

SC REVENUE RULING #05-1

**SUBJECT:** Fuel Surcharges by Retailers Delivering Tangible Personal Property  
(Sales & 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 12-36-90 (2000; Supp. 2003)  
S. C. Code Ann. Section 12-36-130 (2000; Supp. 2003)  
SC Regulation 117-310(d) (Supp. 2003)

**AUTHORITY:** S. C. Code Ann. Section 12-4-320 (2000)  
S. C. Code Ann. Section 1-23-10(4) (Supp. 2003)  
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 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position and is binding on agency personnel until superseded or  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.

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" and therefore subject to the  
sales and use tax?

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" and therefore subject to  
the sales and use tax.

For example:

(1) If Retailer "A" sells \$1,000 in merchandise and charges the customer a \$50 delivery charge for delivery via its own vehicle and a \$25 fuel surcharge due to the rising cost of motor fuel, the basis for calculating the tax is \$1,075.

(2) If Retailer "B" sells \$1,000 in merchandise, and does not charge the customer for delivery via its own vehicle but does charge a \$25 fuel surcharge due to the rising cost of motor fuel, the basis for calculating the tax is \$1,025.

Facts:

Retailers selling tangible personal property at retail may or may not charge their customers for delivery. Recently, due to the rising costs of gasoline and diesel fuel, some retailers are charging a "fuel surcharge" when they make a delivery via their own vehicle. For example:

Example #1

Retailer "A" sold various office equipment and supplies to XYZ and delivered that merchandise via its own vehicle. The retailer billed XYZ as follows:

Total Sales Price of All Purchases:	\$1,000.00
Delivery Charge:	\$ 50.00
Fuel Surcharge	<u>\$ 25.00</u>
Total:	\$1,075.00

Example #2

Retailer "B" sold various office equipment and supplies to XYZ and delivered that merchandise via its own vehicle. The retailer billed XYZ as follows:

Total Sales Price of All Purchases:	\$1,000.00
Delivery Charge:	\$ 00.00
Fuel Surcharge	<u>\$ 25.00</u>
Total:	\$1,025.00

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.

Accordingly, the total amount charged in conjunction with the sale or purchase of tangible personal property is subject to the tax.

A similar conclusion was reached in *Regency Towers Association, Inc. v. South Carolina Tax Commission*, 88-CP-26-1109 (1989), where the Horry County Court of Common Pleas held charges for maid service were not deductible from gross proceeds derived from charges for accommodations. In Commission Decision #92-37, the Commission held that charges for maid services, which were optional, were a part of the accommodations furnished to transients and therefore subject to the accommodations tax.

Finally, 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.

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" and therefore subject to the sales and use tax.

For example:

(1) If Retailer "A" sells \$1,000 in merchandise and charges the customer a \$50 delivery charge for delivery via its own vehicle and a \$25 fuel surcharge due to the rising cost of motor fuel, the basis for calculating the tax is \$1,075.

(2) If Retailer “B” sells \$1,000 in merchandise, and does not charge the customer for delivery via its own vehicle but does charge a \$25 fuel surcharge due to the rising cost of motor fuel, the basis for calculating the tax is \$1,025.

SOUTH CAROLINA DEPARTMENT OF REVENUE

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

January 11, 2005  
Columbia, South Carolina