
State of South Carolina
Department of Revenue
301 Gervais Street, P. O. Box 125, Columbia, South Carolina 29214
Website Address: <http://www.sctax.org>

SC REVENUE RULING # 03-3

SUBJECT: Gifts – Multistate Transactions
(Sales and Use Tax)

EFFECTIVE DATE: Applies to all periods open under the statute.

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

REFERENCES: S. C. Code Ann. Section 12-36-910(A) (Supp. 2000)
S. C. Code Ann. Section 12-36-1310(A) (Supp. 2000)
S. C. Code Ann. Section 12-36-2120(36) (Supp. 2000)
S. C. regulation 117-334

AUTHORITY: S. C. Code Ann. Section 12-4-320 (Supp. 2000)
S. C. Code Ann. Section 1-23-10(4) (Supp. 2001)
SC Revenue Procedure #03-1

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 is an advisory opinion; it 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 It is, however, the Department’s position and is binding on agency personnel until superseded or modified by a change in statute, regulation, court decision, or advisory opinion.

Introduction:

As a service to their customers, many retailers will directly ship merchandise purchased by a customer as a gift directly to the intended recipient of the gift. For example, if a customer purchases a golf shirt from ABC Golf and Tennis Shop as a gift for a friend, ABC Golf and Tennis Shop will directly mail or otherwise ship the shirt to the customer’s friend.

Questions have arisen as to the retailer’s liability or responsibility for remitting the sales or use tax on such transactions when the retailer has nexus with South Carolina and one or more of the parties (retailer, the purchaser or donor of the gift, and the recipient or donee of the gift) is located outside of South Carolina.

The following represents several scenarios that will be addressed in this advisory opinion:

Scenario A – Purchaser, Recipient and Retailer are all located within SC.

Scenario B – Purchaser and Retailer are located within SC, Recipient is not.

Scenario C – Purchaser and Recipient are located within SC, Retailer is not.

Scenario D – Purchaser is located within SC, Recipient and Retailer are not.

Scenario E – Recipient and Retailer are located within SC, Purchaser is not.

Scenario F – Recipient is located within SC, Purchaser and Retailer are not.

Law and Discussion:

Code Section 12-36-910(A) imposes a sales tax and reads:

A sales tax, equal to five percent of the gross proceeds of sales, is imposed upon every person engaged or continuing within this State in the business of selling tangible personal property at retail. (Emphasis added)

Code Section 12-36-1310(A) imposes a use tax and reads:

(A) A use tax is imposed on the storage, use, or other consumption in this State of tangible personal property purchased at retail for storage, use, or other consumption in this State, at the rate of five percent of the sales price of the property, regardless of whether the retailer is or is not engaged in business in this State.

SC Regulation 117-333 states in part:

Donors of tangible personal property are regarded as consumers thereof, and the tax applies to the gross proceeds from the sale of the property to them.

With respect to goods coming into South Carolina from another state, SC Regulation 117-334 states:

(1) Goods coming into this State. When tangible personal property is purchased for use or consumption in this State and (1) the seller is engaged in the business of selling such tangible personal property in this State for use or consumption and (2) delivery is made in this State, such sale is subject to the sales tax. Such sale is taxable regardless of the fact that the purchaser's order may specify that the goods are to be manufactured or procured by the seller at a specified point outside this State and shipped directly to the purchaser from the point of origin.

If the conditions above are met it is immaterial (1) that the contract of sale is closed by acceptance outside the State or (2) that the contract is made before the property is brought into the State. Delivery is held to have taken place in this State (1) when physical possession of the tangible personal property is actually transferred to the buyer within this State or (2) when the tangible personal property is placed in the mails at a point outside this State directed to the buyer in this State or placed on board a carrier at a point outside this State (FOB or otherwise) and directed to the buyer in this State.

Engaging in business in this State shall include any of the following methods of transacting business: maintaining directly, indirectly, or through a subsidiary, an office, distribution house, sales house, warehouse or other place of business or by having an agent, salesman or solicitor operating within the State under the authority of the seller or its subsidiary.

(2) Goods shipped from this State. When tangible personal property is sold within the State and the seller is obligated to deliver it to the buyer or to an agent of the buyer at a point outside of the State or to deliver it to a carrier or to the mails for transportation to the buyer or to an agent of the buyer at a point outside this State, the retail sales tax does not apply provided the property is not returned to a point within the State. The most acceptable proof of transportation outside the State will be:

- (a) A way-bill or bill of lading made out to the seller's order and calling for delivery; or
- (b) An insurance receipt or registry issued by the United States Postal Department, or a Post Office Department receipt Form 3817; or
- (c) A trip sheet signed by the seller's delivery agent and showing the signature and address of the person outside this State who received the goods delivered.

However, where tangible personal property pursuant to a sale is delivered in this State to the buyer or to an agent of his other than a common carrier the retail sales tax applies notwithstanding that the buyer may subsequently transport the property out of the State.

With respect to goods leaving South Carolina, Code Section 12-36-2120(36) exempts from the tax the gross proceeds of sales or sales price of:

tangible personal property where the seller, by contract of sale, is obligated to deliver to the buyer, or to an agent or donee of the buyer, at a point outside this State or to deliver it to a carrier or to the mails for transportation to the buyer, or to an agent or donee of the buyer, at a point outside this State;

After reviewing the above statutes and regulations, it is the opinion of the Department that the sale of tangible personal property to a person who will give that item away as a gift is a retail sale subject to the tax.

If the buyer/donor of the item has the seller ship the items into South Carolina from a point outside of South Carolina, then “[d]elivery is held to have taken place in [South Carolina] ... when physical possession of the tangible personal property is actually transferred to the buyer [or a donee of the buyer] within this State or ... when the tangible personal property is placed in the mails at a point outside this State directed to the buyer [or a donee of the buyer] in this State or placed on board a carrier at a point outside this State (FOB or otherwise) and directed to the buyer [or a donee of the buyer] in this State.”

If the buyer/donor of the item has the seller ship the items outside of South Carolina from a point inside of South Carolina, then the sale is exempt under Code Section 12-36-2120(36).

Conclusions:

Based on the above discussion, it is the opinion of the Department that a retailer that has nexus with South Carolina is responsible for remitting the sales or use tax as follows with respect to the following scenarios as outlined in the facts:

Scenario A – Purchaser, Recipient and Retailer are all located within SC: Since delivery occurs in South Carolina, the sale is subject to the tax. See Code Section 12-36-910(A).

Scenario B – Purchaser and Retailer are located within SC, Recipient is not: Since the seller, by contract of sale, is obligated to deliver the item to a carrier or to the mails for transportation to the donee of the buyer, at a point outside South Carolina, the sale is exempt pursuant to Code Section 12-36-2120(36).

Note: If the purchaser decides not to have the retailer ship the item and takes delivery of the item at the SC store, the sale is subject to the tax since delivery occurs in South Carolina, regardless of the facts that the purchaser himself may subsequently ship the item outside of South Carolina. See Code Section 12-36-910(A).

Scenario C – Purchaser and Recipient are located within SC, Retailer is not: Since the retailer has nexus with South Carolina and “[d]elivery is held to have taken place in [South Carolina] ... when the tangible personal property is placed in the mails at a point outside this State directed to the buyer [or a donee of the buyer] in this State or placed on board a carrier at a point outside this State (FOB or otherwise) and directed to the buyer [or a donee of the buyer] in this State,” the sale is subject to the sales tax under Code Section 12-36-910(A) or the use tax under Code Section 12-36-1310(A). See also SC Regulation 117-334.

Scenario D – Purchaser is located within SC, Recipient and Retailer are not: Since delivery occurred outside of South Carolina and the item does not come into South Carolina, the sale is not subject to the tax.

Scenario E – Recipient and Retailer are located within SC, Purchaser is not: Since delivery occurs in South Carolina, the sale is subject to the sales tax. See Code Section 12-36-910(A).

Scenario F – Recipient is located within SC, Purchaser and Retailer are not: Since the retailer has nexus with South Carolina and “[d]elivery is held to have taken place in [South Carolina] ... when the tangible personal property is placed in the mails at a point outside this State directed to the buyer [or a donee of the buyer] in this State or placed on board a carrier at a point outside this State (FOB or otherwise) and directed to the buyer [or a donee of the buyer] in this State,” the transaction is subject to the sales tax under Code Section 12-36-910(A) or the use tax under Code Section 12-36-1310(A). See also SC Regulation 117-334.

Note: Proper and sufficient documentation of transactions involving of an item purchased as a gift and shipped to the recipient by the retailer will not hinge on the “gift” nature of the transaction.

SOUTH CAROLINA DEPARTMENT OF REVENUE

s/Burnet R. Maybank
Burnet R. Maybank, Director

November 19, 2003
Columbia, South Carolina