

SC REVENUE RULING #09-17

**SUBJECT:** Temporary Storage – Exclusion from the Use Tax  
(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:** S.C. Code Ann. Section 12-36-910 (2000)  
S.C. Code Ann. Section 12-36-1310 (2000)  
S.C. Code Ann. Section 12-36-140 (2000, Supp. 2008)

**AUTHORITY:** S. C. Code Ann. Section 12-4-320 (2000)  
S. C. Code Ann. Section 1-23-10(4) (2005)  
SC Revenue Procedure #09-3

**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 a 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 It is the Department’s position until superseded or modified by a change in statute, regulation, court decision, or another Departmental advisory opinion.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**

The “South Carolina Sales and Use Tax Act” contains a “temporary storage” provision. In reality, this provision is an exclusion from the definitions of “use” and “storage” as defined in Code Section 12-36-140.

The purpose of this advisory opinion is to provide guidance as to the application of the “temporary storage” provision in Code Section 12-36-140 and any reference in this document to “temporary storage” means the exclusions from the use tax in (1) Code Section 12-36-140(A) for tangible personal property purchased at retail and kept or retained in South Carolina for subsequent use solely outside South Carolina, (2) Code Section 12-36-140(C)(1) for tangible personal property purchased at retail for the exclusive purpose of subsequently transporting it outside of South Carolina for first use, and (3) Code Section 12-36-140(C)(2) for tangible personal property purchased at retail for the purpose of first being manufactured, processed, or compounded into other tangible personal property to be transported and used solely outside of South Carolina.

Note: The portion of the “temporary storage” provision concerning (1) cooperative direct mail promotional advertising materials, and (2) promotional maps, brochures, pamphlets, or discount coupons by nonprofit chambers of commerce or convention and visitor bureaus will not be discussed in this advisory opinion. The sales and use tax law also provides an exemption for such transactions in Code Section 12-36-2120(58). Since the exemption in Code Section 12-36-2120(58) is applicable to both the sales tax and the use tax, the “temporary storage” provisions discussed in this advisory opinion are not applicable to qualified purchasers of materials exempt under Code Section 12-36-2120(58).

## **DISCUSSION**

### **Sales Tax:**

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

A sales tax, equal to [six] percent<sup>1</sup> 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 12-36-90 defines the term “gross proceeds of sales,” which is the basis for calculating the sales tax, in part as “the value proceeding or accruing from the sale, lease, or rental of tangible personal property.”

“In general, the sales tax is an imposition upon the privilege of the business of selling at retail and measured by the amount of business done, which is a clear case of an excise tax to which the constitutional provisions relating to property taxes are irrelevant.” *State ex. rel. Roddey v. Byrnes*, 219 S.C. 485, 66 S.E.2d 33 (1951). It is a “transaction tax” imposed with respect to the transaction of a “retail sale” of tangible personal property.

Based on the above, South Carolina imposes a “general” sales tax, equal to 6% of the gross proceeds of sales, upon every person engaged or continuing within this State in the business of selling tangible personal property at retail. The tax is applicable if:

- a person is engaged or continuing in the business of selling,
- the person is selling tangible personal property in South Carolina, and
- the sales of tangible personal property in South Carolina are at retail.

In addition, in Commission Decision #89-14, the Department addressed whether the “temporary storage” provisions applied to sales tax transactions, and stated:

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<sup>1</sup> Beginning June 1, 2007, the total state sales and use tax rate increased to 6%. See Code Section 12-36-1110 for the imposition of this increase and for exceptions to the increase.

In an effort to clarify what constitutes storage or use for purposes of use taxes, the General Assembly has defined those terms respectively at Sections 12-35-130 [now Section 12-36-140(A)] and 12-35-160 [now Section 12-36-140(B)]. Additional clarification is also given at Section 12-35-165 [now Section 12-36-140(C)] where it is provided:

"The terms 'storage' and 'use' as define [sic] in Sections 12-35-130 [now Section 12-36-140(A)] and 12-35-160 [now Section 12-36-140(B)] do not include the keeping, retaining or exercising of any right or power over tangible personal property for the exclusive purpose of subsequently transporting it outside the State for first use thereafter solely outside the State or for the purpose of first being processed, fabricated or manufactured into, attached to or incorporated into other tangible personal property to be transported outside the State and thereafter used solely outside the State."

[The taxpayer] is attempting to construe the above language as somehow exempting the subject transactions from taxation. Such a construction is incorrect because we are here concerned with sales taxes.

Section 12-35-165 [now Section 12-36-140(C)] is a definitional statute that applies to use taxes, not sales taxes. Use and storage are of no importance for sales tax purposes. Section 12-35-510 [now Section 12-36-910] levies a sales tax on transactions in this state regardless of use. Its words are clear.

"In addition to all other licenses, taxes and charges imposed, there is levied for the support of public schools of the State, upon every person engaged or continuing within this State in the business of selling at retail any tangible personal property whatsoever, including merchandise and commodities of every kind and character (not including, however, bonds or other evidences of debt or stocks), an amount equal to four percent of the gross proceeds of sales of the business."

If [the taxpayer's] interpretation of Section 12-35-165 [now Section 12-36-140(C)] was correct, the results would be absurd. For example, any purchases made by travelers passing through South Carolina would be nontaxable provided such property was not used in South Carolina. Obviously, such a construction would be impossible to enforce or administer.

Therefore, since the sales tax applies to sales transactions and is not based on whether the tangible personal property is used, consumed or stored in South Carolina, the exclusion for "temporary storage" does not apply to the sales tax.

## Use Tax:

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 [six] percent<sup>2</sup> of the sales price of the property, regardless of whether the retailer is or is not engaged in business in this State.

Code Section 12-36-130 defines “sales price” in part as “the total amount for which tangible personal property is sold, without any deduction for the cost of the property sold, the cost of the materials used, labor or service cost, interest paid, losses, or any other expenses.”

Based on the above, the use tax, which is 6% of the total amount for which tangible personal property is sold, is imposed on the use, storage or consumption of tangible personal property that was purchased, leased, rented or otherwise obtained for a consideration<sup>3</sup> at retail for use, storage or consumption in South Carolina.

Essentially, 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.

Finally, Code Section 12-36-140 defines the terms “use” and “storage” as used in the use tax imposition in Code Section 12-36-1310. Code Section 12-36-140, as stated in the “Introduction,” also provides for the exclusion for “temporary storage.” Therefore, since the use tax applies to the use, storage or consumption of tangible personal property in South Carolina, the exclusion for “temporary storage” does apply to the use tax.

## Tangible Personal Property Coming into South Carolina – Sales Tax vs. Use Tax:

With respect to goods coming into South Carolina from another state, SC Regulation 117-334 provides guidance as to which tax applies – the sales tax or the use tax – and states, in part:

The purpose of this regulation is to determine which tax applies, the sales tax or the use tax, when tangible personal property is shipped into, or otherwise brought into, South Carolina and to address the application of the tax when goods are shipped from this State.

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<sup>2</sup> See footnote #1.

<sup>3</sup> Code Section 12-36-100 defines the terms “sale” or “purchase” to include rentals, leases, and other forms of agreement.

117.334.1. Goods coming into this State - Sales Tax:

(A) When tangible personal property is purchased for use or consumption in this State and (1) the seller is engaged or continuing within this State in the business of selling tangible personal property at retail and (2) delivery is made in this State, such sale is subject to the sales tax if the order for the future delivery of tangible personal property is sent by the purchaser to, or the subsequent delivery of the property is made by, any local branch, office, outlet or other place of business of the retailer in this State, or agent or representative operating out of or having any connection with, such local branch, office, outlet or other place of business. The term "other place of business" as used herein includes, but is not limited to, the homes of district managers, representatives, and other resident employees, who perform services in relation to the seller's functions in this State. Participation in the transaction in any way by the local office, branch, outlet or other place of business is sufficient to sustain the sales tax.

If the conditions above are met it is immaterial (1) that the contract of sale is closed by acceptance outside the State or (2) that the contract is made before the property is brought into the State.

Delivery is held to have taken place in this State (1) when physical possession of the tangible personal property is actually transferred to the purchaser or the purchaser's designee within this State, or (2) when the tangible personal property is placed in the mails at a point outside this State and directed to the purchaser or the purchaser's designee in this State or (3) when the tangible personal property is placed on board a carrier at a point outside this State (regardless of shipping terms) and directed to the purchaser or the purchaser's designee in this State.

The term "engaged or continuing within this State in the business of selling tangible personal property at retail" as used in this regulation shall have the same meaning as the term "retailer maintaining a place of business in this State" as defined in Code Section 12-36-80.

(B) When tangible personal property is brought into this State by the seller, or an agent, salesman, or other representative of the seller, for sale at a permanent or temporary location (carnivals, festivals, roadside, etc.) or from a truck or other vehicle, such sale is subject to the sales tax.

117-334.2. Goods coming into this State - Use Tax:

(A) When tangible personal property is purchased for use or consumption in this State and delivery is made in this State, such sale is subject to the use tax if the order for future delivery is sent by the purchaser directly to the seller at a point outside this State, and the property is shipped into this

State from a point outside this State directly to the purchaser or the purchaser's designee, provided there is no participation whatever in the transaction by any local branch, office, outlet or other place of business of the retailer or by any agent or representative of the retailer having any connection with such branch, office, outlet, or other place of business. The term "other place of business" as used herein includes, but is not limited to, the homes of district managers, service representatives, and other resident employees, who perform substantial services in relation to the seller's functions in this State.

The purchaser is liable for the use tax on the purchases outlined above in this subsection (117.334.2(A)) until the tax is paid to the State. In addition, a receipt, that shows the South Carolina tax, from a seller who is registered with the Department of Revenue to collect and remit the tax will relieve the purchaser of the liability for the tax on the purchase. However, a seller who is registered with the Department of Revenue to collect and remit the tax has a debt to the State for the use tax required to be collected under the law. If the purchaser is not relieved from his liability for the use tax as stated above, then the Department may assess the purchaser or the seller for the use tax.

(B) When tangible personal property is otherwise brought into this State by the purchaser for first use or consumption in this State, such use or consumption is subject to the use tax. See SC Regulation 117-320.1 for information concerning property purchased and used outside of South Carolina and later used in South Carolina and see Code Sections 12-36-1320 and 12-36-150 for a special imposition of the tax on transient construction property.

(C) When tangible personal property is purchased for use or consumption in this State and the property is shipped from a point outside this State directly to the purchaser or the purchaser's designee at a point in this State, there is a rebuttable presumption that the purchase is subject to the use tax. If the receipt from a seller does not separately state the South Carolina tax, the Department may assess either the purchaser or the seller (if licensed or nexus exists) for the use tax.

117-334.3. Goods coming into this State and Delivered onto the Catawba Indian Reservation.

When tangible personal property is purchased for use or consumption on the Catawba Indian Reservation and delivery is made from a retail location outside of South Carolina to the Catawba Indian Reservation, such sale, based on the provisions of Code Section 27-16-130(H), is:

(a) subject to the State use tax if the retailer is registered with the Department to remit the State tax. Local use taxes are not applicable.

(b) subject to the Tribal use tax if retailer is not registered with the Department to remit the State tax. The Tribal use tax is equal to the combined State and local tax rate for the county in which the reservation is located and in which the delivery occurs. The Catawba Indian Tribe is responsible for collecting the tribal use tax.

#### 117-334.4. Application of the Sales or Use Tax under Other Circumstances.

The application of either the sales tax or the use tax under circumstances not addressed in this regulation will be determined on a case by case basis. The determination as to which tax will apply will consider whether or not the seller, as required for the application of the sales tax under Code Section 12-36-910, is "engaged or continuing within this State in the business of selling tangible personal property at retail," whether or not the seller has sufficient "nexus" with South Carolina under current case law, and whether or not the retail sale occurs in this State.

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Therefore, since the exclusion for "temporary storage" only applies to use tax transactions, the "temporary storage" provision will not apply to tangible personal property shipped into South Carolina "if the order for the future delivery of [the] tangible personal property is sent by the purchaser to, or the subsequent delivery of the property is made by, any local branch, office, outlet or other place of business of the retailer in [South Carolina], or agent or representative operating out of or having any connection with, such local branch, office, outlet or other place of business. The term "other place of business" as used herein includes, but is not limited to, the homes of district managers, representatives, and other resident employees, who perform services in relation to the seller's functions in [South Carolina]. Participation in the transaction in any way by the local office, branch, outlet or other place of business is sufficient to sustain the sales tax [and not allow the exclusion for "temporary storage" if the tangible personal property is subsequently shipped out-of state]."

#### "Temporary Storage" Provision:

Code Section 12-36-140 states, in part:

(A) "Storage" includes any keeping or retaining in this State, for any purpose except sale in the regular course of business or subsequent use solely outside this State, of tangible personal property purchased at retail.

(B) “Use” includes the exercise of any right or power over tangible personal property incident to the ownership of that property, or by any transaction in which possession is given; but it does not include the sale of that property in the regular course of business.

(C) “Storage” and “use” do not include the keeping, retaining, or exercising of any right or power over tangible personal property:

(1) for the exclusive purpose of subsequently transporting it outside the State for first use;

(2) for the purpose of first being manufactured, processed, or compounded into other tangible personal property to be transported and used solely outside the State; or<sup>4</sup>

\* \* \* \*

Based on the above, the use tax will not apply to the purchase at retail from outside of South Carolina of tangible personal property when such property was purchased for:

(1) the purpose of subsequent use solely outside of South Carolina;

(2) the exclusive purpose of subsequently transporting it outside of South Carolina for first use outside of South Carolina; or

(3) the purpose of first being manufactured, processed, or compounded into other tangible personal property in South Carolina that will be transported and used solely outside of South Carolina.

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<sup>4</sup> Code Section 12-36-140(C)(3) states that “storage” and “use” do not include the keeping, retaining, or exercising of any right or power over tangible personal property “for the purpose of being distributed as (i) cooperative direct mail promotional advertising materials, or (ii) promotional maps, brochures, pamphlets, or discount coupons by nonprofit chambers of commerce or convention and visitor bureaus who are exempt from income taxation pursuant to Internal Revenue Code Section 501(c) by means of interstate carrier, a mailing house, or a United States Post Office to residents of this State from locations both inside and outside the State. For purposes of this item, “cooperative direct mail promotional advertising materials” means discount coupons, advertising leaflets, and similar printed advertising, including any accompanying envelopes and labels which are distributed with promotional advertising materials of more than one business in a single package to potential customers, at no charge to the potential customer, of the businesses paying for the delivery of the material.”

As stated in “Note” at the end of the Introduction section of this advisory opinion, the portion of the “temporary storage” provision found in Code Section 12-36-140(C)(3) concerning (1) cooperative direct mail promotional advertising materials, and (2) promotional maps, brochures, pamphlets, or discount coupons by nonprofit chambers of commerce or convention and visitor bureaus will not be discussed in this advisory opinion. The sales and use tax law also provides an exemption for such transactions in Code Section 12-36-2120(58). Since the exemption in Code Section 12-36-2120(58) is applicable to both the sales tax and the use tax, the “temporary storage” provisions discussed in this advisory opinion are not applicable to qualified purchasers of materials exempt under Code Section 12-36-2120(58).



In addressing the application of the “temporary storage” provisions, we must consider several words used in the provision that are not defined in the statute.

It is an accepted practice in South Carolina to resort to the dictionary to determine the literal meaning of words used in statutes. For cases where this has been done, see *Hay v. South Carolina Tax Commission*, 273 SC 269, 255 S.E.2d 837 (1979); *Fennell v. South Carolina Tax Commission*, 233 S.C. 43, 103 S.E.2d 424 (1958); *Etiwan Fertilizer Co. v. South Carolina Tax Commission*, 217 SC 484, 60 S.E.2d 682 (1950).

The Second College Edition of the American Heritage Dictionary defines the following terms:

subsequent	Following in time or order; succeeding
solely	1. Alone; singly; ... 2. Entirely; exclusively; ...
exclusive	... 2. Not divided or shared with others; <i>exclusive publishing rights</i> . 3. Single or independent; sole. 4. Complete; undivided, ...
purpose	... 2. A result or effect that is intended or desired; intention. ...

Furthermore, in *Senn Trucking Company v. Wasson*, 280 S.C. 279, 312 S.E.2d 252 (1984), the South Carolina Supreme Court held:

Senn is engaged in the business of transporting property by motor vehicle in interstate commerce as a common carrier operating under Certificates of Public Convenience and Necessity granted by the Interstate Commerce Commission. In addition, Senn moves freight in intrastate commerce but such intrastate commerce is much smaller than its interstate business. For example, the evidence shows that gross revenues for 1979 were \$13,394,048.39 from interstate commerce, whereas gross revenues from intrastate commerce were \$84,240.00.

The taxes sought to be recovered were paid by Senn on fifty trailers it purchased out of state. In each instance, the trailers were transported by Senn to its terminal in Newberry County, S. C. and underwent modifications there. These modifications consisted of adding decals, numbers, signs and license plates, tarpaulins, padding, straps and storage compartments.

The testimony presented at trial shows that based on sales invoices, work orders and drivers' trip tickets, the trailers remained in Newberry County approximately two to three weeks before they were dispatched to pick up their first load of freight. In each instance the trailers picked up their first

load in South Carolina and then left the state. The trailers periodically returned to South Carolina to pick up and deliver freight. Finally, the evidence showed that the trailers were registered in Newberry County for property tax purposes.

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The "use" which is defined as the exercising of any right or power over the ownership of the trailers occurred within South Carolina since the trailers were transported by Senn to Newberry County, alterations and modifications were made in Newberry, the trailers were registered for property tax purposes in Newberry County, and Senn directed that the trailers pick up freight within South Carolina. Each of these activities shows the exercising of a power over the ownership of the trailers and such activities all occurred within the borders of South Carolina.

While the exclusion for "temporary storage" has been expanded since this case, the South Carolina Supreme Court's decision in *Senn Trucking Company v. Wasson*, supra, still demonstrates that incidental use within South Carolina will forfeit the exclusion for "temporary storage" (unless the first use in South Carolina was the manufacturing, processing, or compounding of that tangible personal property into other tangible personal property in South Carolina for transportation outside of South Carolina and use entirely outside of South Carolina).

Based on the above definition, in order for the exclusion for "temporary storage" to apply, the purchaser must have known at the time of purchase that the tangible personal property being purchased at retail from outside of South Carolina would later be transported outside of South Carolina for use. In addition, the property would have to be first used outside of South Carolina<sup>5</sup> or manufactured, processed, or compounded into other tangible personal property in South Carolina that was transported outside of South Carolina and used solely outside of South Carolina. (If the tangible personal property is manufactured, processed, or compounded into other tangible personal property in South Carolina for transportation and use outside of South Carolina, the property must be used exclusively outside of South Carolina and must never be returned to South Carolina.)

Finally, while it does not deal directly with the "temporary storage" provision, SC Regulation 117-320.1 provides guidance concerning "first use" outside South Carolina. That regulation states in part:

Where property purchased in another state and used outside the state of South Carolina, is later brought into the state for use, storage or consumption in South Carolina, the use tax will apply unless the following conditions are conclusively established: (1) That the property when

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<sup>5</sup> While Code Section 12-36-140(A) excludes from the definition of "storage" tangible personal property subsequently used solely outside of South Carolina, Code Section 12-36-140(C)(1) only requires that the tangible personal property be first used outside of South Carolina.

purchased was intended for a bona fide use outside the state of South Carolina; (2) That the first actual use of the property was outside the state of South Carolina; and (3) That the first actual use of the property was substantial and constituted the primary use for which the property was purchased.

The responsibility for proof rests upon the purchaser and until the above facts are established to the satisfaction of the department, it will be presumed that the use of such property in South Carolina is subject to a use tax.

Therefore, in order for the “temporary storage” provision for property purchased for the exclusive purpose of subsequently transporting it outside of South Carolina for first use outside of South Carolina to apply, the property’s first use outside of South Carolina must be substantial and constitute the primary use for which the property was purchased.

Finally, Code Section 12-54-210(A) requires that a “person liable for a tax ... administered by the department or for the filing of a return with the department ... keep books, papers, memoranda, records, render statements, make returns, and comply with regulations as the department prescribes. As such, persons claiming the exclusion for “temporary storage” must maintain proper records that verify they meet the requirements of the exclusion.

## **QUESTIONS AND ANSWERS – “TEMPORARY STORAGE” PROVISIONS<sup>6</sup>**

1. Does the South Carolina sales and use tax law contain an exclusion for “temporary storage?”

Yes.

2. Does the exclusion for “temporary storage” apply to sales tax transactions, use tax transactions, or both?

The exclusion for “temporary storage,” which can be found in Code Section 12-36-140(C), only applies to use tax transactions. It does not apply to sales tax transactions.

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<sup>6</sup> As stated in “Note” at the end of the Introduction section of this advisory opinion, the portion of the “temporary storage” provision found in Code Section 12-36-140(C)(3) concerning (1) cooperative direct mail promotional advertising materials, and (2) promotional maps, brochures, pamphlets, or discount coupons by nonprofit chambers of commerce or convention and visitor bureaus will not be discussed in this advisory opinion. The sales and use tax law also provides an exemption for such transactions in Code Section 12-36-2120(58). Since the exemption in Code Section 12-36-2120(58) is applicable to both the sales tax and the use tax, the “temporary storage” provisions discussed in this advisory opinion are not applicable to qualified purchasers of such materials exempt under Code Section 12-36-2120(58).

3. What are the requirements in order for a transaction to qualify for the exclusion for “temporary storage?”

In order for a transaction to qualify for the exclusion for temporary storage found in Code Section 12-36-140 to apply, the transaction must meet all of the following requirements:

(a) The tangible personal property must be purchased at retail from outside of South Carolina. Tangible personal property purchased at wholesale (*e.g.*, extending a resale certificate to the seller) but subsequently used by the purchaser does not qualify for the exclusion for temporary storage.”

(b) The transaction must be a use tax transaction as described in SC Regulation 117-334.

(c) The purchaser knew at the time of purchase that the property would be either (i) subsequently transported outside of South Carolina for first use outside of South Carolina or (ii) manufactured, processed, or compounded into other tangible personal property in South Carolina that would be transported outside of South Carolina and used solely outside of South Carolina.

(d) The tangible personal property must be purchased for a specific use outside of South Carolina.

(e) The first use of the tangible personal property must be outside of South Carolina, unless the first use in South Carolina was the manufacturing, processing, or compounding of that tangible personal property into other tangible personal property in South Carolina for transportation outside of South Carolina and use solely outside of South Carolina. (See Code Section 12-36-140(C)(3).)

(f) The first use of the tangible personal property outside of South Carolina must be substantial and constitute the primary use for which the property was purchased.

Note: If the tangible personal property is manufactured, processed, or compounded into other tangible personal property in South Carolina for transportation and use outside of South Carolina, the property must be used exclusively outside of South Carolina and must never be returned to South Carolina.

(g) Any person claiming the exclusion for “temporary storage” must maintain proper records that verify that all the requirements of the exclusion as set forth above have been met.

4. Can the Department provide examples of sales tax transactions that do not qualify for the exclusion for “temporary storage” when tangible personal property is purchased at retail and delivery is made in South Carolina from outside of South Carolina?

If tangible personal property is purchased at retail and delivery is made in South Carolina from outside of South Carolina, the transaction is a sales tax transaction that does not qualify for the exclusion for “temporary storage” if:

(a) The purchaser orders the tangible personal property through any local branch, office, outlet or other place of business of the retailer in South Carolina;

(b) The purchaser orders the tangible personal property agent or representative operating out of or having any connection with any local branch, office, outlet or other place of business of the retailer in South Carolina;

(c) The property, even though ordered through an out-of-state branch, office, outlet or other place of business of the retailer, is delivered to the purchaser by a local branch, office, outlet or other place of business of the retailer in South Carolina.

The above are only examples. For more details concerning when a transaction is a sales tax transaction and when a transaction is a use tax transaction, see SC Regulation 117-334.

5. If a person purchases tangible personal property at retail outside of South Carolina for the purpose of storing it in South Carolina and then subsequently using some of it outside of South Carolina and some of it in South Carolina, must the person know at the time of purchase which specific items, or the exact percentage of items, that will be used outside of South Carolina in order for that property to qualify for the exclusion for “temporary storage?”

No; however, the purchaser must know at the time of purchase the specific use outside of South Carolina for which the property is being purchased and must have a substantially accurate approximation of how much of the property will be used outside of South Carolina for that specific use.

Note: The Department will assess the use tax if a purchaser claims the exclusion for “temporary storage” and the purchaser’s books and records do not provide verification that the purchaser knew at the time of purchase the specific use outside of South Carolina for which the property was being purchased and knew at the time of purchase a substantially accurate approximation of how much of the property would be used outside of South Carolina for that specific use. The transaction must also meet all the other requirements for the exclusion for “temporary storage” as discussed above in Question #3.

6. Does the exclusion for “temporary storage” apply if a person purchases tangible personal property at wholesale for the purpose of resale but later withdraws it from inventory for use outside of South Carolina?

No. See SC Revenue Ruling #08-11 concerning withdrawals for use.

7. Does the exclusion for “temporary storage” apply if the tangible personal property was purchased for first use outside of South Carolina but was actually first used incidentally in South Carolina before it was transported outside of South Carolina for use outside of South Carolina?

No, unless the first use in South Carolina was the manufacturing, processing, or compounding of that tangible personal property into other tangible personal property in South Carolina for transportation outside of South Carolina and use solely outside of South Carolina. (See Code Section 12-36-140(C)(3).)

SOUTH CAROLINA DEPARTMENT OF REVENUE

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

November 19, 2009  
Columbia, South Carolina