

SC REVENUE RULING 08-8

SUBJECT: Collection of Casual Excise Tax and Use Tax on Sale of a Motor Vehicle, Motorcycle, Boat, Motor, Airplane, Trailer, etc.

EFFECTIVE DATE: June 1, 2007

SUPERSEDES: SC Revenue Ruling #04-13, SC Revenue Ruling #95-12 and all previous advisory opinions and any oral directive 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) (Supp. 2007)
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 It is the Department's position until superseded or modified by a change in statute, regulation, court decision, or another Departmental advisory opinion.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

In general, a South Carolina retailer collects and remits sales tax to the Department upon the sale of a motor vehicle, motorcycle, boat, motor, airplane, trailer, semitrailer, or pole trailers. At times, however, the property is purchased from an individual, non-retailer, or a retailer located outside of South Carolina who is not responsible for collecting sales or use tax.

The purpose of this document is to update a previously issued advisory opinion, SC Revenue Ruling #04-13, so as to provide detailed information concerning the application of the casual excise tax or use tax, if any, on motor vehicles, motorcycles, boats, motors, airplanes, trailers, etc. where sales tax has not previously been paid.

For easy reference, this advisory opinion is arranged by major categories to assist in explaining the general tax provisions and the types of transfers that are not subject to casual excise tax, use tax, maximum tax, and/or sales tax. These categories are:

1. Casual Excise Tax

2. Use Tax
3. Maximum Tax
4. Transfers of Boats, Motors, and Boat Trailers
5. Special Provision for Persons 85 and Older
6. Local Sales and Use Taxes
7. Definitions

CASUAL EXCISE TAX - GENERAL PROVISIONS

1. What is the casual excise tax and when is it imposed on sales of motor vehicles, motorcycles, boats, motors, or airplanes?

The casual excise tax is imposed upon the issuance of a certificate of title or other proof of ownership for every (1) motor vehicle, (2) motorcycle, (3) boat, (4) motor, or (5) airplane required to be registered, titled, or licensed. It applies only to the last sale before the application for title. (See Code Sections 12-36-1710(A) and 12-36-1720.) The casual excise tax does not apply to trailers (including boat trailers), semitrailers, or pole trailers.

2. What is the casual excise tax rate?

The tax is 5% of the “fair market value” of the motor vehicle, motorcycle, airplane, and boat¹ purchased. (See Question 3 for the definition of “fair market value.”) However, Code Section 12-36-2110 provides that the casual excise tax on sales of motor vehicles, motorcycles, boats, or airplanes may not exceed the \$300 maximum tax on these transactions. (See Questions 11 and 12 concerning the maximum tax.)

The tax is 6% of the “fair market value” of a motor that is purchased alone (not permanently attached to the boat)². (See Question 3 for the definition of “fair market value” and Question 13 for more information concerning the purchase of boats, motors, and boat trailers, either individually or as a package.)

Note: Any transaction subject to the maximum tax of \$300 is taxed at a state rate of 5% and is not subject to any local tax administered and collected by the Department of Revenue on behalf of local jurisdictions. Any transaction not subject to the maximum tax of \$300 is taxed at a state rate of 6% and is subject to any local tax administered and collected by the Department of Revenue on behalf of local jurisdictions.

3. On what amount is the casual excise tax computed?

The casual excise tax is computed on the “fair market value” which is defined as (1) the total purchase price (i.e., price agreed upon by the buyer and seller) less any trade-in

¹ A boat sold with a motor permanently attached to it is subject to the casual excise tax at the lesser of 5% of the fair market value or \$300. A boat motor is considered permanently attached to a boat if it is (1) an inboard motor or (2) an outboard motor sold mounted to the boat, connected to a permanent steering mechanism, and included in the price of the boat.

² See footnote #1.

allowance of the motor vehicle, motorcycle, boat, motor, or airplane, or (2) the valuation shown in a national publication adopted by the Department. The valuation shown in a national publication of used values, however, is used only in cases of necessity, for example, when closely held stock is exchanged for a motor vehicle.

The price agreed upon by the buyer and seller, less any trade in, includes: (1) the amount of cash paid, (2) the amount of any loan assumed, (3) the value of any property exchanges, or (4) the amount paid at delinquent property tax sales.

NOTE: This conclusion is based upon the following legal analysis:

Code Section 12-36-1710(A) imposes the casual excise tax on the fair market value of the motor vehicle, motorcycle, boat, motor, or airplane. The term “fair market value” is defined in Code Section 12-36-1710(C) as “the total purchase price less any trade-in, or the valuation shown in a national publication of used values adopted by the department, less any trade-in.” The term “total purchase price” is defined in Code Section 12-36-1710(D) as “the price of a motor vehicle, motorcycle, boat, motor, or airplane agreed upon by the buyer and seller with an allowance for a trade-in, if applicable.”

In looking at the definition of fair market value above, the determination must be made as to when the casual excise tax is imposed on the total purchase price and when it is imposed on the valuation shown in a national publication. The court, in *Investors Premium Corp. v. South Carolina Tax Commission*, 193 S.E. 2d 642 (1973), addressed a similar issue. The court stated that “the word ‘or’ used in a statute marks an alternative, and ordinarily means one or the other of two, but not both. We are of the opinion that... ‘or’, while marking an alternative, must also be construed as introducing a substitute. That is, it does not set up an alternative of choice available to the Tax Commission but allows an alternative of necessity. We can find no logic in a purely equal alternative, and yet we must give some significance to the ‘or’ and the alternative it provides.”

4. How is the casual excise tax remitted?

Department of Revenue Form ST-236, “Casual or Use Excise Tax Return,” is used to compute the casual excise tax or use tax due on the transfer of a motor vehicle, motorcycle, boat, motor, or airplane. The tax may be paid at the Department, or at a Department of Motor Vehicles office when registering a motor vehicle or motorcycle, or at the Department of Natural Resources when registering a boat or motor. Form ST-236 can be obtained from the Department’s website at www.sctax.org. Information on the Department of Motor Vehicles or the Department of Natural Resources can be found at www.myscgov.com.

SPECIFIC TRANSFERS NOT SUBJECT TO THE CASUAL EXCISE TAX

5. What types of transfers are not subject to the casual excise tax?

The following transfers of motor vehicles, motorcycles, boats, motors, or airplanes are excluded from the casual excise tax pursuant to Code Section 12-36-1710 and 12-36-1720:

- a. transfers to members of the immediate family (*i.e.*, spouse, parent, child, sister, brother, grandparent, and grandchild);
- b. transfers to a legal heir, legatee, or distributee;
- c. transfers from an individual to a partnership upon formation, or from a stockholder to a corporation upon formation;
- d. transfers to a licensed motor vehicle dealer or licensed motorcycle dealer for the purpose of resale;
- e. transfers to a financial institution for the purpose of resale;
- f. transfers to any other secured party, as a result of repossession, for the purpose of resale;
- g. transfers to the seller or secured party in partial payment (*e.g.*, trade-ins);
- h. transfers where a sales or use tax has been paid on the transaction necessitating the transfer (this includes sales tax paid to an auctioneer licensed as a retailer);
- i. transfers of motor vehicles, motorcycles, or airplanes specifically exempted by Section 12-36-2120 from the sales or use tax (see Question 6 below);
- j. transfers that are a gift or prize (see Question 6 below); and,
- k. vessels registered and documented by the United States Commissioner of Customs.

6. What transfers are exempt from the casual excise tax because they are exempt from sales or use tax under Code Section 12-36-2120?

Below are examples of transfers that are exempt from sales and use tax under Code Section 12-36-2120 and, therefore, exempt from the casual excise tax. These examples illustrate the more frequent methods of transferring a motor vehicle, motorcycle, boat, motor, airplane, or trailer; see Code Section 12-36-2120 for a complete list of exemptions.

Sales to Nonresident Military Personnel -

Motor vehicles, as described below, or motorcycles sold to military personnel stationed in South Carolina by reason of orders of the U.S. Armed Forces who are not residents of South Carolina are exempt from South Carolina sales and use tax, and casual excise tax, provided (1) a copy of Form ST-178, "Nonresident Military Tax Exemption Certificate" is furnished to the seller or (2) a leave and earnings statement from the appropriate department of the armed services is provided that designates the state of residence of the buyer. This information must be furnished within ten days of the sale.

This exemption applies only to the sale of motor vehicles that are primarily designed to carry passengers, such as cars, passenger vans, and sports utility vehicles (*e.g.*, Broncos, Explorers, Troopers). Sales and use tax or the casual excise tax (whichever is applicable) is due on sales of motor vehicles designed primarily to carry cargo, such as trucks or cargo vans.

Sales to the Federal Government -

Sales of a motor vehicle, motorcycle, boat, motor, or airplane to the federal government are exempt from sales or use taxes under Code Section 12-36-2120(2) and also exempt from the casual excise tax. When agents of the federal government purchase one of these items on behalf of the federal government, the purchase is not subject to sales and use taxes providing the credit of the agent is not advanced or risked, the purchase order discloses the purchase is made on behalf of the federal government, title to the property vests in the federal government, and the vendor is paid directly from the federal government.

Sales by the Federal Government -

Sales of a motor vehicle, motorcycle, boat, motor, or airplane by the federal government are exempt from sales and use taxes under Code Section 12-36-2120(1) and exempt from the casual excise tax.

Sales by, or Sales to, Federal Credit Unions –

Sales of a motor vehicle, motorcycle, boat, motor, or airplane by, or sales of such property to, a federal credit union are exempt from sales and use taxes and the casual excise tax. See South Carolina Attorney General Opinion #S-OAG-59 wherein it was concluded that federally chartered credit unions are instrumentalities of the federal government.

Transfers to and from an Insurance Company -

Vehicles that have been declared a total loss and are transferred to or from an insurance company in settlement of a claim are exempt from casual excise tax and sales and use taxes under Code Section 56-19-480. (See also SC Revenue Ruling #93-13.)

Sales of Farm Machinery -

Airplanes used in planting, cultivating or harvesting farm crops (*e.g.*, crop dusting) are exempt from South Carolina sales and use tax and casual excise tax pursuant to Code Section 12-36-2120(16). The tax, however, applies to automobiles or trucks used in farming.

Gifts and Prizes -

The sales and use tax and casual excise tax do not apply to property transferred as a gift or prize since there has not been a “sale” to the recipient. A gift includes a motor vehicle, motorcycle, boat, motor, or airplane transferred by “love and affection”. (See Code Section 12-36-1720 and SC Revenue Ruling #92-10³.)

Sale of Entire Business –

The casual excise tax and sales and use tax do not apply to depreciable assets, used in the operation of a business when the entire business is sold by the owner, pursuant to a written contract, and the purchaser continues operation of the business. For example, if ABC Company, a retail florist business, sells its entire business (*e.g.*, the building, inventory, delivery trucks, goodwill, etc.) to XYZ Company, a retail gift store business who will operate the floral business it purchased, then there is no sales and use tax due on the sale of the delivery trucks. If however, ABC Company sold only a portion of its assets (*e.g.*, all of its delivery trucks), then ABC Company is liable for the sales tax due on the sale of its delivery trucks. See Code Sections 12-36-1710(B)(3), 12-36-2120(42), and SC Revenue Advisory Bulletin #01-1.

USE TAX - GENERAL PROVISIONS

7. What is the use tax and when is it imposed on sales of motor vehicles, motorcycles, boats, motors, airplanes, trailers, semitrailers, or pole trailers?

The use tax is imposed on the storage, use, or consumption in South Carolina of motor vehicles, motorcycles, boats, motors, airplanes, trailers, semitrailers, or pole trailers purchased from retailers who are not engaged in business in South Carolina. (See Code Section 12-36-1310.)

8. What is the use tax rate?

The use tax is 5% of the sales price of the motor vehicle, motorcycle, boat⁴, airplane, recreational vehicle, a trailer or semitrailer capable of being pulled only by a truck tractor, or any other vehicle subject to the maximum tax. However, Code Section 12-36-2110 provides that the use tax may not exceed \$300 on these transactions. (See Questions 11 and 12 concerning the maximum tax.)

³ While the conclusions in SC Revenue Ruling #90-10 are still valid, it should be noted that SC Revenue Ruling #90-10 was issued prior to the increase in the general state sales and use tax rate from 5% to 6%. When reviewing SC Revenue Ruling #90-10, taxpayers should keep in mind the state tax rates discussed in Question 2 and Question 8 of this document.

⁴ A boat sold with a motor permanently attached to it is subject to the use tax at the lesser of 5% of the sales price or \$300. A boat motor is considered permanently attached to a boat if it is (1) an inboard motor or (2) an outboard motor sold mounted to the boat, connected to a permanent steering mechanism, and included in the price of the boat.

The use tax is 6% of the sales price of a motor that is purchased alone (not permanently attached to the boat)⁵, pole trailer, trailer or semitrailer capable of being pulled by vehicles other than a truck tractor, boat trailer, or any other vehicle not subject to the maximum tax.

See Question 13 for more information concerning the purchase of boats, motors, and boat trailers, either individually or as a package.

Note: Any transaction subject to the maximum tax of \$300 is taxed at a state rate of 5% and is not subject to any local tax administered and collected by the Department of Revenue on behalf of local jurisdictions. Any transaction not subject to the maximum tax of \$300 is taxed at a state rate of 6% and is subject to any local tax administered and collected by the Department of Revenue on behalf of local jurisdictions.

9. Is a credit allowed for state and local sales or use tax paid in other states?

Yes, South Carolina allows a credit against the use tax due in South Carolina for the state and local sales or use tax due and paid in another state provided the purchaser has proof that the sales or use tax was due and paid. See Code Section 12-36-1310(C).

SPECIFIC TRANSFERS NOT SUBJECT TO THE USE TAX

10. What sales or purchases of motor vehicles, motorcycles, boats, motors, airplanes, trailers, semitrailers, or pole trailers are not subject to the use tax?

The following transfers of motor vehicles, motorcycles, boats, motors, airplanes, trailers, semitrailers, or pole trailers are not subject to the use tax:

- a. Purchases from another state that have been substantially used outside South Carolina by the purchaser before being titled, registered or licensed in South Carolina. The purchaser must show proof that the property was titled, registered or licensed in another state. (See Code Section 12-36-1310 and Regulation 117-320.1.)
- b. Purchases in which the purchaser has a receipt from an out of state seller or retailer authorized to collect South Carolina's use tax that shows the seller has collected the tax from the purchaser. (See Code Section 12-36-1330.)
- c. Sales to dealers for resale. The liability for 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 Sections 12-36-120, 12-36-1370, and SC Revenue Procedure #08-2.)

⁵ A boat sold with a motor permanently attached to it is subject to the use tax at the lesser of 5% of the sales price or \$300. A boat motor is considered permanently attached to a boat if it is (1) an inboard motor or (2) an outboard motor sold mounted to the boat, connected to a permanent steering mechanism, and included in the price of the boat. .

- d. Sales to nonresident military personnel, sales to, and sales by, the federal government or federal credit union, transfers to or from an insurance company of vehicles declared a total loss, sales of airplanes used in farming as provided in Question 6, sales of an entire business as provided in Code Section 12-36-2120(42), and any sale otherwise exempt under Code Section 12-36-2120.

THE MAXIMUM TAX - GENERAL PROVISIONS

11. What transfers are subject to a maximum tax?

Code Section 12-36-2110 provides that the maximum tax imposed by Chapter 36 (Sales and Use Tax Act) is \$300 for sales or leases of each:

- a. aircraft;
- b. motor vehicle; (SC Revenue Advisory Bulletin #00-3 concluded that all terrain vehicles and legend race cars are not motor vehicles subject to the \$300 maximum tax; transfers of such property are subject to the State 6% sales tax and any applicable local taxes.)
- c. motorcycle (on-road or off-road);
- d. boat (See Question 13 for a complete explanation.) Note: SC Revenue Ruling #04-10 concluded that the sale of personal watercraft, such as a jet ski, is the transfer of a “boat” subject to the \$300 maximum tax;
- e. trailer or semitrailer capable of being pulled only by a truck tractor;
- f. recreational vehicle, including tent campers, travel trailers, park trailers, motor homes and fifth wheels;
- g. self-propelled light construction equipment with compatible attachments limited to a maximum of 160 net engine horsepower; and,
- h. horse trailers.

Code Section 12-36-2110 provides that the maximum tax imposed is \$300 for **each sale**. In order for a lease to qualify for the \$300 maximum tax, a lease must specifically state the term of, and remain in force for, a period in excess of 90 continuous days.

NOTE: The local sales and use taxes do not apply to these sales that are subject to the \$300 maximum tax.

12. What transfers may exceed the \$300 maximum tax?

The maximum tax does not apply to sales or leases of:

- a. trailers or semitrailers capable of being pulled by vehicles other than a truck tractor;
- b. pole trailers;
- c. boat trailers (See Question 13 for a complete explanation); and,
- d. all terrain vehicles or legend race cars (See SC Revenue Advisory Bulletin #00-03. These vehicles cannot be licensed for use on South Carolina highways.)

NOTE: The local sales and use taxes apply to these sales that are not subject to the \$300 maximum tax.

TRANSFERS OF BOATS, MOTORS, AND BOAT TRAILERS

13. What is the sales, use, or casual excise tax rate when a boat, motor, or boat trailer is sold individually or as a complete package?

SC Revenue Ruling #08-x sets forth the following guidelines concerning the tax rates applicable to the sale of boats, motors, or boat trailers:

- a. A boat sold alone is taxed at the lesser of 5% of the purchase price or \$300.
- b. A motor sold alone is taxed at 6% of the purchase price.
- c. A boat trailer sold alone is taxed at 6% of the purchase price. (As stated in Question 1, the casual excise tax does not apply to boat trailers.)
- d. A boat sold with a motor permanently attached to it is taxed at the lesser of 5% of the purchase price of the boat and motor or \$300.
- e. A boat trailer sold in conjunction with the sale of a boat is taxed at 6% of the purchase price of the boat trailer. The boat is taxed at the lesser of 5% of the purchase price of the boat or \$300. (Boat trailers do not include trailers which must be pulled by truck tractors or boat trailers which are used by manufacturers to transport boats to dealerships).
- f. A boat trailer sold in conjunction with the sale of a boat that has a permanently attached motor is taxed at 6% of the purchase price of the trailer. The boat with a permanently attached motor is taxed at the lesser of 5% of the purchase price of the boat and motor or \$300. (Note: If the price of the boat trailer is not separately stated from the price of the boat and motor, the boat trailer is subject to tax at 6% of the fair market value of the boat trailer. If the price of the boat trailer is separately stated from the price of the boat and motor, the price breakdown must be reasonable and supported by the records of the taxpayer, otherwise the trailer will be taxed at 6% of its fair market value.)

NOTE: A boat motor is considered permanently attached to a boat if it is (1) an inboard motor or (2) an outboard motor sold mounted to the boat, connected to a permanent steering mechanism, and included in the price of the boat.

SPECIAL PROVISION FOR PERSONS 85 OR OLDER

For purposes of the casual excise tax and the sales and use tax, the tax rate imposed on a purchase by an individual 85 years old or older who titles or registers a motor vehicle, motorcycle, boat⁶, airplane, recreational vehicle, a trailer or semitrailer capable of being pulled only by a truck tractor, or any other vehicle subject to the maximum tax for his own personal use is 4%, instead of 5%. The maximum tax on these transactions is \$300. (See Code Section 12-36-2640.)

The tax rate imposed on a purchase by an individual 85 years old or older who titles or registers a motor that is purchased alone (not permanently attached to the boat)⁷, pole trailer, trailer or semitrailer capable of being pulled by vehicles other than a truck tractor, boat trailer, or any other vehicle not subject to the maximum tax for his own personal use is 5%, instead of 6%.

Note: Any transaction subject to the maximum tax of \$300 is not subject to any local tax administered and collected by the Department of Revenue on behalf of local jurisdictions. Any transaction not subject to the maximum tax of \$300 is subject to any local tax administered and collected by the Department of Revenue on behalf of local jurisdictions.

(See Code Section 12-36-2640 and SC Revenue Ruling #08-6.)

LOCAL SALES AND USE TAXES

The South Carolina Code allows the imposition of various types of local sales and use taxes. As such, the citizens of a county, depending on the needs within the county, may impose one or several local sales and use taxes (*e.g.*, local option, capital projects, etc.) As with the State sales and use tax, there are certain exemptions from local sales or use taxes. The Department publishes a chart with the various types of local sales and use taxes collected by the Department and the exemptions allowed under each tax. As of the date of this advisory opinion, South Carolina Information Letter #07-4 contains the most recently published information; updated information will be published on the Department's website at <http://www.sctax.org/Tax+Policy/Policy/salesIndex.htm> as warranted.

⁶ A boat sold with a motor permanently attached to it is subject to the use tax at the lesser of 5% of the sales price or \$300. A boat motor is considered permanently attached to a boat if it is (1) an inboard motor or (2) an outboard motor sold mounted to the boat, connected to a permanent steering mechanism, and included in the price of the boat.

⁷ See footnote #6.

DEFINITIONS

For purposes of computing the casual excise tax, maximum tax, or use tax, Code Section 56-3-20 provides the following definitions of motor vehicle, motorcycle, 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.

Motorcycle – Every motorcycle having no more than two permanent functional wheels in contact with the ground or trailer and having a saddle for the use of the rider, but excluding a tractor.

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 constructed so as to carry a load other than a part of the weight of the vehicle and load so drawn.

SOUTH CAROLINA DEPARTMENT OF REVENUE

s/Ray N. Stevens

Ray N. Stevens, Director

June 30 _____, 2008
Columbia, South Carolina