

SC REVENUE RULING #10-6

SUBJECT: Low Speed Vehicles
(Sales and Use Tax)

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

SUPERSEDES: All previous advisory opinions and any oral directives in conflict herewith.

REFERENCES: S. C. Code Ann. Section 12-36-2110(A) (2000; 2008)
S. C. Code Ann. Section 56-3-20 (2006)
S. C. Code Ann. Section 56-1-10(19) (Supp. 2009)
S. C. Code Ann. Section 56-2-100 (Supp. 2009)
S. C. Code Ann. Section 56-2-110 (Supp. 2009)
S. C. Code Ann. Section 56-2-120 (Supp. 2009)
S. C. Code Ann. Section 56-2-130 (Supp. 2009)
S. C. Code Ann. Section 56-2-2740(A) (Supp. 2009)

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 It is the Department's position until superseded or modified by a change in statute, regulation, court decision, or another Departmental advisory opinion.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

Are sales of low speed vehicles as described in the facts entitled to the maximum tax under Code Section 12-36-2110(A) as "motor vehicles?"

Conclusion:

It is the department's opinion that sales of low speed vehicles as described in the facts that meet the requirements of Code Sections 56-2-100 through 56-2-130 are entitled to the maximum tax under Code Section 12-36-2110(A). Low speed vehicles entitled to the

maximum tax under Code Section 12-36-2110(A) are subject to the state sales and use tax at a rate of 5% (local sales and use taxes do not apply), but the state sales and use tax due cannot exceed \$300.

Facts:

The question has arisen as to whether low speed vehicles are entitled to the maximum tax of \$300.

A "low speed vehicle" or "LSV" is "a four-wheeled motor vehicle, other than an all terrain vehicle, whose speed attainable in one mile is more than twenty miles an hour and not more than twenty-five miles an hour on a paved level surface."¹

Discussion:

The issue is whether low speed vehicles are "motor vehicles" entitled to the maximum tax of \$300 as set forth in Code Section 12-36-2110(A).

Code Section 12-36-2110(A) reads in part:

(A) The maximum tax imposed by this chapter is three hundred dollars for each sale made after June 30, 1984, or lease executed after August 31, 1985, of each:

- (1) aircraft, including unassembled aircraft which is to be assembled by the purchaser, but not items to be added to the unassembled aircraft;
- (2) motor vehicle;
- (3) motorcycle;
- (4) boat;
- (5) trailer or semitrailer, pulled by a truck tractor, as defined in Section 56-3-20, and horse trailers, but not including house trailers or campers as defined in Section 56-3-710 or a fire safety education trailer;
- (6) recreational vehicle, including tent campers, travel trailer, park model, park trailer, motor home, and fifth wheel; or
- (7) self-propelled light construction equipment with compatible attachments limited to a maximum of one hundred sixty net engine horsepower.

¹ SC Code Section 56-1-10(19).

In the case of a lease, the total tax rate required by law applies on each payment until the total tax paid equals three hundred dollars. Nothing in this section prohibits a taxpayer from paying the total tax due at the time of execution of the lease, or with any payment under the lease. To qualify for the tax limitation provided by this section, a lease must be in writing and specifically state the term of, and remain in force for, a period in excess of ninety continuous days.

Even though Code Section 12-36-2110 does not refer to the definition in Code Section 56-3-20² with respect to "motor vehicles" (it does with respect to trailers and semitrailers), it has been the Department's longstanding policy to use the definition of "motor vehicle" in Code Section 56-3-20 for the purposes of the maximum tax.

Code Section 56-3-20 defines a "motor vehicle" as follows:

(2) "Motor vehicle:" Every vehicle which is self-propelled, except mopeds, and every vehicle which is propelled by electric power obtained from overhead trolley wires, but not operated upon rails; (Emphasis added.)

Code Section 56-3-20 defines a "vehicle" and "highway" as follows:

(1) "Vehicle:" Every device in, upon or by which any person or property is or may be transported or drawn upon a highway, except devices moved by human power or used exclusively upon stationary rails or tracks; (Emphasis added.)

(25) "Street" or "highway:" The entire width between boundary lines of every way publicly maintained when any part thereof is open to the use of the public for purposes of vehicular travel.

Based on the phrase "is or may be transported or drawn upon a highway" as found in the definition of "vehicle," a motor vehicle is one which is authorized for use on the highways of this state.

Code Section 56-1-10(19)³ defines a low speed vehicles as "a four-wheeled motor vehicle, other than an all terrain vehicle, whose speed attainable in one mile is more than twenty miles an hour and not more than twenty-five miles an hour on a paved level surface."

In addition, Code Section 56-1-10 defines the terms "motor vehicle" and "highway," which are nearly identical to the above definitions from Code Section 56-3-20.

² Chapter 3 of Title 56 concerns motor vehicle registration and licensing.

³ Chapter 1 of Title 56 concerns the driver's licenses.

Code Section 56-2-100 concerns the conditions for operating a low speed vehicle on a highway, and states:

- (A) A low speed vehicle may be operated only on a secondary highway for which the posted speed limit is thirty-five miles an hour or less.
- (B) A low speed vehicle may cross a highway at an intersection where the highway has a posted speed limit of more than thirty-five miles an hour.
- (C) A low speed vehicle must meet the requirements of Federal Motor Vehicle Safety Standard 500 (Part 49 Section 571.500 of the Code of Federal Regulations) at all times when operated on any highway. A low speed vehicle that complies with the equipment requirements in 49 C.F.R. Section 571.500 complies with all equipment requirements of this title.
- (D) Nothing in this section prevents local governments from adopting more stringent local ordinances governing low speed vehicle operation.
- (E) A county or municipality may prohibit the operation of low speed vehicles on any street or highway if the governing body of the county or municipality determines that the prohibition is necessary in the interest of safety.
- (F) The Department of Transportation may prohibit the operation of low speed vehicles on any street or highway if it determines that the prohibition is necessary in the interest of safety.
- (G) A farm vehicle, as defined in Section 56-1-2070(C)(2), is not a low speed vehicle for the purposes of this article.

Code Section 56-2-110 concerns driver's licenses and registration cards with respect to low speed vehicles, and states:

A person operating a low speed vehicle must be at least sixteen years of age and shall hold a valid driver's license. The operator of a low speed vehicle being operated on a highway must have in his possession:

- (1) the registration card issued by the department or the registration card issued by the state in which the low speed vehicle is registered; and
- (2) his driver's license.

Code Section 56-2-120 concerns the titling of low speed vehicles, and states:

(A) A low speed vehicle must be titled as specified in this title. The manufacturer's or importer's certificate of origin must identify clearly the vehicle as a low speed vehicle and must certify that the vehicle was manufactured in compliance with the equipment requirements for low speed vehicles in 49 C.F.R. Section 571.500. The State shall not issue vehicle identification numbers to homemade low speed vehicles, retrofitted golf carts, or any other similar vehicles, and these vehicles shall not qualify as low speed vehicles in this State.

(B) If the vehicle is owned by a nonresident, but is subject to issuance of a certificate of title in this State, the application must also contain his:

- (1) full legal name, social security number, or, if the primary user does not have a social security number but has a passport, his passport number;
- (2) driver's license number, whether the license was issued by this State or another jurisdiction;
- (3) date of birth;
- (4) bona fide principal residence address;
- (5) address in this State where the low speed vehicle will be housed and used; and
- (6) mailing address of the primary user of the vehicle. If the primary user is a firm, association, or corporation, the application must contain the business address and federal employer identification number of the primary user.

(C) A low speed vehicle must be registered and licensed in the same fashion as passenger vehicles pursuant to this title and is subject to the same insurance requirements applicable to other motor vehicles under this title.

(D) The Department of Motor Vehicles shall establish a special size and class of license plate for low speed vehicles that clearly identifies the vehicle as a low speed vehicle.

Code Section 56-2-130 requires that “[a] person engaged in the wholesale or retail sale of low speed vehicles must comply with the motor vehicle dealer licensing laws of this State ...”

Code Section 56-2-2740(A) states that “[t]he Department of Motor Vehicles must refuse to renew the driver's license and motor vehicle registration of a person who has not paid personal property taxes within the time limits prescribed in [Chapter 2 of Title 56].”

Based on the above, a low speed vehicle that meets the above requirements may be operated on secondary highways for which the posted speed limit is 35 miles an hour or less. In addition, such low speed vehicles must be registered and licensed with the Department of Motor Vehicles and may be only operated by a person who is at least 16 years of age and who has a valid driver’s license. The property taxes on the low speed vehicle must also be paid (as with any other motor vehicle) before it may be registered and licensed and receive a license plate from the Department of Motor Vehicles.⁴

A low speed vehicle must also meet the requirements of Federal Motor Vehicle Safety Standard 500 at all times when operated on any highway and one that that complies with the equipment requirements in 49 C.F.R. Section 571.500 is considered complying with all equipment requirements of Title 56.

Finally, a low speed vehicle does not include homemade low speed vehicles, retrofitted golf carts, or any other similar vehicles.

Therefore, a low speed vehicle as defined in Code Section 56-1-10(19) and meeting the requirements of Code Sections 56-2-100 through 56-2-130 is authorized for use on the highways of this state and is entitled to the maximum tax under Code Section 12-36-2110(A).

Even though a qualifying low speed vehicle may not be operated on highways with posted speed limits of more than 35 miles an hour (except as allowed in Code Section 56-2-100(B)), it must be titled, registered and licensed (including the payment of property taxes), must be operated by a licensed driver who is 16 or more years of age, and must meet certain equipment requirements. As such, it is authorized for use on the highways of this state and entitled to the maximum tax under Code Section 12-36-2110(A).

SOUTH CAROLINA DEPARTMENT OF REVENUE

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

March 23, _____, 2010
Columbia, South Carolina

⁴ The license plate issued for low speed vehicle begins with the letters “LV.”