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State of South Carolina  
**Department of Revenue**  
301 Gervais Street, P. O. Box 125, Columbia, South Carolina 29214

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SC REVENUE RULING # 09-6

**SUBJECT:** Late Fees Charged by Utilities  
(Sales and Use)

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

**SUPERSEDES:** SC Revenue Ruling #98-4 and all previous documents and any oral directives in conflict herewith.

**REFERENCES:** S. C. Code Ann. Section 12-36-910 (2000, Supp. 2008)  
S. C. Code Ann. Section 12-36-1110 (Supp. 2008)  
S. C. Code Ann. Section 12-36-90 (2000, Supp. 2008)  
S. C. Code Ann. Section 37-2-109(1) (2002)  
S. C. Code Ann. Section 37-3-109(A) (2002)  
Sc Regulation 117-318.2

**AUTHORITY:** S. C. Code Ann. Section 12-4-320 (2000)  
S. C. Code Ann. Section 1-23-10(4) (Supp. 2008)  
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 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 It is the Department's position until superseded or modified by a change in statute, regulation, court decision, or another Departmental advisory opinion.

Question:

Is the fee charged by an electric power company, cable television company or telephone company ("utility") when a customer does not pay his bill on time a finance charge and, therefore, not includible in the utility's gross proceeds of sales and not subject to the sales tax?

Conclusion:

The fee charged by a utility when a customer does not pay his bill on time is **not** a finance charge.

Therefore, such charges are includible in the utility's gross proceeds of sales and are subject to the sales tax, unless the charge for failure to pay on time is imposed with

respect to sales of electricity, natural gas or both. Charges imposed on a customer for late payment of a bill for electricity, natural gas or both are not subject to the sales and use tax pursuant to Code Section 12-36-90(2)(i).

Note: Code Section 12-36-2120 exempts certain transactions from the sales and use tax. If the sale of cable television service and telephone service falls within an exemption in Code Section 12-36-2120, then any charge for failure to pay on time by the cable television company or telephone company with respect to the exempt sale would be includible in gross proceeds of sales of an exempt sale and not subject to the sales tax.

Facts:

Utilities generally charge their customers an additional amount when they do not pay their bills on time. This additional amount may be applied as a fixed dollar amount (e.g. \$5); a percentage of the amount due for each month the bill remains unpaid (e.g. 1% per month); a fixed dollar amount per month for each month the bill remains unpaid (e.g. \$5 per month); or by some other method.

The question has arisen whether such charges are includible in a utility's gross proceeds of sales and, therefore, subject to sales tax.

Discussion:

Code Section 12-36-910 imposes "a sales tax, equal to [six]<sup>1</sup> percent of gross proceeds of sales, ... upon every person engaged . . . within this State in the business of selling tangible personal property at retail."

The measure of the sales tax, "gross proceeds of sales," is defined at Code Section 12-36-90, in part, as:

... the value proceeding or accruing from the sale, lease, or rental of tangible personal property.

(1) The term includes:

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<sup>1</sup> Code Section 12-36-1110, which increased the state sales and use tax rate from 5% to 6% on June 1, 2007, states:

Beginning June 1, 2007, an additional sales, use, and casual excise tax equal to one percent is imposed on amounts taxable pursuant to this chapter, except that this additional one percent tax does not apply to amounts taxed pursuant to Section 12-36-920(A), the tax on accommodations for transients, nor does this additional tax apply to items subject to a maximum sales and use tax pursuant to Section 12-36-2110 nor to the sale of unprepared food which may be lawfully purchased with United States Department of Agriculture food coupons. (Emphasis added.)

- (b) the proceeds from the sale of tangible personal property without any deduction for:
  - (i) the cost of goods sold;
  - (ii) the cost of materials, labor, or service;
  - (iii) interest paid;
  - (iv) losses;
  - (v) transportation costs;

(2) The term does not include:

\* \* \* \*

- (i) interest, fees, or charges however described, imposed on a customer for late payment of a bill for electricity or natural gas, or both, whether or not sales tax is required to be paid on the underlying electricity or natural gas bill. (Emphasis added.)

In addition, SC Regulation 117-318.2 provides:

When the seller has an established price for the goods he sells, that price is the amount to be included in gross proceeds of sales even though the established price may include an amount to cover a carrying charge. Where they seller has an established cash price and when selling on an extended payment basis, adds a separate charge for financing, the additional charge is not to be included in gross proceeds of sales.

In no event may finance or carrying charges be deducted from gross proceeds of sales when not shown as a separate item in the seller's billing to his customer.

Therefore, an issue that must be addressed is whether, per SC Regulation 117-318.2, fees imposed by utilities when customers fail to pay their bills on time are finance charges. If they are finance charges, then they are not includible in gross proceeds of sales. If they are not finance charges, then they are includible in gross proceeds of sales unless the fee for failure to pay a bill on time is charged with respect to sales of electricity, natural gas or both.

While the term “finance charge” is not defined in the South Carolina Code of Laws, the terms “credit service charge” and “loan finance charge” are defined. “Credit finance charges” are applicable to “consumer credit sales” as defined in Chapter 2 of the Consumer Protection Code. “Loan finance charges” apply to “consumer loans,” as defined in Code Section 37-3-104 of the Consumer Protection Code.

Code Section 37-2-109(1) of the South Carolina Consumer Protection Code defines “credit service charges,” in part, as “all charges payable directly or indirectly by the buyer and imposed directly or indirectly by the seller as an incident to the extension of credit.” Subsection (2) of that section provides that “[t]he term does not include charges as a result of default ....”

Code Section 37-3-109(a) of the South Carolina Consumer Protection Code defines “loan finance charges,” in part, as “all charges payable directly or indirectly by the debtor and imposed directly or indirectly by the lender as an incident to the extension of credit.” Subsection (b) of that section provides that “[t]he term does not include charges as a result of default ....”

In addition, *Black’s Law Dictionary*, Seventh Edition, defines the term “finance charge,” in part, as:

An additional payment, usu. in the form of interest, paid by a retail buyer for the privilege of purchasing goods and services in installments.

Based on the above discussion, the fees in question are not imposed as a condition for the extension of credit (i.e. not finance charges). They are imposed for failure to pay on time.

Therefore, the fees are includible in gross proceeds of sales and subject to the sales and use taxes, unless the charge for failure to pay on time is imposed with respect to sales of electricity, natural gas or both. Charges imposed on a customer for late payment of a bill for electricity, natural gas or both are not subject to the sales and use tax pursuant to Code Section 12-36-90(2)(i).

Note: Code Section 12-36-2120 exempts certain transactions from the sales and use tax. If the sale of cable television service and telephone service falls within an exemption in Code Section 12-36-2120, then any charge for failure to pay on time by the cable television company or telephone company with respect to the exempt sale would be includible in gross proceeds of sales of an exempt sale and not subject to the sales tax.

SOUTH CAROLINA DEPARTMENT OF REVENUE

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

May 19, 2009  
Columbia, South Carolina