
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 #06-7

SUBJECT: One-Time Thanksgiving Sales Tax Holiday
(State Sales and Use Tax)

EFFECTIVE DATE: Effective for 48 hours beginning 12:01 a.m. on November 24, 2006 (Friday) and ending at twelve midnight on November 25, 2006 (Saturday).

REFERENCES: Act 388 of 2006, Part I, Section 4E (Enacted June 22, 2006)

AUTHORITY: S. C. Code Ann. Section 12-4-320 (2000)
S. C. Code Ann. Section 1-23-10(4) (Supp. 2005)
SC Revenue Procedure #05-2

SCOPE: The purpose of a Revenue Ruling is to provide guidance to the public and to Department personnel. It is an advisory opinion issued to apply principles of tax law to a set of facts or general category of taxpayers. It is the Department's position until superseded or modified by a change in statute, regulation, court decision, or another Departmental advisory opinion.

LAW:

Act 388 of 2006, Part I, Section 4E, enacted June 22, 2006, creates a one-time sales tax holiday for November 24th and November 25th of 2006, and states:

The imposition of the sales, use, and casual excise taxes imposed pursuant to Chapter 36 of Title 12 of the 1976 Code, the South Carolina Sales and Use Tax Act, is suspended with respect to otherwise taxable events occurring on November 24 and 25, 2006. The suspension provided pursuant to this paragraph does not apply to the sales tax on accommodations and other charges imposed pursuant to Section [12-36-920](#) of the 1976 Code, nor does the suspension apply to any local sales or use tax administered by the South Carolina Department of Revenue.

Based on the above, the following are important points to remember concerning the one-time sales tax holiday set for November 24th and November 25th of 2006:

1. The one-time sales tax holiday applies to all purchases except accommodations and additional guest charges upon which the tax is imposed under Code Section 12-36-920.
2. The one-time sales tax holiday applies to purchases made by businesses, government agencies, and nonprofit organizations as well as purchases made by individuals.
3. The one-time sales tax holiday only applies to the state sales and use tax, the state casual excise tax and the Catawba Indian tribal sales tax. The one-time sales tax holiday does not apply to sales and use taxes administered and collected by the Department of Revenue on behalf of counties and school districts or to local hospitality taxes and local accommodations taxes collected directly by any county or municipality.

QUESTIONS AND ANSWERS:

The following answers represent the department's opinion with respect to various issues concerning the one-time "sales tax holiday" set for November 24th and November 25th of 2006:

(1) Will the department publish a list of those articles qualifying for the exemption from the state sales and use tax?

There is no need to publish a list of items exempt from the state sales and use tax during "sales tax holiday" set for November 24th and November 25th of 2006. This one-time "sales tax holiday" applies to all purchases, except for purchases of accommodations or the payment of additional guest charges subject to the sales tax under Code Section 12-36-920.

(2) When is this one-time "sales tax holiday?"

This one-time "sales tax holiday" will last for 48 hours and begin at 12:01 a.m. on November 24, 2006 (Friday) and end at twelve midnight on November 25, 2006 (Saturday).

(3) Must the item being sold be delivered to the customer during the one-time "sales tax holiday" set for November 24th and November 25th of 2006 in order for the exemption to apply?

An item will be exempt from the state sales and use tax during the one-time "sales tax holiday" set for November 24th and November 25th of 2006 if:

(a) the item is both delivered to and paid for (cash, check, debit card, credit card or any other binding obligation to pay) by the customer during the two days of the "sales tax holiday"; or

(b) the item is ordered and paid for (cash, check, debit card, credit card or any other binding obligation to pay) 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 (1) local sales and use taxes collected by the department on behalf of counties and school districts and (2) the Catawba tribal sales tax collected by the department on behalf of Catawba Indian tribal government?

The "sales tax holiday" does not apply to local sales and use taxes; therefore, local sales and use taxes administered and collected by the Department of Revenue on behalf of counties and school districts still apply to purchases made during the two days of the "sales tax holiday."

The "sales tax holiday" does apply to the Catawba tribal sales tax that is administered and collected by the Department of Revenue on behalf of the Catawba Indian tribal government. See Code Section 27-16-130(H) which states that the South Carolina sales and use tax laws, regulations and rulings apply to the Catawba tribal sales tax.

(5) Does the "sales tax holiday" apply to local hospitality taxes and local accommodations taxes collected directly by any county or municipality that has imposed such local taxes?

No, local hospitality taxes and local accommodations taxes collected directly by any county or municipality are still applicable to purchases made during the two days of the "sales tax holiday."

(6) Does this one-time "sales tax holiday" apply to purchases made by businesses, government agencies, and nonprofit organizations as well as purchases made by individuals?

Yes, provided the sale occurs during the two days of the "sales tax holiday" as discussed in Question #3. (Local taxes are applicable. See Questions #4 and #5.)

(7) Does this one-time "sales tax holiday" apply to sales made by mail order, Internet or similar retailers?

Yes, provided the sale occurs during the two days of the "sales tax holiday" as discussed in Question #3. (Local taxes are applicable. See Questions #4 and #5.)

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

Yes, provided the sale occurs during the two days of the "sales tax holiday" as discussed in Question #3. (Local taxes are applicable. See Questions #4 and #5.)

(9) 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; therefore, all delivery charges associated with that sale are exempt from the state sales and use tax. For example, if a retailer sells furniture during the sales tax holiday for \$12,000 and also charges \$200 to deliver the furniture, then the entire charge of \$12,200 is exempt from the state sales or use tax. (Local taxes are applicable. See Questions #4 and #5.)

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

All alteration charges associated with a 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 state sales or use tax. (Local taxes are applicable. See Questions #4 and #5.)

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

If a customer purchases an 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, state and local sales or use tax will apply to the sale of the newly purchased item.

(12) 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.

(13) 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 state sales or use tax regardless of when the rain check was issued. (Local taxes are applicable. See Questions #4 and #5.)

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

No. Since the item placed on lay-away during the "sales tax holiday" is reserved for future delivery and is not for immediate delivery as provided for in Question #3, the purchase does not qualify for the one-time "sales tax holiday."

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

With respect to the return filed for November, 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 as a result of the "sales tax holiday" on November 24th and November 25th of 2006 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.

However, in order to properly report any local sales and use taxes due for November of 2006 (see Question #13), retailers will need to "add back" their "sales tax holiday" sales on Line 1 of the "Local Sales and Use Tax Worksheet" on Form ST-389. Exhibit "A" is a "modified" "Local Sales and Use Tax Worksheet" containing an additional line (Line 1.a.) that should assist retailers in properly reporting any local sales and use taxes due for November of 2006.

(16) 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.

In addition, the retailer may be held liable for a penalty equal to one hundred fifty percent of the amount of tax collected that exceeds the amount authorized or required to be collected from the purchaser under the sales tax or use tax. (See Act No. 386 of 2006, Section 2.)

(17) Is the sale of an item on a "90 days same as cash" basis exempt from state sales and use 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."

(18) Does this one-time "sales tax holiday" apply to sales of electricity, gas, laundry services, communication services (e.g., cable television services, satellite programming services, prepaid wireless calling arrangements, fax transmissions, etc.¹), and warranty, maintenance and similar service contracts?"

¹ See SC Revenue Ruling #04-15 for more detailed information as to the types of communication services that are subject to the sales and use tax.

Sales of electricity, gas, laundry services, communication services (e.g., cable television services, satellite programming services, prepaid wireless calling arrangements, fax transmissions, etc.²), and warranty, maintenance and similar service contracts will be exempt or taxable during the one-time "sales tax holiday" set for November 24th and November 25th of 2006 as follows:

(a) Sales of electricity, gas and communication services (e.g., cable television services, satellite programming services) that are regularly billed on a monthly basis will be exempt from the state sales and use tax during two days of the one-time "sales tax holiday" set for November 24th and November 25th of 2006.

If it is not practical to measure or otherwise determine the specific amount of electricity, gas or communication services provided to a customer during the two days of the "sales tax holiday," a reasonable method of providing the customer the benefits of the "sales tax holiday" should be used. For example, the seller may calculate the amount of service used during the "sales tax holiday" by a ratio of the two days of the sales tax holiday (provided the service is active during the two days) to the total number of days in the billing cycle.

(b) Sales of gas and communication services (e.g., fax transmissions) that are not regularly billed on a monthly basis will be exempt during the one-time "sales tax holiday" set for November 24th and November 25th of 2006 if the service is both provided to, and paid for by, the customer during the two days of the "sales tax holiday."

(c) Sales of laundry service will be exempt during the one-time "sales tax holiday" set for November 24th and November 25th of 2006 if the items to be cleaned are provided to the drycleaner and the order is accepted by the drycleaner during the "sales tax holiday" for immediate cleaning and immediate delivery, even if delivery is made after the "sales tax holiday."

(d) Sales of warranty, maintenance and similar service contracts will be exempt during the one-time "sales tax holiday" set for November 24th and November 25th of 2006 if the contract is signed and becomes effective during the "sales tax holiday." Please note that subsequent renewals of a contract after the "sales tax holiday" are not exempt.

If the contract is not signed, or does not become effective, during the "sales tax holiday," then the sale of the warranty, maintenance and similar service contract is not exempt, unless otherwise exempt under the law.

Note: See SC Revenue Ruling #05-12 for additional information concerning the application of the tax to warranty, maintenance and similar service contracts.

(Note: In the above cases where the transaction is exempt from the state sales and use tax under the one-time "sales tax holiday," local taxes are still applicable. See Questions #4 and #5.)

² See SC Revenue Ruling #04-15 for more detailed information as to the types of communication services that are subject to the sales and use tax.

(19) Does this one-time "sales tax holiday" apply to the casual excise tax and purchases of motor vehicles, motorcycles, boats, motors, and airplanes from a non-retailer?

Yes; however, since the casual excise tax is imposed on the issuance of a certificate of title or other proof of ownership, the one-time "sales tax holiday" only applies to the casual excise tax and purchases of motor vehicles, motorcycles, boats, motors, and airplanes from a non-retailer if the certificate of title or other proof of ownership is applied for during the two days of the holiday. Since state offices will be closed during the two days of the one-time "sales tax holiday," an application for a certificate of title or other proof of ownership for a purchase from a non-retailer will be exempt from the state casual excise tax if the application is properly completed and signed; is deposited in the United States mails in an envelope with proper postage; is addressed to the appropriate office of the Department of Motor Vehicles or the Department of Natural Resources; and the postmark is legible and falls on either November 24th or 25th.

Note: If a motor vehicle, motorcycle, boat, motor, and airplane is purchased from a retailer, the sales or use tax applies and the one-time "sales tax holiday" only applies if the sale occurs during the two days of the "sales tax holiday" as discussed in Question #3.

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/Ray N. Stevens
Ray N. Stevens, Director

September 27, 2006
Columbia, South Carolina

Exhibit "A"

**LOCAL TAX WORKSHEET FOR NOVEMBER 2006
(If Applicable)**

- 1. **Net Sales and Purchases** (From line 6 of Sales and Use Tax Worksheet) 1. _____
- 1.a. **Sales Tax Holiday Sales** (From line 4 Deductions of Sales and Use Tax Worksheet) 1.a. _____
- 2. **Catawba Tribal Sales** (From line 4b Deductions of Sales and Use Tax Worksheet) 2. _____
- 3. **Total Sales and Purchases** (Add lines 1, 1a, and 2) 3. _____
- 4. **Local Tax Allowable Deductions**

Column A Type of Deduction	Column B Amount of Deduction
a. <u>Catawba Sales less than \$100</u>	\$ _____
b. <u>Sales Not Subject to Local Tax</u>	\$ _____
_____	\$ _____
_____	\$ _____

- 5. **Total Allowable Deductions** (Total Column B) 5. _____
- 6. **Total Net Taxable Local Sales (Line 3 minus line 5)** 6. _____

Should agree with ST-389, Page 3, line 1, column A.

Note: When your sales, purchases and withdrawals are made or delivered into a locality With more than one local tax, the total on Form ST-389 will not agree with line 6.

Note: This form does not address the local taxes on sales that are collected directly by the counties and municipalities (sales of accommodations and prepared meals). It only addresses the general local taxes collected by the Department of Revenue on behalf of the counties, school districts, and the Catawba Indian tribal government.

**CAPITAL PROJECT, CATAWBA TRIBAL, SCHOOL DISTRICT, TRANSPORTATION AND PROPERTY OFFSET
NUMERICAL CODES**

As a result of specific legislation, certain counties and jurisdictions now impose additional sales and use taxes, which are identified as Capital Project, Catawba Tribal, School District, Transportation and Property Offset. These taxes are required to be reported based upon the county or jurisdiction in which the sales consummates. (Usually this is where the business is located, but it can be the place of delivery or physical presence by acceptance of the goods sold, if different from the business location.) For your convenience, the counties and jurisdictions that currently impose these additional taxes are listed on form ST-389 with their assigned four digit processing code.
