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Comments Due by: **November 15, 2022**

SC REVENUE RULING #22-x [DRAFT – 11/3/2022]

- SUBJECT:** Fuel Surcharges by Retailers Delivering Tangible Personal Property (Sales and Use Tax)
- EFFECTIVE DATE:** Applies to all periods open under the statute.
- SUPERSEDES:** SC Revenue Ruling #05-1, and all previous advisory opinions and any oral directives in conflict herewith.
- REFERENCES:** S.C. Code Ann. Section 12-36-90 (2014; Supp. 2021)
S.C. Code Ann. Section 12-36-130 (2014; Supp. 2021)
SC Regulation 117-310(d) (Supp. 2003)
- 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 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 Ruling 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 It is, however, the Department’s position and is binding on agency personnel until superseded or modified by a change in statute, regulation, court decision, or advisory opinion.

Purpose:

The purpose of this advisory opinion is to update SC Revenue Ruling #05-1, “Fuel Surcharges by Retailers Delivering Tangible Personal Property,” to include additional examples illustrating the application of the sales and use tax when retailers charge fuel surcharges to their customers when delivering taxable or exempt tangible personal property via their own vehicles.

Question:

Are fuel surcharges, as described in the facts, charged by a retailer to the customer when delivering merchandise via its own vehicles includable in “gross proceeds of sales” or “sales price” and therefore subject to the sales and use tax?

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Conclusion:

Fuel surcharges, as described in the facts, charged by a retailer to the customer when delivering merchandise via its own vehicles are includable in “gross proceeds of sales” or “sales price” and therefore subject to the sales and use tax, unless the transaction is otherwise exempt.

The following examples assist in explaining the taxability of a fuel surcharge where a retailer sells and delivers tangible personal property via its own vehicle and charges a fuel surcharge.

Example 1. Retailer “A” sells \$1,000 in merchandise and charges the customer a \$50 delivery charge for delivery via its own vehicle and a \$30 fuel surcharge due to the rising cost of motor fuel. The basis for calculating the tax is \$1,080.

Example 2. Retailer “B” sells \$1,000 in merchandise, and does not charge the customer for delivery via its own vehicle but does charge a \$30 fuel surcharge due to the rising cost of motor fuel. The basis for calculating the tax is \$1,030.

Example 3. Retailer “C” sells \$500 in merchandise and charges the customer a \$25 delivery charge for delivery via its own vehicle. Later in the month, Retailer “C” sells another \$500 in merchandise and charges the customer a \$25 delivery charge for delivery via its own vehicle. Each delivery is billed separately. In a separate invoice, the retailer bills the customer \$60 in fuel surcharges for the two deliveries made during the month (\$30 for each delivery). The basis for calculating the tax on the monthly deliveries is \$1,110 (\$525 + \$525 + \$60), since all charges are a part of the retail sale of tangible personal property. The answer is the same whether the fuel surcharge is billed on the same invoice as the merchandise or billed on a separate invoice (e.g., billed the month of delivery or billed the month following delivery).

Example 4. Retailer “D” sells \$1,000 in exempt tangible personal property (e.g., propane used for residential purposes exempt under Code Section 12-36-2120(33)) and charges a \$50 delivery charge for delivery via its own vehicle and a \$30 fuel surcharge due to the rising cost of motor fuel. Since the transaction is exempt from the sales and use tax, the entire \$1,080 “gross proceeds of sales” or “sales price” (\$1,000 propane plus \$50 delivery charge and \$30 fuel surcharge) is exempt from sales and use tax. The answer is the same whether the delivery charge or the fuel surcharge is separately stated or included in the sales price of the exempt item.

Note: SC Revenue Ruling #19-9, “Delivery Charges” addresses questions regarding the applicability of the sales and use tax to delivery charges when the tangible personal property being sold and delivered is not taxable or when the tangible personal property being sold and delivered includes both taxable and nontaxable items. The guidance in SC Revenue Ruling #19-9 is applicable to the fuel surcharges discussed in this advisory opinion.

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Facts:

Retailers selling tangible personal property at retail may or may not charge their customers for delivering merchandise via their own vehicle. However, when fuel costs increase dramatically for various reasons (e.g., natural disasters, inflation, or supply chain issues), retailers may either increase the sales price of tangible personal property sold to customers or charge the customer a separate fuel surcharge to recover some or all of the increased cost of fuel. The fuel surcharge may be charged as a separate line item on the same invoice as the merchandise or on a separate invoice. Questions have arisen as to the applicability of sales and use taxes to “fuel surcharge fees” collected by retailers making a delivery via their own vehicle, including the applicability of the tax when the delivery includes taxable merchandise, exempt merchandise, or a combination of both.

Law and Discussion:

The sales tax is imposed upon a retailer’s “gross proceeds of sales” which is defined at Code Section 12-36-90, in part, as:

...the value proceeding or accruing from the sale, lease, or rental of tangible personal property... without any deduction for... the cost of materials, labor, or service... [or] any other expenses....

The use tax is based upon the “sales price” of tangible personal property. The term “sales price” is defined at Code Section 12-36-130, in part, as:

...the total amount for which tangible personal property is sold, without any deduction for the cost of the property sold, the cost of the materials used, labor or service cost, interest paid, losses, or any other expenses.

(1) The term includes:

- (a) any services or transportation costs that are a part of the sale, whether paid in money or otherwise[.]

In *Meyers Arnold, Inc. v. South Carolina Tax Commission*, 285 S.C. 303, 328 S.E.2d 920, 923 (1985), the Court of Appeals of South Carolina held the element of service involved in a lay away sale was subject to tax as being part of the sale of tangible personal property. The test used by the court was as follows:

...But for the lay away sales, Meyers Arnold would not receive the lay away fees. The fees are obviously charged for the service rendered in making lay away sales. For these reasons, this court holds the lay away fees are part of the gross proceeds and subject to the sales tax.

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Accordingly, the total amount charged in conjunction with, or as part of, the retail sale or purchase of tangible personal property is subject to the tax, unless otherwise exempt.

Further, SC Regulation 117-310, concerning “Freight and Delivery Charges,” states in part:

(d) No practice of invoicing or billing will entitle the seller to deduct from gross proceeds of sale any cost or expense, actual or estimated, in cases where the seller, by use of his own means of transportation, effects such delivery.

Therefore, the “measure” of the sales and use tax is the total proceeds of a sale (i.e., it is the sum total of all consideration received in conjunction with, or as part of, the retail sale of tangible personal property, without any deductions, unless specifically provided. The source of the amount received or earned is irrelevant. What matters is whether the amount received or earned is the result of a retail sale (i.e., the value proceeding or accruing from the sale, lease, or rental of tangible personal property at retail (sales tax) or the total amount for which tangible personal property is sold including any services or transportation costs that are a part of the sale, whether paid in money or otherwise (use tax)).

Based on the above, it is the opinion of the Department that fuel surcharges, as described in the facts, charged by a retailer to the customer when delivering merchandise via its own vehicles are includable in “gross proceeds of sales” or “sales price” and therefore subject to the sales and use tax, unless the transaction is otherwise exempt.