) Artists, craftsmen, and transient retailers already licensed by the Commission under Code Section 12-36-510(A) (2) or (3) should not use the special event return. These retailers have already obtained a license which allows them to make sales at various locations (but not more than one at a time) in South Carolina and, therefore, do not need a special event return.

If the artist, craftsman or transient retailer is making sales at a location not qualifying as a special event, and at a special event at the same time, such retailer should be issued a special events return for the qualifying special event and should report the sales from the other location on his or her's monthly tax return.

- (3) Retailers entering the State on a one time basis in order to make sales at a special promotional show, trade show, fair or carnival (which qualifies as a special event) should be issued a special event return in order to report those sales made at the event. Any retailer entering the State in order to make sales at several special events as defined in the statute, or at another location in addition to the special event, may not use a special event return and must be licensed as a transient business. In order to determine if the retailer is entering the State on a "one time basis", the Commission will consider the retailer's activity in this State, if any, during the previous twelve months and the retailer's intended activity in this State

during the twelve months following the proposed special event. Any activity, or intended activity, in the State during this 24 month period will require the retailer to obtain a license pursuant to subsection (A) of Code Section 12-36-510 (artist and craftsmen, temporary location or transient retailer).

- (4) The burden of proof as to the retailer's activities in South Carolina, or as to whether the retailer falls within the guidelines established by this Revenue Procedure for using a special event return, falls upon the retailer. If there is doubt as to the retailer's activities or intended activities in this State, or whether the retailer falls within the guidelines established by this Revenue Procedure for using a special event return, the Commission will require the retailer to obtain a retail license pursuant to subsection (A) of Code Section 12-36-510 (artist and craftsmen, temporary location or transient retailer).