
State of South Carolina
Department of Revenue
301 Gervais Street, P. O. Box 12265, Columbia, South Carolina 29211
Website Address: <http://www.sctax.org>

SC REVENUE RULING #07-5

SUBJECT: Use Tax Information for Individuals, Businesses and Nonprofits
(Use Tax)

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

SUPERSEDES: SC Revenue Ruling #06-2 and all previous advisory opinions and any oral directives in conflict herewith.

REFERENCES: Article 13, Chapter 36 of Title 12 (2000; Supp 2006)

AUTHORITY: S. C. Code Ann. Section 12-4-320 (Supp. 2000)
S. C. Code Ann. Section 1-23-10(4) (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 It is the Department's position until superseded or modified by a change in statute, regulation, court decision, or another Departmental advisory opinion.

Introduction:

Contrary to popular belief, catalog, Internet and other out-of-state purchases from out-of-state retailers are subject to the South Carolina sales and use tax. Making a purchase from a retailer outside of South Carolina's borders, whether done physically, electronically or by telephone, does not exempt the purchaser from paying the tax.

Merchandise bought from a retailer outside of South Carolina for use, storage or consumption in this state is subject to the "use" tax if an equal amount of sales tax was not due and paid in the other state at the time of purchase. The statewide use tax is 6%, but residents in counties with a local option or one of the special local taxes have to pay an additional local use tax.

The following questions and answers are part of the Department's continuing efforts to educate the public about the use tax and a person's responsibilities in reporting and paying this tax. These questions and answers are intended to provide general information. For more specific information, including information about exemptions and maximum tax items, visit the Department's website at www.sctax.org.

Questions and Answers:

1. What is the use tax?

The use tax is a tax that applies to purchases of tangible personal property from out-of-state retailers for use, storage or consumption in South Carolina, and includes purchases from retailers made via the Internet (retailers' websites and retailers' sales on auction sites), through out-of-state catalog companies, or when visiting another state or another country.

2. What is the rate for the use tax?

The tax rate for the use tax is the same as the sales tax. This rate is determined by where the tangible personal property will be used, stored or consumed, regardless of where the sale actually takes place. Therefore, the tax rate for the use tax will be the 6% state rate plus the applicable local use tax rate for the location where the tangible personal property will be used, stored or consumed.

Note: Information concerning local sales and use tax rates can be found on the Department's website (www.sctax.org).

3. What is the difference between the sales tax and the use tax?

The sales tax is imposed on all retailers within South Carolina and applies to all retail sales of tangible personal property within the state. Retailers making sales of tangible personal property in South Carolina are required to remit the sales tax to the Department of Revenue.

The use tax is imposed upon the consumer (purchaser) of tangible personal property that is purchased at retail for use, storage, or consumption in South Carolina. The use tax applies to purchases from out-of-state retailers. The use tax has been around since 1951 – the same year the sales tax law was adopted in South Carolina. For information concerning the remittance of the use tax to the Department of Revenue, see Questions #4 through #9.

Both the sales tax and the use tax also apply to leases or rentals at retail of tangible personal property (e.g., tuxedos, office equipment, etc.).

It is important to note that either the South Carolina sales tax or the South Carolina use tax applies to a single transaction, but not both.

4. Why would an out-of-state retailer charge a purchaser the South Carolina sales tax or use tax?

An out-of-state retailer must obtain a retail license and remit either the South Carolina sales tax or use tax on retail sales shipped into South Carolina if the out-of-state retailer has a physical presence in South Carolina.

Examples of physical presence include, but are not limited to, maintaining (temporarily or permanently) an office, warehouse, store, other place of business, or property of any kind in the state or having (temporarily or permanently) an agent, representative (including delivery personnel and independent contractors acting on behalf of the retailer), salesman, or employee operating within the state.

An out-of-state retailer that is not required to obtain a retail license and remit the South Carolina sales or use tax may, however, voluntarily obtain the retail license and collect and remit the tax to South Carolina.

5. If an out-of-state retailer who has obtained a retail license charges the purchaser for the South Carolina sales or use tax on tangible personal property delivered into South Carolina, is the purchaser still liable for the use tax?

If the purchaser has a receipt showing the entire South Carolina (state and local) sales tax or use tax has been paid to a licensed out-of-state retailer, then the purchaser is no longer liable for the South Carolina use tax.

6. If a South Carolina purchaser buys merchandise via an Internet or mail-order catalog retailer that has not obtained a South Carolina retail license and therefore does not charge the purchaser for the South Carolina sales or use tax on tangible personal property delivered into South Carolina, is the purchaser liable for the use tax?

Yes.

7. If a South Carolina purchaser travels to another state and purchases tangible personal property from a retailer in the other state for use, storage or consumption in South Carolina, does the South Carolina purchaser still owe the South Carolina use tax on the purchase if the other state's sales tax was paid to the retailer at the time of purchase?

The South Carolina purchaser would only owe the use tax on the difference between the sales tax paid in the other state and the use tax due in South Carolina. In other words, if the state and local sales or use tax due and paid in another state is equal to or greater than the state and local use tax due in South Carolina, then no use tax is due in South Carolina.

Example #1: If a South Carolina purchaser paid \$15.00 sales tax in the other state and the total state and local use tax due in South Carolina was \$18.00, then the South Carolina purchaser would be allowed a credit for the \$15.00 and would only owe a South Carolina use tax of \$3.00.

Example #2: If a South Carolina purchaser paid \$21.00 sales tax in the other state and the total state and local use tax due in South Carolina was \$18.00, then the South Carolina purchaser would be allowed a credit for the \$21.00 and no use tax would be due in South Carolina since the \$21.00 paid exceeds the \$18.00 due in South Carolina. However, the purchaser is not entitled to a refund of the difference between the \$21.00 paid in the other state and the \$18.00 due in South Carolina.

Note: Each transaction must stand on its own. In other words, an “excess” paid to another state on one purchase transaction, as shown in Example #2, cannot be used to offset any South Carolina use tax that may be due on another purchase transaction.

8. If a sale by a South Carolina retailer is exempt from the South Carolina sales tax, is the purchase of the same product from an out-of-state retailer exempt from the South Carolina use tax?

Yes. For example, prescription medicine purchased from a South Carolina pharmacy upon presentation of the prescription written by the physician is exempt from the South Carolina sales tax. The same purchase from an out-of-state mail-order pharmacy is exempt from the South Carolina use tax.

9. How can a person report and pay the use tax to the SC Department of Revenue?

The South Carolina use tax is reported and remitted as follows:

If the purchaser is an individual, then this purchaser may:

a) report and remit the use tax on the South Carolina Individual Income Tax Return (Form SC 1040 or Form SC 1040A).

b) report and remit the use tax on a Form UT-3 use tax return. This return can be filed after the purchase or may be filed for a specific period (month, calendar quarter, etc.)

c) report and remit the use tax on a vehicle, airplane or boat purchased from an out-of-state retailer (1) by filing a Form ST-236 with the Department of Revenue or (2) at the time a vehicle or boat is registered, titled or licensed with the Department of Motor Vehicles or the Department of Natural Resources. (Note: Motor vehicles, motorcycles, boats, motors and airplanes purchased from a non-retailer are subject to a separate tax called the “casual excise tax” at the time registered, titled or licensed with one of these agencies. A taxpayer may also report and remit this tax by filing a Form ST-236 with the Department of Revenue.) For information on the “casual excise tax,” see Code Sections 12-36-1710 through 12-36-1740.

If the purchaser is a business or nonprofit organization that is purchasing the tangible personal property for its own use (and not for resale), then this purchaser may:

a) report and remit the use tax on its sales and use tax return if the purchaser is a licensed South Carolina retailer. The use tax is reported on the line for “Out-of-State Purchases Subject to Use Tax” on the Worksheet(s) on the SC sales and use tax return (Forms ST-3, ST-3EZ, ST-388, ST-403, ST-455 and ST-501, plus local tax addendum ST-389).

Note: Certain nonprofit organizations that sell tangible personal property are not required to be licensed as retailers since their sales are exempt from the sales tax under Code Section 12-36-2120(41). These nonprofit organizations should report the use tax as discussed below in item “b” through item “d.”

b) obtain a purchaser’s certificate of registration and report and remit the use tax on its use tax return if the purchaser is not a licensed South Carolina retailer but is a business or nonprofit organization that regularly purchases tangible personal property for its use from an out-of-state retailer. The use tax is reported on the line for “Out-of-State Purchases Subject to Use Tax” on the Worksheet(s) on the SC sales and use tax return (Forms ST-3, ST-3EZ, ST-403, ST-455, and ST-501 plus local tax addendum ST-389).

Note: Persons needing to obtain a purchaser’s certificate of registration in order to file tax returns and remit the use tax on a periodic basis may do so by completing Form SCTC -111 or by contacting the Department’s License and Registration Section at (803) 896-1350.

c) report and remit the use tax on a Form UT-3 use tax return if the purchaser is a business or nonprofit organization that is not a licensed South Carolina retailer and does not regularly purchases tangible personal property for its own use from an out-of-state retailer.

d) report and remit the use tax on a vehicle, airplane or boat purchased from an out-of-state retailer (1) by filing a Form ST-236 with the Department of Revenue or (2) at the time a vehicle or boat is registered, titled or licensed with the Department of Motor Vehicles or the Department of Natural Resources. (Note: Motor vehicles, motorcycles, boats, motors and airplanes purchased from a non-retailer are subject to a separate tax called the “casual excise tax” at the time registered, titled or licensed with one of these agencies. A taxpayer may also report and remit this tax by filing a Form ST-236 with the Department of Revenue.) For information on the “casual excise tax,” see Code Sections 12-36-1710 through 12-36-1740.

10. If a person fails to pay the use tax to the Department in a timely manner, is the person subject to interest and penalties?

Yes. All applicable interest and penalties authorized under the law may be assessed by the Department if the person fails to pay any use tax due in a timely manner.

11. Does the Department obtain information from other states on purchases made by South Carolina residents from out-of-state retailers?

Yes. The Department exchanges information with other states as well as regional and national tax administration associations and the federal government (e.g., information obtained from audits of retailers conducted by other states; information obtained from the U.S. Customs Service; etc.). The Department uses this information to issue assessments to purchasers for use taxes due (plus interest and penalties).

12. If a person fails to pay the use tax due on a purchase, are there time limitations for the assessment of the use tax due?

The law allows the Department to assess any use taxes due (plus interest and penalties) within:

(1) 36 months of when the return was filed or due to be filed (whichever is later)
or

(2) 12 months of receiving information from other states, regional and national tax administration or the federal government, but no later than 72 months after the last day the use tax may have been paid without penalty.

However, the Department may assess use taxes due (plus interest and penalties) beyond these time limits if (1) there is fraudulent intent to evade the taxes, (2) the taxpayer failed to file a return, (3) there is a 20% understatement of the total of all taxes required to be shown on the return, or (4) as otherwise allowed under the law.

13. Who can a person contact for additional questions about the use tax?

Persons having questions about the use tax should call the Department at (803) 898-5788 or send an e-mail to usetax@sctax.org.

SOUTH CAROLINA DEPARTMENT OF REVENUE

s/Ray N. Stevens
Ray N. Stevens, Director

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Columbia, South Carolina