



STATE OF SOUTH CAROLINA
DEPARTMENT OF REVENUE

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SC REVENUE RULING #17-4

SUBJECT: Residential Electricity Exemption
Nursing Homes, Assisted Living Facilities, Healthcare Facilities,
Dormitories and Prisons
(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 It is the Department's position until superseded or modified by a change in statute, regulation, court decision, or another Department advisory opinion.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 nursing homes, assisted living facilities, healthcare facilities, dormitories and prisons.

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.

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:

Exempt Sales of Electricity:

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.

Based on the above, electricity must be used for residential purposes and not business, institutional, or other non-residential purposes in order to be exempt under Code Section 12-36-2120(33).³ In addition, electricity used for dwellings of a temporary or transient nature does not qualify as electricity used for residential purposes under Code Section 12-36-2120(33).

Therefore, electricity used for the operation of (1) facilities that provide skilled nursing care, rehabilitative care, psychiatric care, hospice care, drug treatment, alcohol treatment, or similar care; (2) facilities that provide a dwelling of a temporary or transient nature (*e.g.*, hotels, motels, resort lodges, summer camps, dormitories); or (3) facilities in the nature of an institution (*e.g.*, prisons, colleges, professional training centers) would not be exempt.

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.

³ See also SC Revenue Ruling #17-1, which addressed the application of the exemption for residential electricity to 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.

Examples:

Scenario #1 - Nursing Homes:

Facts:

A nursing home is a facility with an organized nursing staff. It is operated for the purpose of providing intermediate or skilled care for persons not in need of care at a hospital. It provides intensive, short or long term medical care to individuals with serious health conditions in a fully staffed and monitored facility.

Conclusion:

The sale of electricity to a nursing home, as described in the facts, is subject to the sales and use tax. See SC Regulation 117-323.

Scenario #2 – Assisted Living Facilities

Facts:

An assisted living facility offers a housing alternative for older adults who can live independently but may need a limited amount of assistance. However, an assisted living facility is not for older adults who require the intensive medical care or skilled nursing care provided in nursing homes. Typically, the basic personal care support services offered in assisted living facilities include:

- daily meals
- basic housekeeping
- laundry
- health and exercise programs
- social programs
- transportation
- access to medical services

Note: Some assisted living facilities are attached to, or share a campus with, a skilled nursing facility.

Conclusion:

The application of the sales and use tax on sales of electricity to an assisted living facility is similar to the application of the sales and use tax on sales of electricity to apartment complexes. The following provides guidance as to exempt sales and taxable sales of electricity to an assisted living facility:

Exempt Sales of Electricity:

The following sales of electricity to an assisted living facility are exempt from sales tax under Code Section 12-36-2120(33):

1. Electricity provided to an individual assisted living apartment in the assisted living facility.
2. Electricity provided to common areas which are integral and necessary to the individual assisted living apartment's residential use, such as hallways, parking lots, trash compactors and entrance gates.
3. Electricity provided to residential assisted living facility amenities, such as a pool or club house, if the amenities are (1) used exclusively for domestic purposes, and (2) used only by assisted living apartment residents and their non-paying guests.
4. Electricity provided for use in business related areas of the assisted living facility (e.g. office area, maintenance facilities, and repair facilities), if the assisted living facility's sole purpose is to provide independent residential living with only basic personal care support services (e.g., ensuring medicine is taken, transportation) and the electricity is centrally metered and billed as such.

Taxable Sales of Electricity:

The following sales of electricity to an assisted living facility are subject to the sales tax:

1. Electricity provided to residential assisted facility amenities which are available for a business purpose or available to non-residents of the assisted living facility complex for a fee. For example, an assisted living facility that sells snacks, beverages, toiletries, and other items in a convenience store located in the assisted living facility is using the area for a business purpose.
2. Electricity provided for use in business related areas of the assisted living facility (e.g. office area, maintenance facilities, and repair facilities), if the electricity for the entire assisted living facility is not centrally metered and billed as such.
3. Electricity provided to any area of the facility that provides healthcare or supervised care in a manner similar to a nursing home, rehabilitation center, psychiatric care facility, drug treatment facility, alcohol treatment facility, hospice care center, or any other similar facility.

If the facility has an electric meter that services only residential areas, then the taxpayer may file a single sale exemption certificate (Form ST-8) with the power company in order to purchase the electricity provided through that meter exempt from the tax.

If the facility has an electric meter that services both residential areas and business and health or supervised care areas (e.g., skilled nursing care area), the facility may also file a single sale exemption certificate (Form ST-8) with the power company. By filing the single sale exemption

certificate with the power company, the facility becomes liable for the tax. This will allow the facility to purchase all its electricity tax free, and remit the tax on that portion of the electricity not used for residential purposes by filing a monthly or quarterly use tax return with the Department.⁴ The calculation of the tax due may be based on square footage. For example, if 60% of the square footage of the facility is used for residential purposes and 40% of the square footage is used for business and health or supervised care purposes, then the facility would report and remit the tax on 40% of the purchase price of the electricity provided through the meter.

Note: This conclusion does not apply to facilities whose primary purpose is to provide healthcare or supervised care, such as hospitals, nursing homes, rehabilitation centers, psychiatric care centers, drug treatment facilities, alcohol treatment facilities, and other similar facilities that provide skilled nursing care, rehabilitative care, hospice care, mental health treatment, or similar care or that provide training or evaluation. See Scenarios #1 and #3.

Scenario #3 – Healthcare Facilities

Facts:

A healthcare facility is any location whose primary purpose is to provide healthcare. Healthcare facilities include hospitals, rehabilitation centers, psychiatric care centers, drug treatment facilities, alcohol treatment facilities, and other similar facilities that provide skilled nursing care, rehabilitative care, hospice care, mental health treatment, or similar care or that provide training or evaluation.

Conclusion:

The sale of electricity to a healthcare facility, as described in the facts, is subject to the sales and use tax.

Scenario #4 – Dormitories at Colleges, Professional Training Facilities, and Summer Camps

Facts:

A dormitory is a building at a college or university containing a number of private or semiprivate rooms for students attending and residing at the college or university. A dormitory is also a building containing a number of private or semiprivate rooms for trainees at a training facility for various types of professions (*e.g.*, firefighters, law enforcement) or for campers at a summer camp.

Conclusion:

The sale of electricity to a college, a training center, or a summer camp for use in dormitories is subject to the sales and use tax. See SC Regulation 117-323.

⁴ If the facility is not already registered with the Department for sales or use tax purposes, the facility will need to register with the Department for use tax purposes by completing Form SCDOR-111, the “South Carolina Department of Revenue Tax Registration Application.”

Scenario #5 – Prisons

Facts:

A prison is a building operated by or on behalf of the state, county or other political subdivision in which people are legally held as a punishment for a crime they have committed or while awaiting trial.

Conclusion:

The sale of electricity to a prison is subject to the sales and use tax.

SOUTH CAROLINA DEPARTMENT OF REVENUE

s/W. Hartley Powell
W. Hartley Powell, Director

August 28, 2017
Columbia, South Carolina