

SC REVENUE RULING # 05-4

- SUBJECT:** Trailers, Semitrailers and Pole Trailers  
(Sales and Use)
- EFFECTIVE DATE:** Applies to all periods open under the statute.
- SUPERSEDES:** All previous documents and any oral directives in conflict herewith.
- REFERENCES:** S. C. Code Ann. Section 12-36-910 (2000 & Supp. 2004)  
S. C. Code Ann. Section 12-36-1310 (2000 & Supp. 2004)  
S. C. Code Ann. Section 12-36-60 (2000)  
S. C. Code Ann. Section 12-36-930 (2000)  
S. C. Code Ann. Section 12-36-2110(A) 2000)  
S. C. Code Ann. Section 12-36-2120 (2000 & Supp. 2004)  
S. C. Code Ann. Section 12-36-120 (2000)  
S. C. Code Ann. Section 56-3-20 (Supp.2004)
- 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and is not binding on the public.** It is, however, the Department's position and is binding on agency personnel until superseded or modified by a change in statute, regulation, court decision, or advisory opinion.

**Introduction:**

Over the years, the Department has addressed various issues concerning the application of the sales and use tax to trailers, semitrailers, and pole trailers. Specifically, these issues concern the maximum tax provisions, local sales and use taxes, and sales to nonresidents. Many of these issues have been addressed in prior advisory opinions. However, this advisory opinion will address these issues in one place for the convenience of taxpayers who sell or purchase trailers, semitrailers, and pole trailers.

## **Law and Discussion:**

### **General Provisions:**

Code Section 12-36-910(A) imposes the sales tax and states:

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.

Code Section 12-36-1310(A) imposes the use tax and states:

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.

Code Section 12-36-60 defines the term “tangible personal property” and states:

“Tangible personal property” means personal property which may be seen, weighed, measured, felt, touched, or which is in any other manner perceptible to the senses. It also includes services and intangibles, including communications, laundry and related services, furnishing of accommodations and sales of electricity, the sale or use of which is subject to tax under this chapter and does not include stocks, notes, bonds, mortgages, or other evidences of debt. Tangible personal property does not include the transmission of computer database information by a cooperative service when the database information has been assembled by and for the exclusive use of the members of the cooperative service.

Based on the above, sales at retail of trailers, semitrailers, and pole trailers are subject to the South Carolina sales and use tax.

Note: Code Section 12-36-1310(C) allows a credit against the use tax for any sales or use tax due and paid in another state.

### **Sales to Nonresidents:**

Code Section 12-36-930 concerns the sales of motor vehicles and certain trailers and semitrailers to nonresidents, and reads:

(A) The tax imposed by this article on sales of motor vehicles, as defined in Section 56-1-10, trailers, semitrailers, or pole trailers of a type to be registered and licensed, to a resident of another state, is the lesser of:

- (1) an amount equal to the sales tax, which would be imposed in the purchasers state of residence, or
- (2) the tax that would be imposed under this chapter.

(B) At the time of the sale, the seller shall:

- (1) obtain from the purchaser a notarized statement of the purchaser's intent to license the vehicle, within ten days, in the purchaser's state of residence; and
- (2) retain a signed copy of the notarized statement. The purchaser shall give a copy to the sales tax agency of the purchaser's state of residence.

(C) No tax is due if a nonresident will not receive credit in his state of residence for sales tax paid to this State under this section.

With respect to the notarized statement of the purchaser's intent to license the vehicle in the purchaser's state of residence (Form ST-385), the Department stated the following in a footnote in SC Revenue Ruling #99-3:

It should be noted that some trailers and semitrailers, while of a type to be registered and licensed in South Carolina, are not required to be registered and licensed in the purchaser's state of residence. The provisions of Code Section 12-36-930 are still applicable to such trailers and semitrailers; however, the notarized statement required by the statute should be modified to state that, while the trailer or semitrailer is not required to be licensed to the purchaser's state of residence, the situs of the trailer or semitrailer will be the purchaser's state of residence and not in South Carolina.

Therefore, the provisions of Code Section 12-36-930 that require a trailer or semitrailer to be "of a type to be registered and licensed" apply if the trailer or semitrailer is of a type required to be registered and licensed in South Carolina or the purchaser's state of residence. If the trailer or semitrailer is not of a type required to be registered and licensed in South Carolina or the purchaser's state of residence, then the provisions of Code Section 12-36-930 do not apply and the sale is treated the same as a sale to a resident of South Carolina.

#### Maximum Tax Provisions:

Code Section 12-36-2110(A) establishes a maximum tax for motor vehicles and certain trailers and semitrailers, and states:

(A) The maximum tax imposed by this chapter is three hundred dollars for each sale made after June 30, 1984, or lease executed after August 31, 1985, of each:

- (1) aircraft, including unassembled aircraft which is to be assembled by the purchaser, but not items to be added to the unassembled aircraft;
- (2) motor vehicle;
- (3) motorcycle;
- (4) boat;
- (5) trailer or semitrailer, pulled by a truck tractor, as defined in Section 56-3-20, and horse trailers but not including house trailers or campers as defined in Section 56-3-710;

(6) recreational vehicle, including tent campers, travel trailer, park model, park trailer, motor home, and fifth wheel; or

(7) self-propelled light construction equipment with compatible attachments limited to a maximum of one hundred sixty net engine horsepower.

In the case of a lease, the total tax rate required by law applies on each payment until the total tax paid equals three hundred dollars. Nothing in this section prohibits a taxpayer from paying the total tax due at the time of execution of the lease, or with any payment under the lease. To qualify for the tax limitation provided by this section, a lease must be in writing and specifically state the term of, and remain in force for, a period in excess of ninety continuous days. (Emphasis added.)

#### Local Sales and Use Taxes:

All statutes and laws concerning local sales and use taxes administered and collected by the Department on behalf of local jurisdictions state that sales of tangible personal property subject to a maximum tax under Chapter 36 of Title 12 are not subject to the local sales and use tax.

#### Farm Trailers and Semitrailers:

Certain farm trailers and semitrailers may be exempt from the tax under Code Section 12-36-2120(16) if used in the “planting, cultivating, or harvesting” of farm crops for sale in their “original state of production or preparation for sale.” See Revenue Ruling #99-3 for more details.

#### Wholesale Sales and Out-of-State Sales:

The provisions of Code Section 12-36-120(1) concerning “wholesale sales” and Code Section 12-36-2120(36) concerning out-of-state sales apply to sales of trailers, semitrailers, and pole trailers.

Code Section 12-36-120 includes in the definition of a non-taxable “wholesale sale” a sale of “tangible personal property to licensed retail merchants, jobbers, dealers, or wholesalers for resale, and do not include sales to users or consumers not for resale.”

Code Section 12-36-2120(36) exempts from the tax sales 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.”

#### Other Exempt Sales:

Sales of trailers, semitrailers and pole trailers, not listed above, may be exempt under other provisions of Code Sections 12-36-2120 and 12-36-2130 – the statutes within the sales and use tax law that list the exempt retail sales (e.g., sales to the federal government, sales of depreciable assets used in the operation of a business pursuant to the sale of the business). See Code Sections 12-36-2120 and 12-36-2130 for more details.

Definitions:

Finally, the Department has consistently applied the following definitions from the motor vehicle code in addressing issues concerning sales of trailers, semitrailers, and pole trailers. Specifically, Code Section 56-3-20 provides the following definitions of motor vehicle, vehicle, trailer, semitrailer, pole trailer, and truck tractor:

Motor Vehicle - Every vehicle which is self-propelled, except mopeds, and every vehicle which is propelled by electric power obtained from overhead trolley wires, but not operated upon rails.

Vehicle - Every device in, upon or by which any person or property is or may be transported or drawn upon a highway, except devices moved by human power or used exclusively upon stationary rails or tracks.

Trailer - Every vehicle with or without motive power, other than a pole trailer, designed for carrying persons or property and for being drawn by a motor vehicle and so constructed that no part of its weight rests upon the towing vehicle.

Semitrailer - Every vehicle with or without motive power, other than a pole trailer, designed for carrying persons or property and for being drawn by a motor vehicle and so constructed that some part of its weight and that of its load rests upon or is carried by another vehicle.

Pole Trailer - Every vehicle without motive power designed to be drawn by another vehicle and attached to the towing vehicle by means of a reach or pole or by being boomed or otherwise secured to the towing vehicle and ordinarily used for transporting long or irregularly shaped loads such as poles, pipes or structural members capable, generally, of sustaining themselves as beams between the supporting connections.

Truck Tractor - Every motor vehicle designed and used primarily for drawing other vehicles and not so constructed as to carry a load other than a part of the weight of the vehicle and load so drawn.

With respect to the term “nonresident,” the Department has consistently defined a “nonresident” as “any individual, firm, copartnership, association, receiver, trustee or any other group or combination acting as a unit (not including, however, corporations) whose primary residence or place of business is in a state other than South Carolina, and foreign corporations doing no business in this state. Foreign corporations operating business establishments in South Carolina or otherwise doing business in this state, and corporations organized and existing under the laws of this state are residents for purposes of this exemption.” See SC Information Letter #03-6 and prior versions of this information letter.

## **Conclusions:**

Based on the above, the following represents the Department's longstanding opinion with respect to the application of the sales and use tax law to sales of trailers, semitrailers, and pole trailers:

### **SALES TO RESIDENTS OF SOUTH CAROLINA**

Sales of trailers, semitrailers and pole trailers to residents of South Carolina are subject to the sales and use tax. If a South Carolina resident purchases a trailer, semitrailer or pole trailer from a South Carolina retailer, then the sale is subject to the sales tax. If a South Carolina resident travels out of state and purchases a trailer, semitrailer or pole trailer from a retailer in another state, then the sale is subject to the use tax; however, the purchaser is allowed a credit against the use tax for any sales or use tax due and paid in the other state.

See discussion below on maximum sales and use taxes imposed. See Code Sections 12-36-910 and 12-36-1310.

### **SALES TO RESIDENTS OF OTHER STATES**

Sales of trailers, semitrailers and pole trailers to a resident of another state that are to be registered and licensed in the purchaser's state of residence are taxed at the lesser of the (1) sales tax which the purchaser would have paid had the trailer, semitrailer, or pole trailer been purchased in his state of residence or (2) sales tax that a South Carolina resident would pay on the purchase. See discussion below on maximum sales and use taxes imposed. See Code Sections 12-36-910 and 12-36-930.

Note: The provisions of Code Section 12-36-930 that require a trailer or semitrailer to be "of a type to be registered and licensed" apply if the trailer or semitrailer is of a type required to be registered and licensed in South Carolina or the purchaser's state of residence. If the trailer or semitrailer is not of a type required to be registered and licensed in South Carolina or the purchaser's state of residence, then the provisions of Code Section 12-36-930 do not apply and the sale is treated the same as a sale to a resident of South Carolina.

Sales of trailers, semitrailers and pole trailers to a resident of another state that are to be registered and licensed in South Carolina (e.g., a trailer maintained and used at a nonresident's South Carolina vacation home) are subject to South Carolina sales and use tax at the rate that a South Carolina resident would pay on the purchase. See discussion below on maximum sales and use taxes imposed. See Code Sections 12-36-910, 12-36-1310, and 12-36-930.

### **SALES TO RESIDENTS OF POSSESSIONS OF THE UNITED STATES OR OTHER COUNTRIES**

Sales of trailers, semitrailers and pole trailers to residents of possessions of the United States or other countries are subject to South Carolina sales and use tax at the rate that a South Carolina resident would pay on the purchase. See discussion below on maximum sales and use taxes imposed. See Code Sections 12-36-910, 12-36-1310, and 12-36-930.

## **TRAILERS AND SEMITRAILERS SUBJECT TO THE MAXIMUM TAX**

The South Carolina sales and use tax imposed may not exceed \$300.00 on sales of the following trailers and semitrailers:

1. Recreational trailers, including tent campers, travel trailers, park trailers, and fifth wheels.
2. Trailers and semitrailers capable of being pulled only by a truck tractor.
3. Horse trailers.

The above trailers and semitrailers, which are entitled to the \$300.00 cap if sold, are also entitled to the \$300.00 cap when leased, provided the lease is in writing and specifically states a term of, and remains in force for, a period in excess of ninety continuous days. See Code Section 12-36-2110.

The above trailers and semitrailers that are entitled to the \$300.00 cap when sold or leased are not subject to any local sales and use tax administered and collected by the Department on behalf of a local jurisdiction. See the various code sections and legislation enacting local sales and use taxes.

## **TRAILERS, SEMITRAILERS, AND POLE TRAILERS NOT SUBJECT TO THE MAXIMUM TAX**

The South Carolina sales and use tax imposed may exceed \$300.00 on sales of:

1. Trailers and semitrailers capable of being pulled by vehicles other than a truck tractor, such as a “utility” trailer or semitrailer.
2. Pole trailers.
3. Boat trailers. See Code Section 12-36-2110 and SC Revenue Ruling #92-12.

The above trailers, semitrailers, and pole trailers, that are not entitled to the \$300.00 cap when sold or leased, are subject to any local sales and use tax that is administered and collected by the Department on behalf of a local jurisdiction. See the various code sections and legislation enacting local sales and use taxes administered and collected by the Department.

## **SALES NOT SUBJECT TO SALES AND USE TAX**

1. Sales of trailers, semitrailers and pole trailers that are delivered out of state by the dealer at the purchaser's direction. See Code Section 12-36-2120(36).
2. Sales of trailers, semitrailers and pole trailers to dealers for resale. The liability for the sales tax will shift from the seller to the purchaser if the seller receives a properly completed Form ST-8A, “Resale Certificate,” from the purchaser. See Code Section 12-36-120(1) and SC Revenue Procedure #98-2.

3. Sales of trailers and semitrailers used in the “planting, cultivating, or harvesting” of farm crops for sale in their “original state of production or preparation for sale.” See Code Section 12-36-2120(16) and SC Revenue Ruling #99-3 for more details.
4. Sales of trailers, semitrailers and pole trailers, not listed above, which are exempt under other provisions of Code Sections 12-36-2120 and 12-36-2130 – the statutes within the sales and use tax law that list the exempt retail sales (e.g., sales to the federal government, sales of depreciable assets used in the operation of a business pursuant to the sale of the business). See Code Sections 12-36-2120 and 12-36-2130 for more details.

SOUTH CAROLINA DEPARTMENT OF REVENUE

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

April 5, 2005  
Columbia, South Carolina