

SC REVENUE RULING #05-10

- SUBJECT:** Sales Tax Holiday
(Sales and Use Tax)
- EFFECTIVE DATE:** Beginning 12:01 a.m. on the first Friday in August and ending at twelve midnight the following Sunday of each year.
- SUPERSEDES:** For sales tax holidays for 2005 and thereafter, this advisory opinion supersedes all previous advisory opinions and any oral directives in conflict herewith.
- REFERENCES:** S. C. Code Ann. Section 12-36-2120(57) (Supp. 2004)
House Bill 3768, Section 57, of 2005 (Enacted June 7, 2005)
- AUTHORITY:** S. C. Code Ann. Section 12-4-320 (2000)
S. C. Code Ann. Section 1-23-10(4) (Supp. 2004)
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 It is, however, the Department's position and is binding on agency personnel until superseded or modified by a change in statute, regulation, court decision, or advisory opinion.

LAW:

Code Section 12-36-2120(57) exempts from the sales and use tax:

- (a) sales taking place during a period beginning 12:01 a.m. on the first Friday in August and ending at twelve midnight the following Sunday of:
 - (i) clothing;
 - (ii) clothing accessories including, but not limited to, hats, scarves, hosiery, and handbags;
 - (iii) footwear;
 - (iv) school supplies including, but not limited to, pens, pencils, paper, binders, notebooks, books, bookbags, lunchboxes, and calculators;

- (v) computers, printers and printer supplies, and computer software;
 - (vi) bath wash clothes, blankets, bed spreads, bed linens, sheet sets, comforter sets, bath towels, shower curtains, bath rugs and mats, pillows, and pillow cases.
- (b) The exemption allowed by this item does not apply to:
- (i) sales of jewelry, cosmetics, eyewear, wallets, watches;
 - (ii) sales of furniture;
 - (iii) a sale of an item placed on layaway or similar deferred payment and delivery plan however described;
 - (iv) rental of clothing or footwear;
 - (v) a sale or lease of an item for use in a trade or business.
- (c) Before July tenth of each year, the department shall publish and make available to the public and retailers a list of those articles qualifying for the exemption allowed by this item.

QUESTIONS AND ANSWERS:

The following answers represent the department's opinion with respect to various issues concerning the "sales tax holiday:"

(1) Has the department published a list, as required by the law, of those articles qualifying for the exemption?

Yes. SC Revenue Ruling #05-9 lists items exempt from the sales and use tax during the three-day "sales tax holiday." SC Revenue Ruling #05-9 can be found at the department's website (www.sctax.org).

(2) When is the "sales tax holiday?"

The three-day "sales tax holiday" is held annually beginning at 12:01 a.m. on the first Friday in August and ending on the following Sunday at midnight.

(3) Must the eligible item being sold be delivered to the customer during the three-day "sales tax holiday" in order for the exemption to apply?

An item qualifying for the "sales tax holiday" will be exempt if:

(a) the eligible item is both delivered to and paid for by the customer during the three days of the "sales tax holiday"; or

(b) the eligible item is ordered and paid for by the customer and the order is accepted by the retailer during the "sales tax holiday" for immediate shipment, even if delivery is made after the "sales tax holiday." An order is accepted by the retailer when it has taken an action to fill the order for immediate shipment.

Actions to fill an order include placing an "in date" stamp on a mail order or assigning an order number to a telephone order. An order is for immediate shipment when delayed shipment is not requested by the customer and is for immediate shipment, notwithstanding that the shipment may be delayed because of a backlog of orders or because stock is currently unavailable to, or on back order by, the retailer.

(4) Does the "sales tax holiday" apply to sales made by mail order, Internet or similar retailers?

Yes, provided the item sold is one qualifying for the exemption and the sale occurs during the three days of the "sales tax holiday" as discussed in Question #3.

(5) Does the "sales tax holiday" apply to custom or special orders?

Yes, provided the item sold is one qualifying for the exemption and the sale occurs during the three days of the "sales tax holiday" as discussed in Question #3.

(6) Are delivery charges subject to the tax during the "sales tax holiday?"

Most delivery charges are included in the tax base for the sales tax and the use tax. If an item qualifies for the exemption under the "sales tax holiday," then all delivery charges associated with that sale are exempt. For example, if a retailer sells a computer during the sales tax holiday for \$2,000 and also charges \$55 to deliver the computer, then the entire charge of \$2,055 is exempt from the sales or use tax.

(7) Are alteration charges for clothing sold during the "sales tax holiday" subject to the tax?

If an item of clothing qualifies for the exemption under the "sales tax holiday," then all alteration charges associated with that sale are exempt. For example, if a retailer sells a pair of pants during the sales tax holiday for \$75 and also charges \$10 to alter the pants, then the entire charge of \$85 is exempt from the sales or use tax.

(8) How are exchanges of items purchased during the "sales tax holiday" handled when returned after the "sales tax holiday?"

If a customer purchases an exempt item during the "sales tax holiday" and later exchanges the item for the same item (different size, different color, etc.), no additional tax will be due even if the exchange is made after the "sales tax holiday."

However, if the customer returns the item after the "sales tax holiday" and receives credit on the purchase of a different item, the sales or use tax will apply to the sale of the newly purchased item.

(9) How are exchanges of items purchased before the "sales tax holiday" handled when returned during the "sales tax holiday?"

If a customer purchases an item before the "sales tax holiday" and later exchanges the item during the "sales tax holiday" for the same eligible item (different size, different color, etc.) or

receives credit on the purchase of a different item, no additional tax will be due if the item received in the exchange is one that qualifies for the exemption.

(10) How will the "sales tax holiday" apply to rain checks?

The issuance of a rain check during the "sales tax holiday" will not qualify an item for the exemption if the item is actually purchased after the "sales tax holiday."

Items that qualify for the exemption which are purchased during the "sales tax holiday" using a rain check will be exempt from sales or use tax regardless of when the rain check was issued.

(11) Does an item placed on lay-away during the "sales tax holiday" qualify for the exemption?

No. The exemption provision specifically states that the exemption does not apply to "a sale of an item placed on lay-away or similar deferred payment and delivery plan however described."

(12) Does the "sales tax holiday" apply to local sales and use taxes collected by the department on behalf of counties that have imposed such local sales and use taxes?

Yes, provided the item sold is one qualifying for the exemption and the sale occurs during the three days of the "sales tax holiday" as discussed in Question #3.

(13) How should retailers report sales exempt during the "sales tax holiday?"

With respect to the return filed for August, all sales, whether or not exempt from the tax, should be reported on Line 1 of the Worksheet on the back of the sales and use tax return. Sales of items exempt from the tax during the "sales tax holiday" should be listed as one of the deductions in the space provided on Line 4 of the Worksheet on Form ST-3. On Forms ST-388 and ST-403, the deduction for sales exempt under the "sales tax holiday" should be listed as "Sales Tax Holiday Exemption" as one of the deductions on Line 4 of the Worksheet.

(14) Can retailers elect not to participate in the "sales tax holiday" and collect the sales tax from their customers on eligible items during the three days of the "sales tax holiday?"

No. Retailers may only "pass on" to their customers sales taxes that are legally due.

The department may revoke any and all licenses issued by the department and held by a retailer if the retailer passes on sales taxes that are not legally due.

(15) Is the sale of an exempt item on a "90 days same as cash" basis exempt from tax if purchased during the "sales tax holiday?"

Yes, provided the contract obligating the buyer to pay is signed during the "sales tax holiday" and delivery of the item is made during the "sales tax holiday" or the retailer accepts the order during the "sales tax holiday" for immediate shipment, even if delivery is made after the "sales tax holiday." See Question #3 for what is meant by "immediate shipment."

If you have any questions, you may call the Department of Revenue at (803) 898-5788 or e-mail the Department at **salestax@sctax.org**.

SOUTH CAROLINA DEPARTMENT OF REVENUE

s/Burnet R. Maybank III
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June 29 _____, 2005
Columbia, South Carolina