
State of South Carolina
Department of Revenue
300A Outlet Pointe Blvd, P. O. Box 12265, Columbia, South Carolina 29211
Website Address: www.sctax.org

SC REVENUE RULING #14-4

SUBJECT: Nexus Creating Activities for Sales and Use Taxes
(Sales and Use Tax)

EFFECTIVE DATE: Applies to all open periods under the statute, unless otherwise stated in the Introduction.

SUPERSEDES: SC Revenue Ruling #07-3 and all previous advisory opinions and any oral directives in conflict herewith.

REFERENCES: Chapter 36 of Title 12 (2014)

AUTHORITY: S. C. Code Ann. Section 12-4-320 (2014)
S. C. Code Ann. Section 1-23-10(4) (2014)
SC Revenue Procedure #09-3

SCOPE: The purpose of a Revenue Ruling is to provide guidance to the public. 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 It is the Department's position until superseded or modified by a change in statute, regulation, court decision, or another Departmental advisory opinion.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:

Nexus is a sufficient connection between a person and a state, and a sufficient connection between an activity, property, or transaction and a state, that allows the state to subject the person, and the activity, property, or transaction to its taxing jurisdiction. The Due Process and Commerce Clauses of the United States Constitution and other federal statutes provide limitations on a state's powers to tax out of state business.

Over the years, the courts have provided limitations and guidelines in determining whether certain activities create nexus in a taxing state. For example, see *Quill Corp. v. North Dakota* 502 U.S. 808, 112 S. Ct. 1904, 119 L. Ed. 2d 27 (1992), *Complete Auto Transit, Inc. v. Brady*, 430 U.S. 274, 97 S. Ct. 1076, 51 L. Ed. 326 (1977), *Miller Brothers v. Maryland*, 347 U.S. 340, 347, 74 S. Ct. 535, 98 L. Ed. 744 (1954), *Scripto, Inc. v. Carson*, 362 U.S. 207, 80 S. Ct. 52, 4 L. Ed. 2d 54 (1960), *National Bellas Hess, Inc. v. Department of Revenue*, 386 U.S. 753, 87 S.Ct. 1389, 18 L.Ed.2d 505 (1967), *Helicopteros Nacionales de Columbia, S.A. v. Hall*, 104 S. Ct.1868 (1984), and *National Geographic Society v. California Bd. of Equal*, 430 U.S. 551, 97 S. Ct. 1386, 51 L. Ed. 2d 631 (1977).

The purpose of this advisory opinion is to provide written guidance from the Department concerning sales and use tax nexus creating activities.

This opinion reflects the Department’s official position regarding sales and use tax nexus at this time. Since developments in this area are constantly taking place, any response is subject to change due to a future statute, regulation, court decision, or advisory opinion.

Any change in South Carolina’s position as set forth in this document that is not the result of a court case or change in statute or regulation will be prospective. Any change that is the result of a court case will apply to all periods open under the statute unless the court states otherwise and any change in statute or regulation will be applicable as of the effective date established by the General Assembly.

Questions concerning the existence of nexus with South Carolina should be directed to the Department’s Nexus/Discovery Section at 803-898-5235 or 803 898-5695.

Qualifications to Responses:

Each response is based upon the specific facts described in the question and the following assumptions:

- **The business is selling tangible personal property¹ at retail to residents or others in South Carolina;**
- **Each specific question by itself was the only possible nexus creating activity or relationship a business has in South Carolina²; and,**
- **The activities described are not “de minimis” unless the question or answer specifically states otherwise.**

A “yes” response indicates the activity or relationship will, by itself, create nexus with South Carolina. A “no” response indicates the activity or relationship will, by itself, not create nexus with South Carolina. However, it is important to note that a combination of several different activities or relationships, even if each by itself does not create nexus, may create nexus with South Carolina. In addition, any variance from the facts stated in a question, or any additional facts not stated in a question, may change the answer set forth in this document.

¹ See Code Section 12-36-60 for the definition of “tangible personal property” and the various imposition provisions of Chapter 36 of Title 12 (Sales and Use Tax Code of Laws) for information as to services and intangibles that are “tangible personal property” by definition.

² Even though some questions specifically state that the activity represents the business’ “sole activity” in South Carolina, all other questions represent the business’ sole activity in South Carolina whether or not such is specifically stated. The difference in wording only represents how each question was originally presented to the Department.

Each response refers only to sales and use tax nexus. Activities that create nexus for sales and use tax purposes differ somewhat from those that create nexus for other tax purposes.

A. General Activities

- | | YES | NO |
|--|--------------------------|-------------------------------------|
| 1. The business holds a certificate of authority to conduct business in South Carolina, or is otherwise registered with the Secretary of State or any other regulatory agency in South Carolina. | <input type="checkbox"/> | <input checked="" type="checkbox"/> |
| 2. The business maintains a bank account in South Carolina. | <input type="checkbox"/> | <input checked="" type="checkbox"/> |
| 3. The business is listed in the local telephone books of cities in South Carolina. | <input type="checkbox"/> | <input checked="" type="checkbox"/> |
| 4. The business uses local phone numbers in South Carolina, which are forwarded to its headquarters in another state. | <input type="checkbox"/> | <input checked="" type="checkbox"/> |

B. Property in South Carolina

- | | YES | NO |
|---|-------------------------------------|--------------------------|
| 1. The business' sole activity in South Carolina is maintaining or using a place of business for selling tangible personalty. | <input checked="" type="checkbox"/> | <input type="checkbox"/> |
| 2. The business' sole activity in South Carolina is maintaining or using a place of business for storing ³ tangible personal property. | <input checked="" type="checkbox"/> | <input type="checkbox"/> |
| 3. The business' sole activity in South Carolina is maintaining inventory in South Carolina. | <input checked="" type="checkbox"/> | <input type="checkbox"/> |
| 4. The business' sole activity in South Carolina is maintaining or using a distribution facility. | <input checked="" type="checkbox"/> | <input type="checkbox"/> |

Note: South Carolina enacted a limited “safe harbor” nexus statute for persons who placed a distribution facility in service in South Carolina after December 31, 2010, but before January 1, 2013. This answer does not apply to a person who has met the investment and job requirements of Code Section 12-36-2691 before January 1, 2013. For persons who met these investment and job requirements, this “safe harbor” is applicable until the earlier of (a) January 1, 2016; (b) when the person no longer meets the requirements of the statute; or (c) the effective date of a law enacted by Congress that allows states to require sales tax collection for taxpayers that do not have substantial nexus. For all other person, this “safe harbor” is no longer available and the above answer is applicable.

³ See Question B.4.

- | | YES | NO |
|--|-------------------------------------|-------------------------------------|
| 5. The business' sole activity in South Carolina is maintaining tangible personal property for lease through a representative. | <input checked="" type="checkbox"/> | <input type="checkbox"/> |
| 6. The business' sole activity in South Carolina is the existence of unrelated in-state office (e.g. advertising). | <input checked="" type="checkbox"/> | <input type="checkbox"/> |
| 7. The business' sole activity in South Carolina is licensing software for use in South Carolina and | | |
| (a) the business sold and delivered the licensed software into South Carolina via a tape, disk, flash drive, or some other form of tangible personal property as defined in the South Carolina sales and use tax law; or, | <input checked="" type="checkbox"/> | <input type="checkbox"/> |
| (b) the business sold and delivered the licensed software into South Carolina as an attachment to an e-mail or a download from a website. | <input type="checkbox"/> | <input checked="" type="checkbox"/> |
| Note: See SC Revenue Rulings #12-1, 11-2, 03-5 and 96-3. | | |
| 8. The business' sole activity in South Carolina is that of a mail-order catalog seller with property or solicitors in South Carolina. | <input checked="" type="checkbox"/> | <input type="checkbox"/> |
| 9. The business' sole activity in South Carolina is the drop shipment of catalogs in South Carolina, for mailing to residents within South Carolina. | <input checked="" type="checkbox"/> | <input type="checkbox"/> |
| Note: See Question D.4 for the application of nexus to a business that uses a company in South Carolina to drop-ship merchandise to customers. | | |
| 10. The business sells tangible personal property to residents in South Carolina from outside of South Carolina (e.g., telephone, over the Internet, via catalog/direct mail, or otherwise) and delivers merchandise to customers in South Carolina in returnable containers. | <input checked="" type="checkbox"/> | <input type="checkbox"/> |
| 11. The business sells tangible personal property at retail to businesses in South Carolina from outside of South Carolina (e.g., telephone, over the Internet, or otherwise) and delivers the merchandise to customers by the business' tractor-trailers or railcars and leaves the trailer or railcar with the customer for a specified number of days or until the next delivery is made during which the customer will remove the merchandise from the trailer or railcar. | <input checked="" type="checkbox"/> | <input type="checkbox"/> |
| 12. The business sells tangible personal property to residents in South Carolina from outside of South Carolina (e.g., telephone, over the Internet, via catalog/direct mail, or otherwise) and provides in-state telephone and kiosks that allow customers to access inventories and purchase merchandise from remote subsidiaries. | <input checked="" type="checkbox"/> | <input type="checkbox"/> |

C. Activities of an Employee or Third Party (e.g., Sales Representative, Independent Contractor or Affiliated Company)

	YES	NO
1. The business' sole activity in South Carolina is the presence of a representative selling in South Carolina.	<input checked="" type="checkbox"/>	<input type="checkbox"/>
2. The business authorizes an employee or third party (e.g., independent contractor, affiliated company or other representative) to install, deliver, service, or repair merchandise in South Carolina or hires independent contractor to perform warranty or repair services on tangible personal property in South Carolina. (The repairs may be under warranty for which there is no separate charge or may be under warranty for which there was a separate charge.)	<input checked="" type="checkbox"/>	<input type="checkbox"/>
3. The business uses an employee or third party in South Carolina (e.g., independent contractor, affiliated company, or other representative) to investigate, handle or resolve customer issues, provide training or technical assistance, or otherwise provide customer service to customers in South Carolina.	<input checked="" type="checkbox"/>	<input type="checkbox"/>
4. The business' sole activity in South Carolina is an employee/representative providing training to South Carolina customers.	<input checked="" type="checkbox"/>	<input type="checkbox"/>
5. The business' sole activity in South Carolina is an employee/representative providing trouble-shooting to South Carolina customers.	<input checked="" type="checkbox"/>	<input type="checkbox"/>
6. The business sells tangible personal property to residents in South Carolina from outside the state (e.g., by telephone, over the Internet, via catalog/direct mail, or otherwise) and has an employee visit South Carolina four or more times during the year.	<input checked="" type="checkbox"/>	<input type="checkbox"/>
7. The business' sole activity in South Carolina is telemarketing activity into South Carolina (telemarketer not located in South Carolina).	<input type="checkbox"/>	<input checked="" type="checkbox"/>
8. The business' sole activity in South Carolina is the use of a telemarketing firm with a South Carolina office.	<input checked="" type="checkbox"/>	<input type="checkbox"/>
9. The business hires an unrelated call center or fulfillment center located in South Carolina to process telephone or electronic orders that primarily derive from out-of-state customers.	<input checked="" type="checkbox"/>	<input type="checkbox"/>
10. The business' sole activity in South Carolina is using an in-state photographer, if the vendor's products are shipped to South Carolina during the photographic sessions.	<input checked="" type="checkbox"/>	<input type="checkbox"/>
11. The business collects delinquent accounts using a collection agency in South Carolina or hires attorneys or other third parties to file collection suits in South Carolina.	<input checked="" type="checkbox"/>	<input type="checkbox"/>

- | | YES | NO |
|--|-------------------------------------|--------------------------|
| 12. The business is affiliated with an entity that sells tangible personal property or services to customers in South Carolina, and | | |
| (a) the South Carolina affiliate sells similar merchandise and uses common trade names, trademarks or logos; or, | <input checked="" type="checkbox"/> | <input type="checkbox"/> |
| (b) uses the South Carolina affiliate to accept returns, take orders, perform customer service or distribute advertising materials on its behalf. | <input checked="" type="checkbox"/> | <input type="checkbox"/> |
| 13. The business sells tangible personal property to residents in South Carolina from outside the state and authorizes an employee or third party (e.g., sales representative, independent contractor, or affiliated company) to solicit sales in South Carolina. | <input checked="" type="checkbox"/> | <input type="checkbox"/> |
| 14. The business' sole activity in South Carolina is soliciting through independent agents. | <input checked="" type="checkbox"/> | <input type="checkbox"/> |
| 15. The business' sole activity in South Carolina is using a broker to arrange rentals of customer mailing lists, that constitute tangible personal property under the South Carolina sales and use tax law, to vendors in South Carolina and other states. | <input checked="" type="checkbox"/> | <input type="checkbox"/> |
| 16. The business' in -state representative maintains an in-home office. | <input checked="" type="checkbox"/> | <input type="checkbox"/> |
| <p>Note: This answer applies whether or not the business reimburses the in-state representative for the costs of maintaining the in-home office. In addition, as noted elsewhere in this advisory opinion, it is not necessary that a representative maintain an in-state office in order for nexus to exist.</p> | | |
| 17. The business sells tangible personal property to residents in South Carolina from outside of South Carolina (e.g., telephone, over the Internet, via catalog/direct mail, or otherwise) and ships its product for distribution to a third-party distributor located in South Carolina that performs the functions such as labeling, packaging, and shipping. | <input checked="" type="checkbox"/> | <input type="checkbox"/> |
| <p>Note: This answer assumes that the third-party distributor did not purchase the merchandise, but is providing a service on behalf of a retailer selling tangible personal property to South Carolina residents.</p> | | |
| 18. The business sells tangible personal property to residents in South Carolina from outside of South Carolina (e.g., telephone, over the Internet, via catalog/direct mail, or otherwise) and makes remote sales of tangible personal property to South Carolina residents and holds two or more one-day seminars in South Carolina. | <input checked="" type="checkbox"/> | <input type="checkbox"/> |

- | | YES | NO |
|---|-------------------------------------|--------------------------|
| 19. The business sells tangible personal property to residents in South Carolina from outside of South Carolina (e.g., telephone, over the Internet, via catalog/direct mail, or otherwise) and makes remote sales of tangible personal property to South Carolina residents and holds two or more one-day seminars in South Carolina, and has its employees visit South Carolina five times during the year. | <input checked="" type="checkbox"/> | <input type="checkbox"/> |
| 20. The business sells gifts cards in affiliated South Carolina stores. | <input checked="" type="checkbox"/> | <input type="checkbox"/> |
| 21. The business makes remote sales of “canned software,” that constitutes tangible personal property under the South Carolina sales and use tax law, to residents of South Carolina and then sends a representative to customize it to meet the customer’s specific needs or to provide other Information Technology services. | <input checked="" type="checkbox"/> | <input type="checkbox"/> |
| 22. The business sells tangible personal property while temporarily located in South Carolina for up to three days. | <input type="checkbox"/> | <input type="checkbox"/> |

Note: The answer depends on whether or not the business’ presence or sales are de minimis, the business’ intent with respect to returning to the state, the value of the sales, and other facts and circumstances. However, even if nexus is not established, the seller must be licensed and remit the tax on all sales made by the employee during the employee’s time in the state

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| 23. The business sells tangible personal property to residents in South Carolina from outside of South Carolina (e.g., telephone, over the Internet via catalog/direct mail, or otherwise) and produces an “info-commercial” that runs on an in-state television channel and pays commissions to the local TV station based on a percentage of sales to South Carolina customers who made purchases using the phone number or website address displayed on the infomercial.” | <input type="checkbox"/> | <input type="checkbox"/> |
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Note: The answer depends on the facts and circumstances (e.g., nexus may exist if the advertising consists of a personal endorsement by a local personality)

D. Delivery

- | | YES | NO |
|--|-------------------------------------|--------------------------|
| 1. The business’ sole activity in South Carolina is in-state delivery via company-owned vehicles. | <input checked="" type="checkbox"/> | <input type="checkbox"/> |
| 2. The business’ sole activity in South Carolina is the presence of a representative to deliver merchandise in South Carolina ⁴ . | <input checked="" type="checkbox"/> | <input type="checkbox"/> |

⁴ See Question B.4.

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|---|-------------------------------------|-------------------------------------|
| 3. The business delivers merchandise in South Carolina by means other than common carrier or the U.S. Postal Service. | <input checked="" type="checkbox"/> | <input type="checkbox"/> |
| 4. The business uses a company in South Carolina to drop-ship merchandise to customers. | <input type="checkbox"/> | <input checked="" type="checkbox"/> |

Note: See SC Revenue Ruling #98-8. In addition, see Question B.9 for the application of nexus to a business whose sole activity in South Carolina is the drop shipment of catalogs in South Carolina for mailing to residents within South Carolina.

E. Transactions with South Carolina Printers⁵.

- | | YES | NO |
|---|--------------------------|-------------------------------------|
| 1. The business' sole activity in South Carolina is using a South Carolina printing company to print catalogs or advertisements, if the vendor's personnel enter the state occasionally (1-3 times per year) during the printing process. | <input type="checkbox"/> | <input checked="" type="checkbox"/> |

Note: See Code Section 12-36-75

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| 2. The business' sole activity in South Carolina is using a South Carolina printing company to print catalogs or advertisements, if the vendor's personnel do not enter South Carolina during the printing process. | <input type="checkbox"/> | <input checked="" type="checkbox"/> |
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Note: See Code Section 12-36-75.

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| 3. The business' sole activity in South Carolina is using a South Carolina printing company where the taxpayer's printing materials or printed goods are stored. | <input type="checkbox"/> | <input checked="" type="checkbox"/> |
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Note: See Code Section 12-36-75.

F. Advertising

- | | YES | NO |
|--|--------------------------|-------------------------------------|
| 1. The business' sole activity in South Carolina is spillover advertising from neighboring states. | <input type="checkbox"/> | <input checked="" type="checkbox"/> |

Note: This answer assumes that the advertiser and retailer have no physical presence in South Carolina.

⁵ See Exhibit A.

- | | YES | NO |
|--|--------------------------|-------------------------------------|
| 2. The business' sole activity in South Carolina is that of a mail-order catalog seller with only mail communication in the state. | <input type="checkbox"/> | <input checked="" type="checkbox"/> |

Note: This answer assumes that the retailer has no physical presence in South Carolina and that the catalogs are not mailed from within South Carolina.

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| 3. The business' sole activity in South Carolina is mailing catalogs to South Carolina consumers. | <input type="checkbox"/> | <input checked="" type="checkbox"/> |
|---|--------------------------|-------------------------------------|

Note: This answer assumes that the retailer has no physical presence in South Carolina and that the catalogs are not mailed from within South Carolina.

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| 4. The business is an Internet-based retailer with an out-of-state home office and enters into an agreement with a South Carolina operator of a website. The website operator hosts advertisements directing consumers to the website of the out-of-state retailer, and is paid each time an ad is displayed (per impression). | <input type="checkbox"/> | <input checked="" type="checkbox"/> |
|--|--------------------------|-------------------------------------|

- | | | |
|---|--------------------------|--------------------------|
| 5. The business' sole activity in South Carolina is advertising on local media (e.g., newspapers, radio, TV). | <input type="checkbox"/> | <input type="checkbox"/> |
|---|--------------------------|--------------------------|

Note: The answer depends on the facts and circumstances (e.g., nexus may exist if the advertising consists of a personal endorsement by a local personality)

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| 6. The business' sole activity in South Carolina is advertising on national media, which may be circulated in South Carolina (e.g., national magazines or TV). | <input type="checkbox"/> | <input type="checkbox"/> |
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Note: The answer depends on the facts and circumstances (e.g., nexus may exist if the advertising consists of a personal endorsement by a local personality)

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| 7. The business' sole activity in South Carolina is advertising on satellite TV. | <input type="checkbox"/> | <input type="checkbox"/> |
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Note: The answer depends on the facts and circumstances (e.g., nexus may exist if the advertising consists of a personal endorsement by a local personality)

G. Other Issues

- | | YES | NO |
|--|-------------------------------------|--------------------------|
| 1. The business sells tangible personal property over the Internet and operates a website which is maintained on a server that is owned by the business and located in South Carolina. | <input checked="" type="checkbox"/> | <input type="checkbox"/> |

- | | YES | NO |
|--|--------------------------|-------------------------------------|
| 2. The business makes remote sales of digital content such as music and video that is downloaded by residents of South Carolina. | <input type="checkbox"/> | <input checked="" type="checkbox"/> |

Sales of digital content that is downloaded is not subject to the tax.

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|---|-------------------------------------|--------------------------|
| 3. The business sells tangible personal property to residents in South Carolina from outside of South Carolina (e.g., telephone, over the Internet, via catalog/direct mail, or otherwise) and is the single member in a single member LLC that is a disregarded entity and is operating in South Carolina. | <input checked="" type="checkbox"/> | <input type="checkbox"/> |
|---|-------------------------------------|--------------------------|

Note: As stated in the “Introduction,” the above answers are based on the assumption that the business is selling tangible personal property at retail to residents or others in South Carolina and that each specific question by itself was the only possible nexus creating activity or relationship a business has in South Carolina. However, it is important to note that a combination of several different activities or relationships, even if each by itself does not create nexus, may create nexus with South Carolina. In addition, any variance from the facts stated in a question, or any additional facts not stated in a question, may change the answer set forth in this document.

SOUTH CAROLINA DEPARTMENT OF REVENUE

s/Rick Reames III
Rick Reames III, Director

September 10 _____, 2014
Columbia, South Carolina

EXHIBIT A

PERSONS CONTRACTING WITH STATE COMMERCIAL PRINTER

NEXUS SAFE HARBOR STATUTE

CODE SECTION 12-36-75

(A) Notwithstanding any other provision of this chapter, tangible or intangible property that is:

- (1) owned or leased by a person that has contracted with a commercial printer for printing and used in connection with a printing contract; and
- (2) located at the premises of the commercial printer;

shall not be considered to be, or to create, an office, a place of distribution, a sales location, a sample location, a warehouse, a storage place, or other place of business maintained, occupied, or used in any way by the person. A commercial printer with which a person has contracted for printing by reason of any printing contract which may include storing and shipping the items printed shall not be considered to be in any way a representative, an agent, a salesman, a canvasser, or a solicitor for the person.

(B) Notwithstanding any other provision of this chapter, the following shall not cause a person that has contracted with a commercial printer for printing to have a duty to register as a retailer or to collect or remit the sales or use tax imposed by this chapter:

- (1) the ownership or leasing by that person of tangible or intangible property located at the South Carolina premises of the commercial printer and used in connection with printing contracts;
- (2) the sale by that person of property printed or imprinted at and shipped or distributed from the South Carolina premises of the commercial printer by the commercial printer;
- (3) the activities performed pursuant or incident to a printing contract by or on behalf of that person at the South Carolina premises of the commercial printer by the commercial printer; or
- (4) the activities performed pursuant or incident to a printing contract by the commercial printer in South Carolina for or on behalf of that person