

SC REVENUE RULING #08-5

SUBJECT: Purchases by Individuals 85 Years of Age and Older
(Sales and 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: Chapter 36 of Title 12 (2000; Supp. 2007)

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 It is the Department's position until superseded or modified by a change in statute, regulation, court decision, or another Departmental advisory opinion.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

South Carolina imposes a general sales and use tax rate of 6% and a sales tax rate of 7% on rentals of accommodations. The Department of Revenue also administers and collects local sales and use taxes on behalf of local jurisdictions. These local sales and use taxes collected by the Department of Revenue are presently imposed at rates of 1%, 1.5% and 2%, depending on the county. Some municipalities and counties also impose a local hospitality tax (prepared meals and food) and a local accommodations tax, which they directly administer and collect.

The South Carolina sales and use tax law provides a lower state tax rate for purchases by individuals 85 years of age and older for their personal use. This advisory opinion will provide guidance as to the requirements of the law and its application to various situations.

This document is not intended to address every issue an individual 85 years of age or older may encounter. It is intended to only provide general guidance as to everyday purchases and to make individuals 85 years of age or older aware of the lower state sales and use tax rate available to them.

Note: The lower sales and use tax rate for individuals 85 years of age and older, sometimes referred to as the “1% exclusion” for individuals 85 years of age and older, does not apply to local taxes administered and collected by the Department of Revenue on behalf of local jurisdictions or to local sales taxes administered and collected directly by a city or county (i.e., the local hospitality tax or fee and the local accommodations tax or fee).

Executive Summary

The state sales and use tax applies to purchases at retail of tangible personal property. The sales and use tax law also applies to certain services, such as communication services, laundry and drycleaning services, electricity, and accommodations.

An individual who is 85 years of age or older is entitled to a lower state sales and use tax rate, sometimes referred to as the “1% exclusion,” for items that individual purchases for his or her own personal use. In other words, a person who is 85 years of age or older would pay a state sales tax of 5% instead of 6% (any local sales and use taxes would still apply) on:

- (1) purchases of tangible personal property (food, clothing, furniture, appliances, etc.); and,
- (2) purchases of communications services, such as phone service (long distance calls are already exempt), cable television service, satellite programming services (radio, emergency, television) as well as other communication services.

An individual who is 85 years of age or older would pay a state sales tax of 6% instead of 7% (any local sales and use taxes would still apply) on purchases of accommodations services (the rental charge for a hotel room or condominium) and would pay a state sales tax of 5% instead of 6% on any additional guest charges (charges for maid service, in-room movies, and other amenities) charged by the place providing the accommodations.

The law granting this exclusion for individuals 85 years of age or older does not require the purchaser to complete any form with the Department of Revenue. It only requires that (1) the individual purchases the tangible personal property himself or herself, (2) that the tangible personal property is purchased for his or her own personal use, (3) that the purchaser requests the exclusion at the time of the sale, and (4) that the purchaser provides the retailer with proof of age.

Finally, purchases by an individual who is 85 years of age or older are not entitled to the lower state sales and use tax rate if the purchase is not for the personal use of the individual purchaser who is 85 years of age or older. For example, purchases for a business use or as a gift for another individual are not entitled to the lower state sales and use tax rate.

See the attached exhibits for a chart that provides general guidance (Exhibit “A”) and for the code sections that authorize the “1% exclusion,” or lower state sales and use tax rate, for individuals 85 years of age or older (Exhibit “B”).

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Procedure for Obtaining the Lower State Sales and Use Tax Rate

The law granting the lower state sales and use tax rate for individuals 85 years of age or older does not require the purchaser to complete any form with the Department of Revenue. It only requires that:

- (1) the individual purchases the tangible personal property himself or herself;
- (2) that the tangible personal property is purchased for his or her own personal use;
- (3) that the purchaser requests the exclusion at the time of the sale; and,
- (4) that the purchaser provides the retailer with proof of age.

Questions and Answers:

General Purchases

1. If an individual 85 years of age or older purchases tangible personal property at retail for his or her personal use, what tax rate is applicable to the purchase?

Except as discussed in subsequent questions, an individual 85 years of age or older who purchases tangible personal property at retail for his or her personal use would pay a state sales and use tax rate of 5% (instead of the 6% applicable to all other persons), plus any applicable local sales and use tax.

Examples of purchases of tangible personal property subject to this 5% rate (instead of the 6% applicable to all other persons) include, but are not limited to:

Clothing

Clothing accessories, such as handbags, scarves, hats and hosiery

Appliances, such as refrigerators, washers, dryers, microwave ovens

Electronics, such as televisions, radios, computers, and computer accessories

Household items, such as draperies and rugs

Furniture, such as sofas, chairs, tables, and lamps

Jewelry and Watches

Cosmetics

Household supplies, such as cleaning supplies, light bulbs, toiletries

Food Purchases

2. If an individual 85 years of age or older purchases unprepared food at retail for his or her personal use, what tax rate is applicable to the purchase?

Purchases of unprepared food products (the type that can be purchased with food stamps) by all individuals are exempt from the state sales and use tax. However, such purchases are still subject to any applicable local sales and use tax.

The following are examples of foods eligible and not eligible for the exemption from the state sales and use tax.

Foods eligible for the state sales and use tax exemption include:

Any food intended to be eaten at home by people, including snacks, beverages and seasonings

Seeds and plants intended to grow food (not birdseed or seeds to grow flowers)

Cold items, which may include salads or sandwiches, intended to be eaten at home by people and that are not considered “prepared meals or food” as discussed below

Items which are not eligible for state sales and use tax exemption and are, therefore, subject to the state sales and use tax at the state rate of 5% for individuals 85 years of age or older (instead of the 6% applicable to all other persons) are:

Alcoholic beverages, such as beer, wine, or liquor

Hot beverages ready-to-drink such as coffee

Tobacco

Hot foods ready to eat

Foods designed to be heated in the store

Hot and cold food to be eaten at a lunch counter, in a dining area or anywhere else in the store or in a nearby area such as a mall food court or that are considered “prepared meals or food” as discussed above

Vitamins and medicines (Note: Medicines sold by prescription are exempt from the state and local sales and use taxes.)

Pet food

Any non-food items such as tissue, soap or other household goods

The term “unprepared” food does not include (1) meals and food sold by a restaurant, cafeteria, lunch wagon, or other similar places or businesses engaged in the business of selling prepared meals or food for immediate consumption; (2) meals prepared and delivered by a meal delivery service; (3) meals sold to or at congregate meal sites; or (4) meals and food sold at a grocery store, convenience store or any other similar store for the purpose of eating at or near the store, such as meals and food sold with eating utensils (e.g., plates, knives, forks, spoons, cups, napkins) provided by the seller. These meals and foods are considered “prepared meals or food” and are not eligible for the state sales and use tax exemption and are subject to the state sales and use tax at the state rate of 5% for individuals 85 years of age or older (instead of the 6% applicable to all other persons).

For more information on the state exemption for purchases of unprepared foods, see SC Revenue Ruling #07-4. Also, the Department of Revenue has proposed a regulation to provide guidance as to the application of the exemption for unprepared foods. This regulation is presently being reviewed (during the 2008 session) by the General Assembly. If the proposed regulation is approved by the General Assembly, it will become an official regulation of the Department. The proposed regulation can be found at the Department's website.

3. If an individual 85 years of age or older purchases a prepared food or meal at retail at a restaurant or similar place for his or her personal use, what tax rate is applicable to the purchase?

An individual 85 years of age or older who purchases a prepared food or meal at retail at a restaurant or similar place for his or her personal use would pay a state sales and use tax rate of 5% (instead of the 6% applicable to all other persons), plus any applicable local sales and use tax.

Note: In addition to the 6% state tax (5% for individuals 85 years of age and older) and any local tax administered and collected by the Department of Revenue on behalf of local jurisdictions, some cities and counties impose a local hospitality tax of up to 2% on prepared meals and beverages.

Communications Services (Telephone, Cable TV, Etc.)

4. If an individual 85 years of age or older purchases communication services at retail such as telephone services, cable televisions services, and satellite television, radio or emergency services for his or her personal use, what tax rate is applicable to the purchase?

An individual 85 years of age or older who purchases communication services at retail such as telephone services, cable televisions services, and satellite television, radio or emergency services for his or her personal use would pay a state sales and use tax rate of 5% (instead of the 6% applicable to all other persons), plus any applicable local sales and use tax.

Examples of purchases of communication services subject to this 5% rate (instead of the 6% applicable to all other persons) include, but are not limited to:

Telephone services

Paging Services

Answering Services

Cable Television Services

Satellite Programming Services and Other Programming Transmission Services (includes, but is not limited to, emergency communication services and television, radio, music or other programming services)

Fax Transmission Services

Database Access Transmission Services (On-Line Information Services), such as charges to access an individual website (e.g., monthly charges to access a sports website)

Note: Charges for long distance calls are exempt from the sales and use tax.

For more detailed information on communication services subject to the tax or exempt from the tax, see SC Revenue Ruling #06-8.

Residential Electricity Purchases

5. If an individual 85 years of age or older purchases electricity at retail for residential purposes for his or her personal use, what tax rate is applicable to the purchase?

Purchases of electricity at retail for residential purposes are exempt from state and local sales and use taxes.

Laundry and Drycleaning Purchases

6. If an individual 85 years of age or older purchases laundry and drycleaning services at retail for his or her personal use, what tax rate is applicable to the purchase?

An individual 85 years of age or older who purchases laundry and drycleaning services at retail for his or her personal use would pay a state sales and use tax rate of 5% (instead of the 6% applicable to all other persons), plus any applicable local sales and use tax.

Note: Under a separate provision of law, some drycleaning facilities must also charge a 1% environmental surcharge on charges for laundry and drycleaning services.

Motor Vehicle Purchases, Leases and Rentals

7. If an individual 85 years of age or older purchases at retail a motor vehicle for his or her personal use, what tax rate is applicable to the purchase?

An individual 85 years of age or older who purchases at retail a motor vehicle for his or her personal use would pay a state sales and use tax rate of 4% (instead of the 5% applicable to all other persons purchasing this maximum tax item).

The 4% tax rate is applied to the sales price of the motor vehicle and if the tax as calculated exceeds the \$300 maximum tax the individual 85 years of age or older would only pay \$300.

Note: Local sales and use taxes do not apply to purchases of a motor vehicle subject to the \$300 maximum tax.

8. If an individual 85 years of age or older leases at retail a motor vehicle for more than ninety continuous days for his or her personal use, what tax rate is applicable to the lease?

An individual 85 years of age or older who leases at retail a motor vehicle for more than ninety continuous days for his or her personal use would pay a state sales and use tax rate of 4% (instead of the 5% applicable to all other persons leasing a motor vehicle for more than ninety continuous) and would pay no more than the \$300 maximum tax, provided the lease was in writing, stated a term of more than ninety continuous days, and remained in force for more than ninety continuous days. Local sales and use taxes do not apply to leases of motor vehicles that meet these requirements.

The 4% tax rate is applied to each lease payment until the total tax paid equals \$300; however, the law allows the entire \$300 to be paid at the time the lease is executed.

Note: If the lease is not in writing, or does not state a term of more than ninety continuous days, or does not remain in force for more than ninety continuous days, then the individual 85 years of age or older would pay a state sales and use tax rate of 5% (instead of the 6% applicable to all other persons) and the applicable local sales and use taxes. In addition, the \$300 maximum tax would not apply to the lease.

9. If an individual 85 years of age or older rents at retail a motor vehicle for ninety or less continuous days for his or her personal use, what tax rate is applicable to the rental?

An individual 85 years of age or older who rents at retail a motor vehicle for ninety or less continuous days for his or her personal use would pay a state sales and use tax rate of 5% (instead of the 6% applicable to all other persons), plus any applicable local sales and use tax.

Note: Under a separate provision of law, rental companies in the business of renting private passenger vehicles for 31 days or less must also charge a 5% rental surcharge.

Sleeping Accommodations (Hotels, Motels, Condominium Rentals)

10. If an individual 85 years of age or older purchases at retail sleeping accommodations for his or her personal use, what tax rate is applicable to the purchase?

Charges for accommodations at hotels, motels, campgrounds and any other place where sleeping accommodations are furnished are subject to the sales tax; however, charges for sleeping accommodations supplied to the same person for a period of ninety or more continuous days are not subject to the sales tax on accommodations.

An individual 85 years of age or older who purchases sleeping accommodation for less than ninety continuous days for his or her personal use would pay a state sales and use

tax rate of 6% (instead of the 7% applicable to all other persons), plus any applicable local sales and use tax.

Note: In addition to the 7% state tax (6% for individuals 85 years of age and older) and any local tax administered and collected by the Department of Revenue on behalf of local jurisdictions, some cities and counties impose a local accommodations tax of up to 3% on sleeping accommodations.

For additional information on the sales tax imposed upon accommodations, see SC Regulation 117-307.

11. If an individual 85 years of age or older pays “additional guest charges” that were for his or her personal use at a place that furnishes sleeping accommodations subject to the sales tax on accommodations, what tax rate is applicable to these “additional guest charges?”

“Additional guest charges,” at a place that furnishes sleeping accommodations subject to the sales tax on accommodations, are subject to the sales tax. “Additional guest charges” include, but are not limited to:

- room service;
- amenities;
- entertainment;
- special items in promotional tourist packages;
- laundry and dry cleaning services;
- in-room movies;
- telephone charges;
- rentals of meeting rooms; and
- other guest services.

For additional information on the “additional guest charges,” see SC Regulation 117-307.

An individual 85 years of age or older pays “additional guest charges” that were for his or her personal use at a place that furnishes sleeping accommodations subject to the sales tax on accommodations would pay a state sales and use tax rate of 5% (instead of the 6% applicable to all other persons), plus any applicable local sales and use tax.

Medicines

12. If an individual 85 years of age or older purchases at retail prescription medicines from a pharmacy (as a result of a physician's prescription) for his or her personal use, what tax rate is applicable to the purchase?

Purchases at retail of prescription medicines from a pharmacy (as a result of a physician's prescription) are exempt from state and local sales and use taxes.

13. If an individual 85 years of age or older purchases at retail over-the-counter medicines (e.g., aspirin) for his or her personal use, what tax rate is applicable to the purchase?

An individual 85 years of age or older who purchases at retail over-the-counter medicines (e.g., aspirin) for his or her personal use would pay a state sales and use tax rate of 5% (instead of the 6% applicable to all other persons), plus any applicable local sales and use tax.

Note: Under the state sales and use tax law, medicines administered or provided to a patient by a hospital, nursing home or at a doctor's office are considered used and consumed by the hospital, nursing home or doctor in providing professional medical services. Therefore, purchases by hospitals, nursing homes and doctors of medicine for use in providing professional medical services are subject to the tax at the full state rate (unless otherwise exempt under the law), regardless of the age of the patient.

Diabetic Supplies

14. If an individual 85 years of age or older who is a diabetic purchases at retail hypodermic needles, insulin, alcohol swabs, blood sugar testing strips, monolet lancets, dextrometer supplies, blood glucose meters, and other similar diabetic supplies under the written authorization and direction of a physician for his or her personal use, what tax rate is applicable to the purchase?

Purchases by a diabetic of hypodermic needles, insulin, alcohol swabs, blood sugar testing strips, monolet lancets, dextrometer supplies, blood glucose meters, and other similar diabetic supplies under the written authorization and direction of a physician are exempt from state and local sales and use taxes.

Gifts

15. If an individual 85 years of age or older purchases a gift for another individual, what tax rate is applicable to the purchase?

An individual 85 years of age or older who purchases a gift for another individual would pay a state sales and use tax rate of 6%, plus any applicable local sales and use tax, since the item purchased is not for the personal use of the purchaser.

16. If an individual 85 years of age or older receives a gift purchased by another individual, what tax rate is applicable to the purchase?

An individual who purchases a gift for an individual 85 years of age or older would pay a state sales and use tax rate of 6%, plus any applicable local sales and use tax, since the item was not purchased by an individual 85 years of age or older for his or her own personal use.

Requirement for Retailers

17. What responsibilities does a retailer have with respect to the law that provides the lower state sales and use tax rate for sales to individuals 85 years of age or older?

Retailers are required to post a sign at each entrance or each cash register which advises individuals eighty-five years of age or older of the lower state sales and use tax rate available to them.

Note: The signs posted will generally refer to a “one percent exclusion” from the state sales and use tax when advising individuals 85 years of age or older of the lower state sales and use tax rate available under the law.

18. What if a retailer fails to post the sign?

A retailer who fails to post the required signs is subject to a penalty of up to \$100.00 for each month or portion of the month the sign or signs are not posted. Continued failure to post the signs after a written warning from the Department of Revenue may result in revocation of the retailer's retail license.

Note: Failure to post the signs does not give rise to a cause of action by an individual eighty-five years of age or older who failed to request the exclusion and provide proof of age at the time of sale.

Refunds

19. If an individual 85 years of age or older fails to request the lower state sales and use tax rate and therefore does not receive the lower tax rate at the time of purchase, may that individual subsequently request a refund of the 1% state tax?

No. The lower state rate is only available if an individual 85 years of age or older requests the lower state sales and use tax rate at the time of purchase.

20. If an individual 85 years of age or older fails to provide proof of age at the time of purchase and therefore does not receive the lower state sales and use tax rate, may that individual subsequently request a refund of the 1% state tax?

No. The lower state rate is only available if an individual 85 years of age or older provides proof of age at the time of purchase.

Note: As stated above, this document is not intended to address every issue an individual 85 years of age or older may encounter. It is intended to only provide general guidance as to everyday purchases and to make individuals 85 years of age or older aware of the lower state sales and use tax rate available to them. The attached chart, Exhibit “A,” should also provide general guidance.

In addition, Exhibit “B” contains the various code sections that authorize the “1% exclusion,” or lower state sales and use tax rate, for individuals 85 years of age or older.

For general information about the sales and use tax, visit the Department’s website at www.sctax.org.

SOUTH CAROLINA DEPARTMENT OF REVENUE

s/Ray N. Stevens

Ray N. Stevens, Director

April 25, 2008
Columbia, South Carolina

Exhibit A

The attached chart is intended only as general guidance and is not intended to address every issue an individual 85 years of age or older may encounter or to address all the intricacies of the state sales and use tax law.

Any purchases that fall within the requirements of an exemption provided in the law are not subject to the tax. (e.g., purchases of clothing or computers during the annual sales tax holiday)

STATE SALES AND USE TAX RATES FOR
PURCHASES BY INDIVIDUALS
85 YEARS OF AGE AND OLDER

Type of Purchase	Examples	State Rate	State Rate for Individuals 85 Years of Age and Older	Local Sales and Use Tax
General Items (Except as noted below)	clothes, household items, cosmetics, appliances, electronics, cleaning supplies, etc.	6%	5%	Applicable
Unprepared Food	grocery staples, canned goods, meat, milk, breads, soft drinks, etc.	0%	0%	Applicable, unless otherwise exempt under the local law
Prepared Food	restaurant foods and meals	6%	5%	Applicable
Communications Services	local telephone service, cable TV service	6%	5%	Applicable
Medicines	prescription medicines sold by prescription	0%	0%	0%
	over-the-counter medicines	6%	5%	Applicable
Residential Electricity and Gas	-----	0%	0%	0%
Items Subject to the \$300 Maximum Tax	cars, boats	5%, but no more than \$300	4%, but no more than \$300	0%
Accommodations Charges	room charges	7%	6%	Applicable
	additional guest charges	6%	5%	Applicable
Drycleaning	store pick-up or home delivery	6%	5%	Applicable

Exhibit B

The attached exhibit contains the various code sections that authorize the “1% exclusion” for individuals 85 years of age or older.

SECTION 12-36-2620 - SALES AND USE TAXES COMPOSED OF TWO COMPONENTS.

The taxes imposed by Sections 12-36-910, 12-36-920(B), 12-36-1310, and 12-36-1320 are composed of two taxes as follows:

- (1) a four percent tax, which must be credited as provided in Section 59-21-1010(A), and
- (2) a one percent tax, which must be credited as provided in Section 59-21-1010(B). The one percent tax specified in this item does not apply to sales to an individual eighty-five years of age or older purchasing tangible personal property for his own personal use, if at the time of sale, the individual requests the one percent exclusion from tax and provides the retailer with proof of age.

SECTION 12-36-2630 - SEVEN PERCENT SALES TAX ON ACCOMMODATIONS FOR TRANSIENTS COMPOSED OF THREE COMPONENTS.

The tax imposed by Section 12-36-920(A) is composed of three taxes as follows:

- (1) a four percent tax which must be credited as provided in Section 59-21-1010(A); and
- (2) a one percent tax, which must be credited as provided in Section 59-21-1010(B). The one percent tax specified in this item (2) does not apply to sales to an individual eighty-five years of age or older purchasing tangible personal property for his own personal use, if at the time of sale, the individual requests the one percent exclusion from tax and provides the retailer with proof of age; and
- (3) a two percent local accommodations tax, which must be credited to the political subdivisions of the State in accordance with Chapter 4 of Title 6. The proceeds of this tax, less the department's actual increase in the cost of administration and the expenses of the Tourism Expenditure Review Committee established pursuant to Section 6-4-35, must be remitted quarterly to the municipality or the county in which it is collected. The two percent tax provided by this item may not be increased except upon approval of two-thirds of the membership of each House of the General Assembly. However, the tax may be decreased or repealed by a simple majority of the membership of each House of the General Assembly.

The tax imposed by Section 12-36-920 must be billed and paid in a single item listed as tax, without itemizing the taxes referred to in this section.

SECTION 12-36-2640 - CASUAL EXCISE TAX COMPOSED OF TWO COMPONENTS.

The tax imposed by Section 12-36-1710 is composed of two taxes as follows:

- (1) a four percent tax which must be credited to the general fund of the State; and
- (2) a one percent tax which must be credited as provided in Section 59-21-1010(B). The one percent tax specified in this item does not apply to the issuance of certificates of title or other proof of ownership to an individual eighty-five years of age or older titling or registering a motor vehicle, motorcycle, boat, motor, or airplane for his own personal use, if at the time of sale, the individual requests the one percent exclusion from tax and provides the retailer with proof of age.