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

SC REVENUE PROCEDURE #98-2 (TAX)

SUBJECT: Resale Certificates
(Sales and Use Tax)

EFFECTIVE DATE: March 1, 1998

SUPERSEDES: SC Revenue Procedure #95-1 and all previous documents and any oral directives in conflict herewith.

REFERENCES: S. C. Code Ann. Section 12-36-950 (Supp.1997)

AUTHORITY: S. C. Code Ann. Section 12-4-320 (Supp. 1997)
SC Revenue Procedure #97-8

SCOPE: A Revenue Procedure is a statement which provides information of a procedural nature. It is valid and remains in effect until superseded by a change in the statute or regulations or a subsequent court decision or Revenue Procedure.

Law:

S.C. Code Section 12-36-910 imposes a sales tax "upon every person engaged or continuing within this State in the business of selling tangible personal property at retail". Code Section 12-36-950 provides:

It is presumed that all gross proceeds are subject to the tax until the contrary is established. The burden of proof that the sale of tangible personal property is not a sale at retail is on the seller.

However, if the seller receives a resale certificate signed by the purchaser stating that the property is purchased for resale, the liability for the sales tax shifts from the seller to the purchaser.

The resale certificate must include the purchaser's name, address, retail sales tax license number, and any other provisions or information considered necessary by the commission.

The commission may require the seller to provide information it considers necessary for the administration of this section.

The issue has arisen whether the seller is required to question a resale certificate when presented by a purchaser or if the seller may accept the resale certificate upon its presentation.

Discussion:

Generally, as stated in the above statute, if a seller receives a resale certificate signed by the purchaser stating that the property purchased is for resale, the seller is not required to collect the sales tax, and the liability for the tax shifts from the seller to the purchaser. 68 Am Jur 2d Sales and Use Tax '254.

However, the presentation of a resale certificate does not always shift the liability for the tax from the seller to the purchaser.

"[B]lind acceptance of such certificates is not legally acceptable, and does not shift the burden of proving that the sales in question were not taxable from the taxpayer-seller to the state. Good faith in accepting the certificates is often necessary for a seller to rely on the certificates to relieve tax liability, and certain inquiries or ascertainments of facts may be required to establish good faith. For example, good-faith acceptance of exemption resale certificates can be demonstrated by showing that the kind of property being sold is normally offered for resale in the type of business operated by the purchaser. On the other hand, good faith is not shown . . . where the seller's agents failed to diligently examine the certificates of resale to learn what appeared obvious to the court on the face of the certificates - that they were exercised in bad faith" (68 Am Jur 2d Sales and Use Tax '255).

Procedure:

The presentation of a resale certificate by a purchaser will generally relieve the seller of liability for the sales tax and switch the liability to the purchaser. However, the acceptance of the certificate must be made in good faith. In order for a seller to take a valid resale certificate in good faith, the seller must exercise reasonable prudence to determine the facts supporting the valid resale certificate. This includes an honesty of intention and freedom from knowledge of circumstances which ought to alert the seller that he should make inquiry as to the facts. If any facts upon such certificate would lead a reasonable person to make further inquiry, then such inquiry must be made with an honest intent to discover the facts.

Therefore, in order for the seller to accept a resale certificate in good faith, he must examine the certificate of resale to determine if it is presented for the purchase of goods which will be resold by the purchaser. If the seller accepts a resale certificate which on its face does not appear to be offered in good faith, the seller will be held liable for the sales tax. Good faith acceptance of a resale certificate is not shown where, for example, a resale certificate for weed killer came from a funeral home and a resale certificate for toilet bowl cleaner from the state police, and such certificates were not questioned by the seller to determine if the items purchased would be resold. (68 Am Jur 2d Sales and Use Tax '255).

If the seller cannot determine from the face of the certificate if it is being presented for goods which normally would be resold by the purchaser, the seller must make inquiry to the buyer concerning this issue. Such inquiry should be documented by the seller.

If a seller accepts a resale certificate in good faith and it is later determined that the purchaser did not resell the goods but instead, purchased them for consumption, the liability for the tax is on the purchaser.

A copy of Form ST-8A, Resale Certificate, is attached as a part of this document. The seller should examine the lines completed by the purchaser stating the kind of business engaged in by the purchaser and the items sold, leased or rented by the purchaser to determine if the items purchased are of this type. It is not required that Form ST-8A be used, but the information requested on the form is required on any resale certificate accepted by the seller. Therefore, a letter from the purchaser to the seller or a resale certificate from another state is acceptable provided the letter or certificate contains the same information requested on Form ST-8A. In addition, the "Uniform Sales & Use Tax Certificate" published by the MultiState Tax Commission ("MTC") may be used by a purchaser (since it contains the same information requested on Form ST-8A) for the purpose of purchasing tangible personal property that will be resold, leased or rented in the normal course of the purchaser's retail business. The MTC certificate may also be used by a purchaser of services that are subject to the sales and use tax, such as communications, accommodations, laundry services, and electricity, that will be resold, leased or rented in the normal course of the purchaser's retail business. Please note that the MultiState Tax Commission is amending its certificate form to indicate that retailer's may use the form to purchase such services that will be resold, leased or rented in the normal course of the purchaser's retail business.

Note: It is not necessary that a resale certificate be obtained for each purchase. Only one resale certificate must be maintained on file per customer; however, the seller still has the responsibility of reexamining subsequent purchases to determine if they are for goods to be resold by the purchaser in accordance with the resale certificate that is on file.

For questions concerning resale certificates, contact John McCormack at (803) 898-5138.

SOUTH CAROLINA DEPARTMENT OF REVENUE

s/Burnet R. Maybank III

Burnet R. Maybank, III, Director

Columbia, South Carolina
March 18, 1998