

SC REVENUE RULING #09-9

SUBJECT: Local Sales and Use Taxes and
Catawba Tribal Sales and Use Tax
(Sales and Use Tax)

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

SUPERSEDES: SC Revenue Ruling #91-17, SC Revenue Ruling #96-9 and all
previous advisory opinions and any oral directives in conflict
herewith.

MODIFIES: SC Revenue Ruling #05-16.

REFERENCES: Title 12, Chapter 36 of SC Code of Laws (2000; Supp. 2008)
Title 4, Chapter 10 of SC Code of Laws (Supp. 2008)
Title 4, Chapter 37 of SC Code of Laws (Supp. 2008)
Chapter 117 of SC Code of Regulations (Supp. 2008)
School District and Other Local Sales and Use Tax Laws¹

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until superseded or modified by a change in statute, regulation,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.

I. INTRODUCTION:

The South Carolina Code of Laws allows the imposition of various types of local sales and use taxes. Citizens of a county, depending upon the needs within the county, may

¹ Many school district and other local sales and use tax laws have not been codified. For information as to the act number assigned to, and the year of enactment of, such local sales and use tax laws, see SC Information Letter #09-8. SC Information Letter #09-8 contains the most recently published information; updated information will be published in new information letters on the Department's website (<http://www.sctax.org/Tax+Policy/Policy/salesIndex.htm>) as warranted.

impose one or several local sales and use taxes. Municipal councils, or the citizens of a municipality, may impose a sales and use tax² for tourism development if the municipality is located in a county where revenue from state accommodations tax is at least fourteen million dollars in a fiscal year.

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 document, SC Information Letter #09-8 contains the most recently published information; updated information will be published in new information letters on the Department's website (<http://www.sctax.org/Tax+Policy/Policy/salesIndex.htm>) as warranted.

Most local taxes administered and collected by the Department of Revenue on behalf of local jurisdictions are administered and collected on a county-wide basis. However, the Catawba Tribal Sales and Use Tax is only imposed on the Catawba Indian Reservation and the Tourism Development Fee is only imposed on a municipal-wide basis. The criteria discussed in this advisory opinion, unless otherwise indicated in legislation enacted by the General Assembly, will also apply to any future sales and use taxes administered and collected by the Department of Revenue on behalf of a jurisdiction on a county-wide, municipal-wide or other basis as established by the General Assembly.

Please note that this advisory opinion only addresses the general local sales and use taxes collected by the Department of Revenue on behalf of local jurisdictions (*e.g.*, counties, municipalities, school districts) and the tribal sales tax collected by the Department of Revenue on behalf of the Catawba Indian tribal government³. It does not address the local taxes on sales of accommodations or on sales of prepared meals that are collected directly by the counties.

II. TYPES OF LOCAL SALES AND USE TAXES:

The following is a list of local sales and use taxes⁴ that General Assembly has authorized the Department of Revenue to administer and collect on behalf of local jurisdictions that may enact one or more of these local sales and use taxes.

Local Option: The local option sales and use tax is authorized under Code Section 4-10-10 et. seq. This tax is a general sales and use tax on all sales at retail (with a few exceptions) taxable under the state sales and use tax. This tax is imposed to reduce the property tax burden on persons in the counties that impose this type of local tax and is collected by the Department of Revenue on behalf of these counties.

² This municipal sales and use tax is actually a fee (Local Option Tourism Development Fee) imposed under Article 9 of Chapter 10 of Title 4. For purposes of simplicity, this fee will be referred to as a sales and use tax in this revenue ruling.

³ The tribal use tax is collected directly by the Catawba Indian tribal government.

⁴ The General Assembly may authorize other local sales and use taxes in the future. Unless such legislation states otherwise, any such new local sales and use tax will be administered and collected in the same manner as the taxes listed in this advisory opinion. In addition, the Catawba Indian Tribal Sales Tax is not a local tax; however, it is administered and collected by the Department in a similar manner and is therefore included on this list.

Capital Projects: The local capital projects sales and use tax is authorized under Code Section 4-10-300 et. seq. This tax is a general sales and use tax on all sales at retail (with a few exceptions) taxable under the state sales and use tax. This tax is imposed specifically to defray the debt service on bonds issued for various capital projects in the counties that impose this type of local tax and is collected by the Department of Revenue on behalf of these counties.

Transportation: The local transportation projects sales and use tax is authorized under Code Section 4-37-30 et. seq. This tax is a general sales and use tax on all sales at retail (with a few exceptions) taxable under the state sales and use tax. This tax is imposed specifically to defray the debt service on bonds issued for various transportation projects in the counties that impose this type of local tax and are collected by the Department of Revenue on behalf of these counties.

Personal Property Tax Relief: The personal property tax relief sales and use tax is authorized under Code Section 4-10-540. et. seq. This tax is a general sales and use tax on all sales at retail (with a few exceptions) taxable under the state sales and use tax. This tax is imposed in lieu of the personal property tax imposed on private passenger motor vehicles, motorcycles, general aviation aircraft, boats, and boat motors. The tax may not exceed the lesser of 2% or the amount necessary to replace the property tax on vehicles, motorcycles, general aviation aircraft, boats, and boat motors in the most recently completed fiscal year.

Local Property Tax Credits: The local option sales and use tax for local property tax credits is authorized under Code Section 4-10-720 et. seq. This tax is a general sales and use tax on all sales at retail (with a few exceptions) taxable under the state sales and use tax. This tax is imposed to provide a credit against property tax imposed by a political subdivision for all classes of property subject to the property tax and is collected by the Department of Revenue on behalf of these counties.

Education Capital Improvement Sales and Use Tax. The school district or school districts within a county may impose a 1% sales and use tax within the county for specific education capital improvements for the school district for not more than 15 years. The tax is authorized under Code Section 4-10-410 et. seq. and must be approved by a referendum open to all qualified electors residing in the county. Pursuant to a memorandum of agreement, a portion of the revenue may be shared with the area commission (governing body of a technical college) or higher education board of trustees (governing body of a public institution of higher learning) or both, for specific education capital improvements on the campus of the recipient located in the county listed in the referendum. This tax may only be imposed in counties which have collected at least \$7 million in state accommodations taxes in the most recent fiscal year for which data is available. Once the threshold is met, a county remains eligible to impose this tax. This tax may not be imposed in a county that is imposing or is scheduled to impose a local sales and use tax for public school capital improvements.

School District Taxes. The General Assembly has authorized certain school districts to impose a sales and use tax within the county. These taxes are generally imposed to pay debt service on general obligation bonds and/or the cost of capital improvements.

Catawba Indian Tribal Tax: The application of either the State sales and use tax or the Catawba Tribal sales and use tax for sales (deliveries) made on the Catawba Indian Reservation are determined by the Catawba Indian Claims Settlement Act. The specific sales and use tax provisions can be found in Code Section 27-16-130(H). The Catawba Indian Reservation is located in Lancaster and York counties. The sales tax is administered and collected by the Department.

Tourism Development Tax: The local tourism development sales and use tax is authorized under Code Section 4-10-910 et. seq. This tax is a general sales and use tax on all sales at retail (with a few exceptions) taxable under the state sales and use tax and may only be imposed by a municipality located in a county where revenue from the state accommodations tax is at least fourteen million dollars in a fiscal year. This tax may be imposed by an ordinance adopted by a two-thirds majority of the municipal council or by approval by a majority of qualified electors voting in a referendum authorized by a majority of the municipal council. The tax is imposed specifically for tourism advertisement and promotion directed at non-South Carolina residents; however, in the third and subsequent years of this tax a portion of the tax may be used for certain property tax rollbacks. The tax collected by the Department of Revenue on behalf of these municipalities.

Note: 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 document, SC Information Letter #09-8 contains the most recently published information; updated information will be published in new information letters on the Department's website (<http://www.sctax.org/Tax+Policy/Policy/salesIndex.htm>) as warranted.

III. RETAILER'S RESPONSIBILITY TO REMIT LOCAL SALES AND USE TAXES:

Whether or not a retailer can be required to remit a jurisdiction's tax is dependent upon the controlling facts and the extent of the seller's activities with the jurisdiction into which tangible personal property is delivered.

If a retailer that has established Commerce Clause nexus with South Carolina purposefully avails itself of the benefits of the economic market of a jurisdiction or it has purposefully directed its efforts toward the residents of a jurisdiction, it has a minimal connection with that jurisdiction sufficient to subject it to that jurisdiction's authority and therefore require it to remit the jurisdiction's tax on its deliveries into that jurisdiction, even if it has no physical presence in that particular jurisdiction.

Examples of when a retailer that has established Commerce Clause nexus with South Carolina must remit a jurisdiction's sales and use tax include, but are not limited to:

Retailers Using Their Own Vehicles: A retailer is required to remit a jurisdiction's tax if the retailer is shipping property into the jurisdiction using his own vehicles (whether owned or leased).

Retailers Using a Contract Carrier: A retailer is required to remit a jurisdiction's tax if the retailer is shipping property into the jurisdiction using a contract carrier (an independent or related company working specifically for or otherwise representing the retailer with respect to the delivery.)

Retailers Using a Common Carrier: A retailer is required to remit a jurisdiction's tax if the retailer is shipping property into the jurisdiction using a common carrier (*e.g.*, UPS, the mail), and the retailer is subject to the jurisdiction of delivery's authority (Due Process nexus has been established with the jurisdiction of delivery).

Examples of when a retailer is subject to the jurisdiction of delivery's authority include, but are not limited to, the following:

- (a) The retailer maintains, temporarily or permanently, directly or by subsidiary, an office, warehouse, distribution house, sales house, other place of business, or property of any kind in the jurisdiction of delivery.
- (b) The retailer or a subsidiary has, temporarily or permanently, an agent, representative (including delivery personnel and independent contractors acting on behalf of the retailer), salesman, or employee operating within the jurisdiction of delivery.
- (c) The retailer advertises via advertising media located in the jurisdiction of delivery (*e.g.*, newspapers, television, cable systems, and radio).
- (d) The retailer advertises via advertising media located outside the jurisdiction but which has coverage within the jurisdiction of delivery (*e.g.*, newspapers, television, cable systems, and radio).

Please note that these statements are only examples and that there are other circumstances in which a retailer must remit a jurisdiction's tax with respect to deliveries into that jurisdiction. Retailers must be aware that as the courts address this issue, the requirements for remitting a jurisdiction's tax may evolve and the retailer will be liable for the tax if the retailer fails to remit the tax when it has a connection with that jurisdiction sufficient to require it to remit that jurisdiction's tax. If upon being audited, it is found a retailer has a sufficient connection with a particular jurisdiction so as to require remittance of that jurisdiction's tax, but the retailer has failed to do so, the Department will assess the retailer for that jurisdiction's tax.

For a detailed discussion of this matter, see SC Revenue Ruling #05-16. However, please note that this revenue ruling modifies SC Revenue Ruling #05-16 since at the time it was issued all local sales and use taxes were administered and collected on a county-wide basis. With the enactment of the Tourism Development Tax under Code Section 4-10-910 et. seq (Senate Bill No. 483 of 2009), the principles of SC Revenue Ruling #05-16 also apply to local sales and use taxes imposed on a municipal-wide or other basis, such as the Tourism Development Tax.

IV. QUESTIONS & ANSWERS CONCERNING LOCAL SALES AND USE TAXES:

In-State Retailers – Remittance and Reporting Requirements:

1. Q. What are the criteria that must be met to require an in-state retailer to collect a jurisdiction's local tax and how must the in-state retailer report sales for purposes of the local sales and use taxes?
 - A. If a retailer located in South Carolina purposefully avails itself of the benefits of the economic market of a jurisdiction or it has purposefully directed its efforts toward the residents of a jurisdiction, it has a minimal connection with that jurisdiction sufficient to subject it to that jurisdiction's authority and therefore require it to remit the jurisdiction's tax on its deliveries into that jurisdiction, even if it has no physical presence in that particular jurisdiction.

Examples of when a retailer located in South Carolina must remit a jurisdiction's sales and use tax include, but are not limited to:

Retailers Using Their Own Vehicles: A retailer is required to remit a jurisdiction's tax if the retailer is shipping property into the jurisdiction using his own vehicles (whether owned or leased).

Retailers Using a Contract Carrier: A retailer is required to remit a jurisdiction's tax if the retailer is shipping property into the jurisdiction using a contract carrier (an independent or related company working specifically for or otherwise representing the retailer with respect to the delivery.)

Retailers Using a Common Carrier: A retailer is required to remit a jurisdiction's tax if the retailer is shipping property into the jurisdiction using a common carrier (*e.g.*, UPS, the mail), and the retailer is subject to the jurisdiction of delivery's authority (Due Process nexus has been established with the jurisdiction of delivery).

Examples of when a retailer is subject to the jurisdiction of delivery's authority include, but are not limited to, the following:

(a) The retailer maintains, temporarily or permanently, directly or by subsidiary, an office, warehouse, distribution house, sales house, other place of business, or property of any kind in the jurisdiction of delivery.

(b) The retailer or a subsidiary has, temporarily or permanently, an agent, representative (including delivery personnel and independent contractors acting on behalf of the retailer), salesman, or employee operating within the jurisdiction of delivery.

(c) The retailer advertises via advertising media located in the jurisdiction of delivery (*e.g.*, newspapers, television, cable systems, and radio).

(d) The retailer advertises via advertising media located outside the jurisdiction but which has coverage within the jurisdiction of delivery (*e.g.*, newspapers, television, cable systems, and radio).

Please note that these statements are only examples and that there are other circumstances in which a retailer must remit a jurisdiction's tax with respect to deliveries into that jurisdiction. Retailers must be aware that as the courts address this issue, the requirements for remitting a jurisdiction's tax may evolve and the retailer will be liable for the tax if the retailer fails to remit the tax when it has a connection with that jurisdiction sufficient to require it to remit that jurisdiction's tax. If upon being audited, it is found a retailer has a sufficient connection with a particular jurisdiction so as to require remittance of that jurisdiction's tax, but the retailer has failed to do so, the Department will assess the retailer for that jurisdiction's tax.

Sales on which a retailer is required to report a local sales or use tax are to be reported by jurisdiction of delivery on Form ST-389, which is to be attached to the appropriate sales and use tax return. Form ST-389 provides information as to which type of local sales and use tax must be reported by county and municipality and which type of local sales and use tax must be reported only by county or only by municipality.

Out-of-State Retailers – Remittance and Reporting Requirements:

2. Q. What are the criteria that must be met to require an out-of-state retailer to collect a jurisdiction's local tax and how must the out-of-state retailer report sales for purposes of the local sales and use taxes?
 - A. If a retailer that has established Commerce Clause nexus with South Carolina purposefully avails itself of the benefits of the economic market of a jurisdiction or it has purposefully directed its efforts toward the residents of a jurisdiction, it has a minimal connection with that jurisdiction sufficient to subject it to that jurisdiction's authority and therefore require it to remit the jurisdiction's tax on its deliveries into that jurisdiction, even if it has no physical presence in that particular jurisdiction.

Examples of when a retailer that has established Commerce Clause nexus with South Carolina must remit a jurisdiction's sales and use tax include, but are not limited to:

Retailers Using Their Own Vehicles: A retailer is required to remit a jurisdiction's tax if the retailer is shipping property into the jurisdiction using his own vehicles (whether owned or leased).

Retailers Using a Contract Carrier: A retailer is required to remit a jurisdiction's tax if the retailer is shipping property into the jurisdiction using a contract carrier (an independent or related company working specifically for or otherwise representing the retailer with respect to the delivery.)

Retailers Using a Common Carrier: A retailer is required to remit a jurisdiction's tax if the retailer is shipping property into the jurisdiction using a common carrier (*e.g.*, UPS, the mail), and the retailer is subject to the jurisdiction of delivery's authority (Due Process nexus has been established with the jurisdiction of delivery).

Examples of when a retailer is subject to the jurisdiction of delivery's jurisdiction include, but are not limited to, the following:

- (a) The retailer maintains, temporarily or permanently, directly or by subsidiary, an office, warehouse, distribution house, sales house, other place of business, or property of any kind in the jurisdiction of delivery.
- (b) The retailer or a subsidiary has, temporarily or permanently, an agent, representative (including delivery personnel and independent contractors acting on behalf of the retailer), salesman, or employee operating within the jurisdiction of delivery.
- (c) The retailer advertises via advertising media located in the jurisdiction of delivery (*e.g.*, newspapers, television, cable systems, and radio).
- (d) The retailer advertises via advertising media located outside the jurisdiction but which has coverage within the jurisdiction of delivery (*e.g.*, newspapers, television, cable systems, and radio).

Please note that these statements are only examples and that there are other circumstances in which a retailer must remit a jurisdiction's tax with respect to deliveries into that jurisdiction. Retailers must be aware that as the courts address this issue, the requirements for remitting a jurisdiction's tax may evolve and the retailer will be liable for the tax if the retailer fails to remit the tax when it has a connection with that jurisdiction sufficient to require it to remit that jurisdiction's tax. If upon being audited, it is found a retailer has a sufficient

connection with a particular jurisdiction so as to require remittance of that jurisdiction's tax, but the retailer has failed to do so, the Department will assess the retailer for that jurisdiction's tax.

Sales upon which a retailer is required to collect a local use tax are to be reported by jurisdiction of delivery on Form ST-389, which is to be attached to the appropriate sales and use tax return. Form ST-389 provides information as to which type of local sales and use tax must be reported by county and municipality and which type of local sales and use tax must be reported only by county or only by municipality.

Voluntary Collection of a Local Tax:

3. Q. May a retailer, who is not subject to a particular jurisdiction's authority as discussed in Questions #1 and #2 above to require the retailer to collect that jurisdiction's local use tax, voluntarily collect that jurisdiction's local use tax?
 - A. Yes. If a retailer voluntarily collects the local use tax, he has an obligation to remit the tax to the Department.

Purchasers - Reporting Requirements:

4. Q. The liability for a local use tax, as with the state use tax, is on the purchaser. The retailer may, however, be required to collect the tax from the purchaser as discussed in Questions #1 and #2 above and remit the local tax to the Department. If the retailer does not collect the local use tax from the purchaser, then the purchaser must pay the tax directly to the Department on his return.

In those situations where the retailer does not collect the local use tax, how is the purchaser to report the tax?

- A. Purchases of tangible personal property (not for resale) first stored, used or consumed in a local tax jurisdiction are subject to the local use tax. Such purchases are to be reported on Form ST-389 by county and/or municipality where the property is first stored, used or consumed. Form ST-389 provides information as to which type of local sales and use tax must be reported by county and municipality and which type of local sales and use tax must be reported only by county or only by municipality.

NOTE: The purchaser is not liable for a jurisdiction's local use tax if he takes delivery in another jurisdiction and pays the other jurisdiction's local sales tax, provided the local sales tax he paid is equal to or greater than the local use tax that would otherwise be due. If the local sales tax he paid is less than the local use tax, then the purchaser owes the difference. Also, the purchaser is relieved of the liability for the local use tax if he has a receipt from a retailer showing the retailer has collected the local use tax.

Artists, Craftsmen & Transient or Temporary Retailers:

5. Q. How are "artists and craftsmen" licensed under Code Section 12-36-510(A)(2) and "transient or temporary" retailers licensed under Code Section 12-36-510(A)(3) to report their sales?
- A. Such retailers are to report their sales on Form ST-389 by jurisdiction where delivery is made. (See Questions #1 and #2.) Form ST-389 provides information as to which type of local sales and use tax must be reported by county and municipality and which type of local sales and use tax must be reported only by county or only by municipality.

Withdrawals for Use:

6. Q. Code Section 12-36-110(c) defines "retail sale" to include "the withdrawal, use, or consumption of tangible personal property by anyone who purchases it at wholesale". How are such "retail sales" to be reported?
- A. These retail sales are to be reported on Form ST-389 by jurisdiction where the property is first withdrawn, used or consumed. Form ST-389 provides information as to which type of local sales and use tax must be reported by county and municipality and which type of local sales and use tax must be reported only by county or only by municipality.

For additional information about the taxation of "withdrawals for use," see SC Revenue Ruling #08-11.

Sales Made via Outside Salesmen:

7. Q. How are in-state retailers to report sales made as a result of orders taken by outside salesmen?
- A. Such retailers are to report their sales on Form ST-389 by jurisdiction where delivery is made. (See Questions #1 and #2.) Form ST-389 provides information as to which type of local sales and use tax must be reported by county and municipality and which type of local sales and use tax must be reported only by county or only by municipality.
8. Q. How are in-state retailers to report sales made by outside salesmen who, at the time of taking the order, also deliver the merchandise to the customer?
- A. Such retailers are to report their sales on Form ST-389 by jurisdiction where delivery is made. (See Questions #1 and #2.) Form ST-389 provides information as to which type of local sales and use tax must be reported by county and municipality and which type of local sales and use tax must be reported only by county or only by municipality.

9. Q. How are out-of-state retailers who solicit orders via salesmen to report their sales?
- A. Such retailers are to report their sales on Form ST-389 by jurisdiction where delivery is made. Form ST-389 provides information as to which type of local sales and use tax must be reported by county and municipality and which type of local sales and use tax must be reported only by county or only by municipality.

If the property is delivered into a local tax jurisdiction, then the sale is subject to the local sales and use tax. If the property is delivered into a jurisdiction that has not imposed a local tax, then a local sales and use tax is not due. (See Question #1 and #2.)

“Direct Pay” Certificates:

10. Q. What effect, if any, does the use of a "direct pay" exemption certificate (Code Section 12-36-2510) have on the reporting of a local sales and use tax?
- A. By using a so-called "direct pay" exemption certificate, a taxpayer can make all purchases tax free and must pay any taxes due directly to the Department. The taxpayer is liable for any taxes due and the tax (sales or use) is due upon the property being "withdrawn, used or consumed by the taxpayer". For purposes of a local sales and use tax, such withdrawals, use or consumption are reportable on Form ST-389 by jurisdiction where the property is first withdrawn, used or consumed. Form ST-389 provides information as to which type of local sales and use tax must be reported by county and municipality and which type of local sales and use tax must be reported only by county or only by municipality.
11. Q. For those taxpayers who use a "direct pay" exemption certificate, what is the effect on a local sales and use tax if the property is merely transferred from one locale to another? By "transferred", it is meant the property is not withdrawn from inventory for use or consumption, but is merely moved from one location to another.
- A. Merely transferring property from one locale to another does not trigger the tax. The tax is due when the property is withdrawn, used or consumed by the taxpayer and such withdrawal, use or consumption is reportable on Form ST-389 by the jurisdiction where first withdrawn, used or consumed. Form ST-389 provides information as to which type of local sales and use tax must be reported by county and municipality and which type of local sales and use tax must be reported only by county or only by municipality.

“Limited” Exemption Certificates:

12. Q. What effect, if any, does use of a "limited" exemption certificate have on the reporting of a local sales and use tax?

- A. Unlike a "direct pay" exemption certificate, which allows the holder to make all purchases free of the tax, a so-called "limited" exemption certificate only allows specific items, which are exempt under Code Section 12-36-2120, to be purchased tax-free.

If the holder of the limited exemption certificate purchases an item which falls within an exemption provided by Code Section 12-36-2120, then the purchase is exempt from the state tax and the local sales and use tax.

However, if the holder uses the certificate to purchase an item not exempt under Code Section 12-36-2120, then the holder of the certificate is liable for any tax due upon the property being withdrawn, used or consumed. For purposes of a local sales and use tax, such withdrawals, use or consumption are reportable on Form ST-389 by jurisdiction where the property is first withdrawn, used or consumed. Form ST-389 provides information as to which type of local sales and use tax must be reported by county and municipality and which type of local sales and use tax must be reported only by county or only by municipality.

Transactions Not Subject to the Local Sales and Use Tax:

- 13.Q. Are there any transactions which are not subject to the local sales and use taxes?

- A. Yes.

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 document, SC Information Letter #09-8 contains the most recently published information; updated information will be published in new information letters on the Department's website (<http://www.sctax.org/Tax+Policy/Policy/salesdx.htm>) as warranted.

Construction Contracts:

14. Q. How does a local sales and use tax apply to construction contracts?

- A. Each local sales and use tax provides that "[t]he gross proceeds of sales of tangible personal property delivered after the imposition date of the [local sales and use] tax levied ... in a [jurisdiction], either under the terms of a construction contract executed before the imposition date, or a written bid submitted before the imposition date culminating in a construction contract entered into before or after the imposition date are exempt from the local sales and use tax...provided a verified copy of the contract is filed with the South Carolina Department of Revenue within six months after the imposition of the local option sales and use tax".

To apply for the above exemption, use Form ST-10C.

Local Sales Tax:

For those transactions which are not exempt under the above provisions, the local sales tax is reportable by the contractor's supplier in the jurisdiction where the tangible personal property is delivered.

Local Use Tax:

For those transactions which are not exempt under the above provisions, the local use tax is reportable on Form ST-389 by jurisdiction where the property is first stored, used or consumed. Form ST-389 provides information as to which type of local sales and use tax must be reported by county and municipality and which type of local sales and use tax must be reported only by county or only by municipality.

The liability for the local use tax, as with the state use tax, is on the contractor. The supplier may, however, be required to collect the tax from the contractor and remit it to the Department. (See Questions #1 - #3 for information as to when a supplier is required to remit a local jurisdiction tax for tangible personal property delivered in or into a local tax jurisdiction.)

If the contractor takes delivery in one local tax jurisdiction and pays that jurisdiction's local sales tax to the supplier, he is not liable for the local use tax if he takes the property to another local tax jurisdiction and stores, uses or consumes the property in that jurisdiction, provided the local sales tax he paid is equal to or greater than the local use tax that would otherwise be due. If the local sales tax he paid is less than the local use tax, then the contractor owes the difference. Also, the contractor is relieved of the liability for the local use tax if he has a receipt from a retailer showing the retailer has collected the local use tax.

15. Q. Code Section 12-36-110(1)(d) includes in the definition of "retail sale" "the use within this State of tangible personal property by its manufacturer as building materials in the performance of a construction contract".

How are such businesses, which are generally referred to as "manufacturer/contractors", to report these "retail sales"?

- A. "Manufacturer/contractors" are to report the local sales or use tax on Form ST-389 by jurisdiction where the property is used or consumed - the location of the construction site. Form ST-389 provides information as to which type of local sales and use tax must be reported by county and municipality and which type of local sales and use tax must be reported only by county or only by municipality.

Vending Machine Operators

16. Q. How are businesses that make sales from vending machines to report their sales?

A. Local Sales Tax:

Items to be sold from vending machines, except for cigarettes and soft drinks in closed containers, purchased from suppliers and subject to the local sales tax when delivered to the vending machine operator in or into a local tax jurisdiction are the liability of the vending machine operator's supplier. The supplier must account for these sales on Form ST-389 by the jurisdiction where the property is delivered to the vending machine operator. Form ST-389 provides information as to which type of local sales and use tax must be reported by county and municipality and which type of local sales and use tax must be reported only by county or only by municipality.

Sales of cigarettes and soft drinks in closed containers are subject to a local sales tax upon being sold from the vending machines, if the machines are located in a local tax jurisdiction. The liability for the tax is on the vending machine operator and he is to account for such sales on Form ST-389 by jurisdiction in which the vending machines are located. Form ST-389 provides information as to which type of local sales and use tax must be reported by county and municipality and which type of local sales and use tax must be reported only by county or only by municipality.

Local Use Tax:

Items to be sold from vending machines, except for cigarettes and soft drinks in closed containers, which are purchased from suppliers and subject to the local use tax are the liability of the vending machine operator.

However, the vending machine operator is not liable for the jurisdiction's local use tax if he takes delivery in another jurisdiction and pays the other jurisdiction's local sales tax, provided the local sales tax he paid is equal to or greater than the local use tax that would otherwise be due. If the local sales tax he paid is less than the local use tax, then the vending machine operator owes the difference. Also, the vending machine operator is relieved of the liability for the local use tax if he has a receipt from a retailer showing the retailer has collected the local use tax.

If the supplier (whether in-state or out-of-state) does not collect the local tax from the vending machine operator (who is liable for the local use tax), or the local sales tax is not paid, then the vending machine operator is to pay the tax directly to the Department on his return. (See Questions #1 - #3 as to when a retailer is required to remit the local tax.)

Purchases by the vending machine operator of cigarettes and soft drinks in closed containers for sale from vending machines are not subject to the local use tax. The local sales tax is due upon such items being sold from machines located in a local tax jurisdiction. The liability for the local sales tax is on the vending machine operator. Again, such sales are to be accounted for on Form ST-389 by jurisdiction where the machines are located. Form ST-389 provides information as to which type of local sales and use tax must be reported by county and municipality and which type of local sales and use tax must be reported only by county or only by municipality.

Utilities

17. Q. How are utilities to report the local sales or use tax?

- A. Utilities must report sales in the jurisdiction in which consumption of the tangible personal property occurs. In other words, utilities are to report their sales on Form ST-389 by jurisdiction where their customers are located. Form ST-389 provides information as to which type of local sales and use tax must be reported by county and municipality and which type of local sales and use tax must be reported only by county or only by municipality.

A utility, as a result of its network of pipelines, transmissions lines or towers, its regional or statewide advertising, and the repair and other services it provides, is considered engaged in business in every jurisdiction in which it has customers. Therefore, a utility, for purposes of this document, will be considered located in every jurisdiction in which it has customers and will be liable for the local sales tax in each of these counties that has enacted one or more of the local sales and use taxes administered and collected by the Department of Revenue.

18. Q. For purposes of question #17, what is a "utility"?

- A. A "utility" is an entity which sells products or services subject to the state sales and use tax and transmits or delivers its products or services via electronic transmissions or pipelines (*i.e.*, electric and gas companies, telephone companies, cable TV companies and other communications companies).

Note: Entities which sell water via pipelines to the public are also "utilities"; however, their sales are exempt from the state sales and use tax and all local sales and use taxes administered and collected by the Department.

Businesses Which Bill on a Monthly Basis:

19. Q. For those taxpayers who sell and bill their services on a monthly basis (*i.e.* electric utilities and cable TV companies), when are they to begin reporting the local sales or use tax?

- A. Taxpayers who sell and bill their services on a monthly basis (i.e. electric utilities and cable TV companies) must report the local tax beginning on the first day of the billing period beginning on or after the date of general imposition. The phrase "date of general imposition" means the date the local sales and use tax becomes effective in a particular jurisdiction.

For example, if an electric power company has a billing period ending May 10, 2009, the first "billing cycle" subject to a local sales and use tax that became effective on May 1, 2009 would be the period beginning May 11, 2009. The period May 1st through May 10th would not be subject to the local sales and use tax.

Leases:

20. Q. If tangible personal property is leased prior to the imposition date of a local sales and use tax in a local tax jurisdiction and the lease period extends beyond the imposition date, does the local sales or use tax apply to those lease payments made after the imposition date?

- A. No. The local sales or use tax would not apply to those lease payments made after the imposition date on leases entered into before the imposition date of a local sales and use tax. However, if the lease has an optional renewal provision and the lessee renews the lease under this option after the imposition date of the local sales and use tax, then the local sales and use tax would apply to those lease payments made after the renewal.

Note: For more information concerning leases, see SC Revenue Ruling #91-9.

Installment Sales:

21. Q. Code Section 12-36-2560, which concerns sales made on an installment basis, allows a retailer to elect "to include in the return only the portion of the sales price actually received by the retailer during the taxable period or to include the entire sales price in the return for the taxable period during which the sale was consummated".

If the retailer has elected to pay the tax as payments are received, are payments received after the imposition date of the local sales and use tax subject to the local sales or use tax?

- A. For sales made after the imposition date, the local sales or use tax applies to all payments received. For sales made before the imposition date, the local sales or use tax would not apply.

For those sales made on or after the imposition date of the local sales and use tax, and on which the retailer does not collect the local use tax from the purchaser (if

he delivers to the purchaser in a local tax jurisdiction), the purchaser must pay his jurisdiction's local use tax on his return directly to the Department. If the purchaser must pay the local use tax, the tax is due on the entire purchase price. The purchaser may not pay the local use tax as payments are made to the retailer.

Accommodations:

22.Q. Does a local sales tax apply to charges for accommodations? See Code Section 12-36-920(A).

A. Yes. A local sales tax applies to charges for accommodations.

Note: Since the sales tax is imposed on “accommodations furnished,” the local sales tax on accommodations applies to accommodations furnished on or after the imposition date of the local sales tax, regardless of when the reservation and/or payment was made. For example, if a local sales tax is imposed effective May 1, 2010, the local sales tax on accommodations applies to accommodations furnished on or after May 1, 2010 even if the guest reserved and/or paid for the accommodations prior to May 1, 2010.

23.Q. Does a local sales tax apply to "additional guest charges", as defined at Code Section 12-36-920(B)?

A. Yes. A local sales tax applies to charges for "additional guest charges".

24.Q. How are taxpayers who are subject to the sales tax on accommodations and "additional guest charges" to report a local sales tax if they own or manage rental units in different counties or municipalities?

A. Taxpayers who are subject to the sales tax on accommodations and "additional guest charges" must report separately in their sales tax returns the total gross proceeds from business done in each jurisdiction, using Form ST-389. Form ST-389 provides information as to which type of local sales and use tax must be reported by county and municipality and which type of local sales and use tax must be reported only by county or only by municipality.

Note: For more detailed information as to the application of the state and local sales taxes to accommodations and “additional guest charges,” see SC Regulation 117-307.

Credit for Sales and Use Taxes Paid in Another State:

25.Q. May credit be taken against the local use tax for sales and use tax due and paid in another state?

A. Yes. Credit may be taken against the local use tax for sales and use tax due and paid in another state, as provided below:

- (1) If the total tax due and paid in another state (state plus local) is less than state and local tax due in a South Carolina jurisdiction which has imposed one or more local taxes, then the use tax owed in South Carolina is to be allocated to the State and to the jurisdiction.

For example, if another state has a 5% state tax and a 1% local tax; therefore, if a taxpayer makes a purchase in that state with a sales price of \$1,000, upon which the 6% tax was due and paid in that other state, and stores, uses or consumes the property in a South Carolina jurisdiction which has imposed a 1% use tax, the difference owed in South Carolina (1%) is to be allocated as follows -

State portion = 6/7 times 1% times \$1,000 =	\$ 8.57
Local portion = 1/7 times 1% times \$1,000 =	<u>1.43</u>
Total due	\$ 10.00

- (2) If the total sales and use taxes due and paid in another state (state plus local) is equal to or greater than the state and local tax due in a South Carolina jurisdiction, no tax will be due in South Carolina (either state or local).
- (3) If the property is stored, used or consumed in a S.C. county which has not imposed the a sales and use tax, credit will be allowed against the state use tax up to the amount of state and local taxes due and paid in the other state.

Note: If the purchaser takes delivery of tangible personal property in a local tax jurisdiction and pays that jurisdiction's local sales tax to the retailer, the purchaser is not liable for the local use tax if the property is first stored, used or consumed in another local tax jurisdiction, provided the local sales tax he paid is equal to or greater than the local use tax that would otherwise be due. If the local sales tax he paid is less than the local use tax, then the purchaser owes the difference. Also, the purchaser is relieved of the liability for the local use tax if he has a receipt from a retailer showing the retailer has collected the full local use tax due.

Refunds of State & Local Sales and Use Taxes:

- 26 Q. If a retailer pays taxes which should not have been paid, who is entitled to a refund - the retailer or the purchaser?
- A. Sale Involving State Sales Tax and Local Sales Tax. If a retailer delivers property in or into a local tax county, the retailer may receive a refund for the state sales tax and the local sales tax, if the tax should not have been paid.

Sales Involving State Sales Tax and Local Use Tax. If a retailer has property delivered into a local tax jurisdiction, the retailer may receive a refund for the state sales tax, if the tax should not have been paid. The retailer may not, however, receive a refund for the local use tax.

The purchaser is the taxpayer for purposes of the local use tax and is, therefore, the only one entitled to the refund for the local use tax. To receive the refund, the purchaser must have documentation showing he has paid the local use tax to the retailer.

Sales Involving State Use Tax and Local Use Tax. If a retailer has property delivered into a local tax jurisdiction, the retailer may not receive a refund for the state use tax or the local jurisdiction use tax, if the tax should not have been paid.

The purchaser is the taxpayer for purposes of the state use tax and the local jurisdiction use tax and is, therefore, the only one entitled to the refund for the state and local use taxes. To receive the refund, the purchaser must have documentation showing he has paid the state and local use taxes to the retailer.

Exceptions: See Code Section 12-60-470(C) for information as to (1) the authority of a retailer to assign the right to a refund of the state sales tax or the local sales tax to the purchaser and (2) the authority of a retailer to claim a refund of the state use tax and the local use tax when (a) the retailer can establish the use tax has been repaid to the purchaser (from whom the use tax was collected) or (b) the retailer has obtained the written consent of the purchaser (from whom the use tax was collected) that allows the retailer to claim the refund of the to the state use tax and the local use tax.

How to Request a Refund. Taxpayers who are entitled to a refund of the state or local sales and use tax may send a letter to:

South Carolina Department of Revenue
Sales Tax Refund Request
P.O. Box 125
Columbia, S.C. 29214

This letter must contain the following information as required by Code Section 12-60-470:

- (1) the name, address, and telephone number of the taxpayer;
- (2) the appropriate taxpayer identification number or numbers;
- (3) the tax period or date for which the tax was paid;
- (4) the nature and kind of tax paid;
- (5) the amount which the taxpayer claims was erroneously paid;
- (6) a statement of facts supporting the taxpayer's position;
- (7) a statement outlining the reasons for the claim, including law or other authority upon which the taxpayer relies; and

(8) a schedule showing (by month) a breakdown by county and municipality where the tax was originally reported. This schedule must also show the type tax (sales or use) and amount to be refunded.

The Department may also require other relevant information depending on the facts and circumstances.

All refunds are subject to verification by audit, either before or after issuance.

How Taxes Should Be Shown On Billings To Customers:

- 27.Q. Are retailers required to show the state tax and the local tax separate from the sales price on billings to their customers?
- A. Both the state and local sales taxes are the liability of the retailer. Code Section 12-36-940 allows, but does not require, the retailer to include in the sales price the amount of the sales tax.

The state and local use taxes are the liability of the purchaser. Code Section 12-36-1350 requires the retailer to "collect the use tax from the purchaser and give to the purchaser a receipt showing the amount subject to the tax and the amount of tax collected".

Sales Involving State Sales Tax and Local Sales Tax. A retailer making deliveries in or into a local tax county is not required to separately show either the state sales tax or the local sales tax from the sales price on billings to a customer. The retailer, however, does have the option under Code Section 12-36-940 to separately show the state sales tax and the local sales tax from the sales price.

Sales Involving State Sales Tax and Local Use Tax. A retailer that ships into a local tax jurisdiction is not required to separately show the state sales tax from the sales price. The retailer, however, does have the option under Code Section 12-36-940 to separately show the state sales tax from the sales price.

However, in collecting the local use tax, the retailer is required to separately show the local use tax from the sales price on billings to a customer.

Sales Involving State Use Tax and Local Use Tax. A retailer that ships into a local tax jurisdiction is required to separately show the state use tax and the local use tax from the sales price on billings to a customer. The retailer is not required to separate the two taxes. The retailer may just show a combined South Carolina tax was collected.

Special Rules for the Catawba Indian Reservation and the Catawba Tribal Sales and Use Tax:

28.Q. Since the Catawba Tribal Sales and Use Tax is imposed as a result of the Catawba Indian Claims Settlement Act, are there any special rules for sales (deliveries) made on the Catawba Indian Reservation?

The application of either the State sales and use tax or the Catawba Tribal sales and use tax for sales (deliveries) made on the Catawba Indian Reservation are determined by the Catawba Indian Claims Settlement Act. The specific sales and use tax provisions can be found in Code Section 27-16-130(H). The Catawba Tribal sales and use tax expires on November 28, 2092.

Code Section Code Section 27-16-130(H) states:

(H) The Tribe, its members, and the Tribal Trust Funds are liable for the payment of all state and local sales and use taxes to the same extent as any other person or entity in the State, except as specifically provided as follows:

- (1) Purchases made by the Tribe for tribal government functions during ninety-nine years from the effective date of this chapter are exempt from state and local sales and use taxes.
- (2) Catawba pottery and artifacts made by members of the Tribe and sold on or off the Reservation by the Tribe or members of the Tribe are exempt from state and local sales and use tax.
- (3) During ninety-nine years from the effective date of this chapter, the sale on the Reservation of all other items, made on or off the Reservation, are exempt from state and local sales and use taxes but are subject to a special tribal sales tax levied by the Tribe equal to the state and local sales tax that would be levied in the jurisdiction encompassing the Reservation but for this exemption.
 - (a) The South Carolina sales and use tax laws, regulations, and rulings apply to the special tribal sales tax, and the special tribal sales tax must be administered and collected by the South Carolina Tax Commission.
 - (b) The South Carolina Tax Commission separately shall account for the special tribal sales tax, and the State Treasurer shall remit the special tribal sales tax revenues periodically to the Tribe at no cost to the Tribe.
 - (c) The tribal sales tax does not apply to retail sales occurring on the Reservation as a result of delivery from outside the Reservation when the gross proceeds of sale are one hundred dollars or less. If it does not apply, the state sales tax applies.

(d) The Tribe shall impose a tribal use tax on the storage, use, or other consumption on the Reservation of tangible personal property purchased at retail outside the State when the vendor does not collect the tax. However, use taxes collected by a vendor which is not located in the State are subject to state use taxes, and the use tax must be remitted to the State and not the Tribe. Use taxes not collected by the vendor and remitted to the State are subject to the tribal use tax and must be collected directly by the Tribe.

The following chart provides a summary of these provisions:

<u>Delivery on the Reservation From:</u>	<u>Type Tax Applicable</u>	<u>Administered and Collected By:</u>
Location On the Reservation	Tribal Sales Tax (Equal to Combined State and Local Rate)	Department of Revenue
Location Off the Reservation But in SC – Sales \$100 or less	State Sales Tax (6%) (Local taxes would not be applicable in these circumstances.)	Department of Revenue
Location Off the Reservation But in SC – Sales Over \$100	Tribal Sales Tax (Equal to Combined State and Local Rate)	Department of Revenue
Location Off the Reservation and Outside the State – Seller Registered with DOR	State Use Tax (6%) (Local taxes would not be applicable in these circumstances.)	Department of Revenue
Location Off the Reservation and Outside the State – Seller Not Registered with DOR	Tribal Use Tax (Equal to Combined State and Local Rate)	Catawba Indian Tribe

Maximum Tax Items: For sales (deliveries) made on the Reservation of tangible personal property subject to the maximum tax provisions, the tribal sales and use tax rate is 5% in each county (since the state sales and use tax on maximum tax items is 5% and maximum tax items are exempt from all local sales and use taxes), but the tax may not exceed the maximum tax set forth in Code Section 12-36-2110.

Casual Excise Tax Items: Counties imposing a local sales and use tax that do not exempt casual excise tax items will impose the local tax on sales and purchases of (a) trailers that can be pulled by vehicles other than truck tractors, (b) sales of pole trailers and (c) sales of boat motors not attached to a boat at the time of sale. Therefore, for sales (deliveries) of these trailers and boat motors made on the Reservation within each county, the tribal sales and use tax rate will depend on the type of local tax imposed in the respective counties.

Please note that the rate for the tribal sales tax and the tribal use tax may increase or decrease dependent upon whether the total state and local sales and use tax rates change in Lancaster county or York county in the future.

For additional information concerning the Catawba Tribal Tax, see SC Revenue Ruling #98-18.

Note: 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, including information concerning the Catawba Tribal Tax. As of the date of this document, SC Information Letter #09-8 contains the most recently published information; updated information will be published in new information letters on the Department's website (<http://www.sctax.org/Tax+Policy/Policy/salesIndex.htm>) as warranted.

Other Information:

- 29.Q. Do the discount provisions for filing and paying timely (Code Section 12-36-2610) apply to a local sales and use tax?
- A. Yes.
- 30.Q. If the answer to question #29 is "yes", how is the discount amount(s) to be computed?
- A. The discount amount is to be computed by applying the appropriate discount rate to the total tax due on the return (the state tax combined with the local tax).
- 31.Q. Is a local sales and use tax to be considered in determining whether or not a taxpayer may be permitted to file a quarterly return?
- A. Yes. A local sales and use tax should be considered in determining whether or not a taxpayer may be permitted to file a quarterly return. In other words, the local tax should be added to the state tax liability.
- 32.Q. Do the penalty and interest provisions of Chapter 54 of Title 12 apply to a local sales and use tax?
- A. Yes.
- 33.Q. Are the penalties and interest to be applied to a local sales and use tax separately from the state tax?
- A. Yes. Penalties and interest are to be applied to a local sales and use tax separately from the state tax.
- 34.Q. Is a local sales and use tax to be considered in computing warrant costs, pursuant to Code Section 12-53-40?
- A. Yes.

35.Q. Are warrant costs shared with the counties?

A. No. Warrant costs are collected from taxpayers for costs incurred by the State in collecting warrants and tax executions.

Notification of Imposition of a Local Sales and Use Tax

36.Q. When are those jurisdictions which approve a local tax to notify the Department that they have adopted a resolution to impose a local sales and use tax?

A. The statutes and laws authorizing the various local sales and use taxes require a local jurisdiction that has approved an ordinance and/or a referendum to impose a local sales and use tax to notify the Department of Revenue by a specified date, depending on the type of local tax. Local jurisdictions seeking to impose a local sales and use tax should carefully review the statute authoring the tax for this information. Failure to notify the Department will delay the imposition of the tax.

Note: 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, including cites to the statutes and laws imposing these taxes. As of the date of this document, SC Information Letter #09-8 contains the most recently published information; updated information will be published in new information letters on the Department's website

(<http://www.sctax.org/Tax+Policy/Policy/salesIndex.htm>) as warranted.

SOUTH CAROLINA DEPARTMENT OF REVENUE

s/Ray N. Stevens

Ray N. Stevens, Director

June 16 _____, 2009
Columbia, South Carolina