



STATE OF SOUTH CAROLINA
DEPARTMENT OF REVENUE

300A Outlet Pointe Blvd., Columbia, South Carolina 29210
P.O. Box 12265, Columbia, South Carolina 29211

SC REVENUE RULING #17-1

SUBJECT: Residential Electricity Exemption
(Sales and Use Tax)

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

REFERENCES: S.C. Code Ann. Section 12-36-2120(33) (2014)
S.C. Regulation 117-323 (2012)

AUTHORITY: S.C. Code Ann. Section 12-4-320 (2014)
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. 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 It is the Department's position until superseded or modified by a change in statute, regulation, court decision, or another Department advisory opinion.

Introduction:

South Carolina exempts from the sales and use tax the sale of electricity and other fuels used for "residential purposes."

The purpose of this advisory opinion is to address the application of the exemption to four examples involving vacant apartment units; separately metered pools, storage sheds and other structures at a single family home; and the common areas of a neighborhood maintained by a homeowners' association.

Law and Discussion:

Code Section 12-36-2120 provides exemptions from the sales and use tax and reads, in part:

Exempted from the taxes imposed by this chapter are the gross proceeds of sales, or sales price of:

* * * *

(33) electricity, natural gas, fuel oil, kerosene, LP gas, coal, or any other combustible heating material or substance used for residential purposes....

Regulation 117-323 defines the term "residential purposes" and provides as follows:

...the term "residential purposes"... is construed to mean any space or area occupied by one or more individuals with the intent that such space or area serves as a residence, house, dwelling or abode. Included in the exemption are single family houses, duplexes, condominium units, apartments and mobile homes of a permanent type used by a person or persons as a place of residence, house dwelling or abode. All sales to such locations would be exempt.

Electricity, natural gas, fuel, oil, coal or any other type of combustible heating materials centrally metered or delivered to a central storage tank (or area) to duplexes, condominium units, apartments or mobile homes of a permanent type, and billed as such, would be considered as used for residential purposes and exempt.

Excluded from the exemption are hotels, motels, dormitories, nursing homes, summer camps, resort lodges and other dwellings of a temporary or transient nature. All sales to such locations would be taxable.

The Attorney General, in an opinion dated August 23, 1979, addressed the meaning of the term residential purposes and concluded the literal meaning of the term should apply. This decision was based in part on the reasoning that:

...the word "residence" in a restrictive covenant is equivalent to "residential" and is used in contradistinction to "business," and that if a building is used as a place of abode and no business carried on, it would be used for "residence purposes" only, whether occupied by one family or a number of families. Jernigan v. Capps, 187 Va. 73, 45 S.E. 2d 886. Also, the terms "residence purposes" and "residences" require use of the property for living purposes as distinguished from uses for business or commercial purposes. MacDonald v. Painter, Texas, 441 S.W. 2d 179.

SC Technical Advice Memorandum #87-5 provides guidance with respect to this issue. This advisory opinion reviewed sales of electricity used to illuminate an area light located in the yard of a single family house. It concluded that the term residential pertains to not only the house in which one resides, but encompasses the entire space or area which is connected with the house. Accordingly, the area light was exempt from sales tax.

The Department followed the above guidance in SC Revenue Ruling #92-4 in addressing the application of the exemption to apartment complexes.

In SC Revenue Ruling #92-4, the Department concluded:

The following sales of electricity to an apartment complex used exclusively as a residence are exempt from sales tax under Code Section 12-36-2120(33):

1. Electricity provided to individual apartment units.
2. Electricity provided to common areas which are integral and necessary to the individual apartment unit's residential use, such as hallways, parking lots, trash compactors and entrance gates.
3. Electricity provided to residential apartment amenities, such as laundry facilities, pool and club houses, and tennis courts, if the amenities are (1) used exclusively for domestic purposes, and (2) used only by apartment residents and their non-paying guests.
4. Electricity provided for use in business related areas of the apartment complex (e.g. office area, maintenance facilities, and repair facilities), if the electricity for the entire apartment complex is centrally metered and billed as such. See Regulation [117-323]¹.

Taxable Sales of Electricity:

The following sales of electricity to an apartment complex used exclusively as a residence are subject to the sales tax:

1. Electricity provided to residential apartment amenities which are available for a business purpose or available to non-residents of the apartment complex for a fee. For example, an apartment complex that sells food and beverage in a lounge located at the apartment complex is using the area for a business purpose.
2. Electricity provided for use in business related areas of the apartment complex (e.g. office area, maintenance facilities, and repair facilities), if the electricity for the entire apartment complex is not centrally metered and billed as such. See Regulation [117-323]².

While SC Revenue Ruling #92-4 addresses apartment complexes and would be applicable to similarly designed condominium complexes, it does not address the common areas of residential neighborhoods or subdivisions.

In applying the residential electricity exemption to the common areas of residential neighborhoods or subdivisions, it should be noted that a residential neighborhood or subdivision is not the same as a single home or an apartment or condominium building or complex.

¹ The Department reorganized and renumbered its regulations after the issuance of SC Revenue Ruling #92-4. SC Regulation 117-177, as originally cited in SC Revenue Ruling #92-4, is now SC Regulation 117-323.

² See footnote #1.

The key, according to the regulation cited above, is whether the space or area is “occupied by one or more individuals” and whether it is the “intent that such space or area serves as a residence, house, dwelling or abode.” Unlike a single home or an apartment complex, the lights for guard houses and entrances, the overhead lights in a parking area, and the metered service to a clubhouse, a swimming pool, tennis courts, and other common areas of a residential neighborhood or subdivision extend beyond the space “occupied by one or more individuals” and these areas do not serve “as a residence, house, dwelling or abode.”

While the parking lot and commons areas of an apartment or condominium building or complex serve a similar purpose as the driveway and front and back yards of a single family home, the common areas of a neighborhood or subdivision extend beyond the area or space that serves as a person’s residence. As such, sales of electricity to a homeowners’ association for the common areas of a neighborhood or subdivision are subject to the tax, and not exempt under the provisions of Code Section 12-36-2120(33).

Examples:

Scenario #1 - Vacant Apartment – Rent Includes Electricity

Facts:

The landlord owns a multi-unit apartment building in which each apartment is separately metered with the utility account held in the landlord’s name. The landlord charges a flat fee for rent, which includes utilities. The tenant moves out, and the apartment remains vacant while the landlord looks for another tenant.

Conclusion:

Since the intent is for each unit within the apartment building to serve as a residence, the sale of electricity for use in each residential unit is exempt from the sales and use tax under Code Section 12-36-2120(33).

Therefore, sales of electricity for a residential unit during the time period when the residential unit remains vacant while the landlord looks for another residential tenant are exempt from the sales and use tax under Code Section 12-36-2120(33).

Scenario #2 - Vacant Apartment – Rent Does Not Include Electricity

Facts:

The landlord owns a multi-unit apartment building in which each apartment is separately metered with the utility accounts held in the tenant’s name. The tenants pay the utility bills directly to the utility. As tenants move in and out, the landlord assumes ownership of the account (*i.e.*, the account is now in the name of the landlord) until a new tenant moves in.

Conclusion:

Since the intent is for each unit within the apartment building to serve as a residence, the sale of electricity for use in each residential unit is exempt from the sales and use tax under Code Section 12-36-2120(33).

Therefore, sales of electricity for a residential unit during the time period when the landlord assumes ownership of the electric utility account of the residential unit while looking for another residential tenant are exempt from the sales and use tax under Code Section 12-36-2120(33).

Scenario #3 - Single Family Home – Separate Meters for Miscellaneous Structures (Pool House, Storage Shed, Etc.)

Facts:

The owner of a single family home has additional buildings on his property that are separately metered, such as a pool house, storage shed, garage or other recreational area (*e.g.*, “man-cave”), or a barn.

Conclusion:

The sale of electricity is exempt if the electricity is used for “residential purposes.” The term “residential purposes” not only applies to the house in which one resides, but encompasses the entire space or area which is connected with the house.

Therefore, sales of electricity used for a pool house, storage shed or other recreational areas (*e.g.*, “man-cave”) at a residence and used for residential purposes are exempt from the sales and use tax under Code Section 12-36-2120(33).

Note: If, for example, the garage is used to conduct a business, such as the operation of an automobile repair shop, then the separately metered electricity used for the garage in this example would be subject to the sales and use tax.

Scenario #4 - Single Family Residential Subdivision – Electricity Sold to Homeowners’ Association (“HOA”) for Common Areas

Facts:

A single family residential community operates security facilities, swimming pools, tennis courts, golf courses, and other common areas of the subdivision. The utility account for these facilities is in the name of the Homeowners’ Association (“HOA”).

Conclusion:

Since the determination, according to SC Regulation 117-323, is whether the space or area is “occupied by one or more individuals” and whether it is the “intent that such space or area serves as a residence, house, dwelling or abode,” sales of electricity to a homeowners association for the lights for guard houses and entrances, the overhead lights in a parking area, and the metered service to a clubhouse, a swimming pool, tennis courts, and other common areas of the neighborhood or subdivision are subject to the sales and use tax.

These common areas of the subdivision, unlike the area of a single family home or an apartment complex, extend beyond the space “occupied by one or more individuals” and do not serve “as a residence, house, dwelling or abode.”

As such, sales of electricity to a homeowners’ association for the common areas of a neighborhood or subdivision are subject to the sales and use tax, and not exempt under the provisions of Code Section 12-36-2120(33).

SOUTH CAROLINA DEPARTMENT OF REVENUE

s/W. Hartley Powell

W. Hartley Powell, Director

February 21, 2017
Columbia, South Carolina