



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 #18-9

SUBJECT: Use Tax Information for Individuals, Businesses and Nonprofits (Use Tax)

EFFECTIVE DATE: July 1, 2017

SUPERSEDES: SC Revenue Ruling #16-6, and all previous documents and any oral directives in conflict herewith.

REFERENCES: Article 13, Chapter 36 of Title 12 (2014; Supp. 2017)

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 It is the Department's position until superseded or modified by a change in statute, regulation, court decision, or another Department advisory opinion.

Purpose of Update

In July 2017, South Carolina Infrastructure and Economic Development Reform Act was enacted to address the funding of significant road maintenance. To accomplish this purpose, an "infrastructure maintenance fee" was imposed upon the registration of a motor vehicle or motorcycle with the South Carolina Department of Motor Vehicles. This fee replaces the sales and use tax on motor vehicles and motorcycles. This document is being revised to reflect this law change (see Questions 15 – 16 below). The remainder of the document remains unchanged.

Introduction

The following guidance is part of the Department's continuing effort to provide the public updated use tax information, including reporting and filing methods. The questions and answers are written in general terms to explain the application of the use tax. Exhibit A provides helpful information and tips regarding the use tax. Exhibit B provides common examples to illustrate the state and local use tax due, if any, from purchases in another state or the local use tax due from purchases in a South Carolina county that is not the purchaser's county of residence, principal place of business, or other place where the item purchased will be used, stored or consumed.

Note: This advisory opinion is not intended to address all requirements or provisions of authority that may be applicable to specific factual situations. More specific information, including information about exemptions, maximum tax items, local sales and use tax rates, and electronic filing and payment options, can be found on the Department's website, www.dor.sc.gov.

Questions and Answers

1. Q. What is the difference between the sales tax and the use tax?

A. The sales tax is imposed on all retailers within South Carolina and applies to all retail sales of tangible personal property within the state. Retailers making sales of tangible personal property in South Carolina are required to remit the sales tax to the Department.

The use tax was enacted in 1951 – the same year the sales tax law was adopted in South Carolina. The use tax is a “transaction tax” imposed upon the consumer (purchaser) of tangible personal property that is purchased at retail for use, storage, or consumption in South Carolina. The use tax applies to purchases from out-of-state retailers and includes purchases from retailers made through the Internet (retailers' websites and retailers' sales on auction sites), through out-of-state catalog companies, or when visiting another state or country.

Both the sales tax and the use tax also apply to leases or rentals at retail of tangible personal property (e.g., furniture, clothing, office equipment, and computers) and various services such as communication services and laundry and dry cleaning services. Either the South Carolina sales tax or the South Carolina use tax applies to a single transaction, but not both.

2. Q. What is the rate for the use tax?

A. The tax rate for the use tax is the same as the sales tax. This rate is determined by where the tangible personal property will be used, stored or consumed, regardless of where the sale actually takes place. Therefore, the tax rate for the use tax is the 6%¹ state rate plus the applicable local use tax rate for the location where the tangible personal property will be used, stored or consumed.

¹ The tax rates referenced are the rates in effect at the time this document was written.

3. Q. Is the use tax rate lower for an individual age 85 or older?
- A. An individual age 85 or older is entitled to a 1% reduction in the state use tax rate for items he purchases for his own personal use. The reduction does not apply to any local taxes administered by the Department or any taxes collected directly by a county or municipality. Accordingly, an individual age 85 or older will generally pay a state use tax rate of 5% (not 6%), plus any applicable local taxes. In order to obtain the sales tax reduction, the individual must request the reduction at the time of sale and must provide the retailer with proof of age. See Code Section 12-36-2620.

4. Q. Why would an out-of-state retailer charge a purchaser the South Carolina sales tax or use tax?
- A. An out-of-state retailer must obtain a retail license and remit either the South Carolina sales tax or use tax on retail sales shipped into South Carolina if the out-of-state retailer has a physical presence in South Carolina.

Examples of physical presence include, but are not limited to, maintaining (temporarily or permanently) an office, warehouse, store, other place of business, or property of any kind in the state or having (temporarily or permanently) an agent, representative (including delivery personnel and independent contractors acting on behalf of the retailer), salesman, or employee operating within the state.

An out-of-state retailer that is not required to obtain a retail license and remit the South Carolina sales or use tax may, however, voluntarily obtain the retail license and collect and remit the tax to South Carolina.

5. Q. If an out-of-state retailer with a South Carolina retail license charges the purchaser for the South Carolina sales or use tax on tangible personal property delivered into South Carolina, is the purchaser still liable for the use tax?
- A. If the purchaser has a receipt showing the entire South Carolina (state and local) sales tax or use tax has been paid to a licensed out-of-state retailer, then the purchaser is no longer liable for the South Carolina use tax.
6. Q. If a South Carolina purchaser buys merchandise through the Internet or a mail order catalog from a retailer that has not obtained a South Carolina retail license and the retailer, therefore, does not charge the purchaser for the South Carolina sales or use tax on tangible personal property delivered into South Carolina, is the purchaser liable for the use tax?
- A. Yes.

7. Q. If a South Carolina purchaser travels to another state and purchases tangible personal property from a retailer in the other state for use, storage or consumption in South Carolina, does the South Carolina purchaser still owe the South Carolina use tax on the purchase if the other state's sales tax was paid to the retailer at the time of purchase?
- A. If the state and local sales or use tax due and paid in the other state is **equal to or more** than the state and local use tax due in South Carolina, then the purchaser does not owe any use tax in South Carolina on the transaction. The purchaser is not entitled to a refund if the other state's tax rate is greater than South Carolina's use tax rate.

For example, if a South Carolina purchaser paid \$21 in state and local sales tax to the other state and the total state and local use tax due in South Carolina was \$18, then the South Carolina purchaser would be allowed a credit for the \$21 and no use tax would be due in South Carolina. The purchaser would not be entitled to a \$3 refund (\$21 sales tax paid in the other state less the \$18 use tax due in South Carolina).

If the state and local sales or use tax due and paid in the other state is **less** than the amount of state and local use tax due in South Carolina, then the purchaser is liable for the use tax and must pay the difference to the Department. South Carolina allows a credit against the state and local tax due in South Carolina for the amount of state and local sales or use tax due and paid to the other state on the purchase of tangible personal property.

For example, if a South Carolina purchaser paid \$15 in state and local sales tax to the other state and the total state and local use tax due in South Carolina was \$18, then the South Carolina purchaser would be allowed a credit for the \$15 tax paid and would owe South Carolina use tax of \$3.

Note: Each transaction stands on its own. In other words, an "excess" paid to another state on one purchase transaction, as shown in the above example, cannot be used to offset any South Carolina use tax that may be due on another purchase transaction.

8. Q. If a South Carolina purchaser travels to another country and purchases tangible personal property from a retailer in that country for use, storage or consumption in South Carolina, does the South Carolina purchaser still owe the South Carolina use tax on the purchase if the other country's tax was paid to the retailer at the time of purchase?
- A. Yes. A credit is not allowed against the South Carolina use tax for any sales or use tax (or any other type of tax, such as a value added tax) due and paid in another country or in a territorial possession of the United States.

9. Q. If a person purchases tangible personal property outside of South Carolina and first uses it outside of South Carolina, is that person liable for the South Carolina use tax if the tangible personal property is later brought into South Carolina?
- A. The South Carolina use tax is due unless the person bringing the tangible personal property into South Carolina can establish the following:
- (1) The property, when purchased, was intended for a bona fide use outside of South Carolina;
 - (2) The first actual use of the property was outside of South Carolina; and
 - (3) The first actual use of the property was substantial and constituted the primary use for which the property was purchased.

The determination of whether the South Carolina use tax is due depends on the individual facts and circumstances of each transaction. The purchaser is responsible for proving that the above listed requirements have been met.

The following examples illustrate the application of the use tax requirements discussed above when bringing tangible personal property into South Carolina.

Example 1: A South Carolina resident vacationing in North Carolina purchases a camera and uses it on the vacation. The South Carolina use tax would be due when the camera is brought back to South Carolina since the camera was not substantially used outside of South Carolina. However, a credit is allowed against the use tax for any sales or use tax due and paid in another state (but not in another country or a U.S. territory) on the camera. See Questions 7 and 8.

Example 2: A Virginia resident purchases new furniture for his home in Virginia. Six months² later, he is transferred to South Carolina. The South Carolina use tax is not due since the furniture was purchased for use in Virginia, it was first used in Virginia, and that first use in Virginia was substantial and constituted the primary use for which the furniture was purchased.

Note: See Code Sections 12-36-1320 and 12-36-150 for the use tax requirements and tax computation when transient construction property is brought into South Carolina for use or storage.

² South Carolina does not have an established safe harbor time frame. The South Carolina use tax determination depends on the specific facts and circumstances of each situation.

10. Q. If a sale by a South Carolina retailer is exempt from the South Carolina sales tax, is the purchase of the same product from an out-of-state retailer exempt from the South Carolina use tax?
- A. Yes. For example, prescription medicine purchased from a South Carolina pharmacy upon presentation of the prescription written by the physician is exempt from the South Carolina sales tax. The same purchase from an out-of-state mail-order pharmacy is exempt from the South Carolina use tax.
11. Q. When can the use tax be assessed beyond the 3 year normal time limitation period?
- A. Generally, use tax is assessed within 36 months from the date the return is filed or due to be filed, whichever is later. Code Section 12-54-85(C) provides for the assessment of tax after the 36 month time limitation period for the fraudulent intent to evade tax, failure to file a return, or a 20% understatement of tax. In addition, Code Section 12-54-85(C)(5) allows the Department to assess the use tax resulting from information received from another state or local taxing authority, a regional or national tax administration organization, or the federal government, within 12 months of receiving the information, but no later than 72 months after the last day the use tax may be paid without penalty.
12. Q. How and when does an individual report and pay the use tax to the Department?
- A. The South Carolina use tax can be reported and remitted by an **individual** in the following ways:
- (1) Using Form SC 1040, "South Carolina Individual Income Tax Return." An individual may report his South Carolina use tax due on purchases made during the year on his individual income tax return when filed.
 - (2) Using Form SC UT-3, "Use Tax Payment Return." An individual may report South Carolina use tax due on a specific purchase or the total of all purchases made in one month, a calendar quarter, or during the calendar year on a use tax return. This method is used by an individual who does not have a South Carolina individual income tax filing requirement for the year, such as a retiree or student.

See Questions 15 and 16 below for information on purchases of motor vehicles, motorcycles, boats, motors, or airplanes.

13. Q. How does a business or nonprofit organization that is **not** a licensed retailer report and pay the use tax to the Department after buying tangible personal property for its own use?

A. A business or nonprofit organization³ that is **not** a licensed retailer and that purchases tangible personal property for its own use (i.e., not for resale) can report the use tax as provided below, based upon the frequency of its out-of-state purchases:

- (1) For a purchaser who is not a licensed retailer and who does **not** regularly purchase property for its own use from an out-of-state retailer: Use Form UT-3, "Use Tax Payment Return" to report and remit South Carolina use tax due on a specific purchase for its own use or the total of all purchases for its own use made in one month, a calendar quarter, or during the calendar year.
- (2) For a purchaser who is not a licensed retailer and who **regularly** purchases property for its own use from an out-of-state retailer: (a) Obtain a purchaser's certificate of registration; and (b) file Form ST-3, "State Sales and Use Tax Return" (or other applicable sales tax return)⁴ and, if applicable, a local tax addendum ST-389, "Schedule for Local Taxes," to report and remit the use tax. Out-of-state purchases subject to use tax are reported on the "Worksheet" of the applicable South Carolina sales and use tax return.

Note: A purchaser's certificate of registration for remitting use tax on a periodic basis may be obtained free of charge by completing Form SCDOR-111, "South Carolina Department of Revenue Tax Registration Application."

14. Q. How does a business or nonprofit organization that is a **licensed retailer** report and pay the use tax to the Department after buying tangible personal property for its own use?

A. A business or nonprofit organization that is a **licensed retailer** and that purchases tangible personal property for its own use (i.e., not for resale) should report and remit the use tax on its appropriate sales and use tax return, usually Form ST-3, "State Sales and Use Tax Return;" and, if applicable, a local tax addendum ST-389, "Schedule for Local Taxes."⁵ Out-of-state purchases subject to use tax are reported on the "Worksheet" of the return.

³ Certain nonprofit organizations that sell tangible personal property are not required to be licensed as retailers since their sales are exempt from the sales tax under Code Section 12-36-2120(41).

⁴ Other sales and use tax returns used by specific types of taxpayers include Forms ST-388, "State Sales, Use, and Accommodations Tax Return"; ST-403, "State Sales, Use, and Aviation Fuel Tax Return"; and ST-455, "State Sales, Use, Maximum Tax and Special Filers Tax Return."

⁵ See footnote 3.

15. Q. How does a purchaser report and remit the use tax on a motor vehicle or motorcycle purchased from an out-of-state seller?
- A. The purchase of a motor vehicle or motorcycle from an out-of-state seller is exempt from use tax. However, an infrastructure maintenance fee is due at the time the motor vehicle or motorcycle is registered with the Department of Motor Vehicles.⁶ For questions concerning the infrastructure maintenance fee, contact the Department of Motor Vehicles at: cartaxes@scdmv.net.
16. Q. How does a purchaser report and remit the use tax on a boat, boat motor, and airplane purchased from an out-of-state retailer?
- A. The use tax due on a boat, motor, or airplane purchased from an out-of-state retailer can be reported and paid as follows:
- (1) File Form ST-236, “Casual or Use Excise Tax Return,” with the Department;
 - (2) Remit the use tax to the Department of Natural Resources at the time the boat or boat motor is registered, titled, or licensed.
- Note: Boats, motors and airplanes **purchased from a non-retailer** are subject to a “casual excise tax” (rather than the use tax) at the time the boat, motor, or airplane is registered, titled, or licensed. A taxpayer also can report and remit this tax by filing Form ST-236 with the Department. For information on the “casual excise tax,” see Code Sections 12-36-1710 through 12-36-1740.
17. Q. Can the use tax be filed and paid electronically?
- A. Yes. For specific online filing and payment information, see the Department’s website, www.dor.sc.gov.
18. Q. What is the Department’s contact information for additional use tax questions?
- A. Questions about the use tax should be directed to the Department at 1-844-898-8542 or by e-mail at salestax@dor.sc.gov.

SOUTH CAROLINA DEPARTMENT OF REVENUE

s/W. Hartley Powell

W. Hartley Powell, Director

June 7 _____, 2018
Columbia, South Carolina

⁶ See Code Section 12-36-2120(83) and Code Section 56-3-627.

Exhibit A – General Information and Tips about the Use Tax

1. There is no minimum dollar use tax filing requirement like there is for individual income tax. An individual who is not required to file an individual income tax return may have to file a use tax return for the current tax year.
2. An individual is not subject to double taxation on a purchase. The individual may have to pay either the South Carolina state sales tax (plus applicable local taxes) or state use tax (plus applicable local taxes) on a purchase, but **not** both on the same purchase.
3. An individual age 85 or older purchasing property for his own personal use (e.g., clothing, furniture, appliances, etc.) that is subject to South Carolina use tax pays a lower use tax rate than an individual under 85. The use tax rate for an individual 85 or older is 5% (as opposed to 6%) plus applicable local taxes. To receive the sales tax reduction, the individual must request it at the time of purchase and provide the retailer with proof of age.
4. The use tax does **not** apply to an individual purchasing stocks, bonds, or mortgages; the use tax applies only to tangible personal property and limited services (e.g., charges to access an out-of-state website, laundry and dry cleaning services, and communication services).
5. Items purchased for use outside South Carolina and substantially used outside of South Carolina are **not** subject to South Carolina use tax. For example, a nonresident individual relocating to South Carolina does not owe South Carolina use tax on property substantially used in the former state of residence, such as household items, computers, and furniture; however, he would owe South Carolina use tax on any of these items if they were **not** first substantially used outside of South Carolina. SC Regulation 117-320.1. Also see Code Section 12-36-1320 for transient construction property use tax provisions.
6. An individual cannot reduce any South Carolina use tax due by sales tax paid in another country or territorial possession of the United States. See Code Section 12-36-1310(C) and SC Revenue Ruling #06-4.
7. An individual paying state and local sales or use tax in another state that is higher than the state and local sales and use tax rate in South Carolina is not entitled to a refund of the difference in the tax rates.
8. It is important to maintain records of purchases for 6 years in some instances. Assessments of use tax from information received from other state taxing authorities, tax administration organizations, or the federal government may be assessed at any time within 12 months after the Department receives the information, but no later than 72 months after the last day the use tax may be paid without penalty. For example, this provision extends the time limitations for the Department to assess use tax due on items reported by another state, regional compacts, or U.S. Customs and Border Protection. Code Section 12-54-85(C)(5).

Exhibit B – Examples of Use Tax Due from Out-of-State or In-State Purchases

A. Out-of-State Purchases - The following examples illustrate the South Carolina use tax due (State and local) from the individual, if any, from his purchase of a taxable item in another state.

Purchaser	Tax Rate Paid in Another State by Individual on Purchase Made Outside of South Carolina	Tax Rate in South Carolina (State Rate and Local Rate in South Carolina County Where Purchaser Lives)	Amount of Offset or “Credit” for Sales/Use Taxes Paid in Other State by the Individual	Use Tax (State and Local) Due in South Carolina by the Individual
Individual 1	\$0 State and Local Taxes in Other State	6% State + 1% Local County = 7% SC Rate	Not Applicable	7% of Purchase Price
Individual 2	4% State + \$0 Local Tax = 4% Rate in Other State	6% State + 1% Local County = 7% SC Rate	4%	3% of Purchase Price
Individual 3	4% State + 4.75% Local = 8.75% Rate in Other State	6% State + 0% Local County = 6% SC Rate	8.75%	\$0 - No Tax Due and No Tax Refunded

Individual 1 – This example illustrates a purchase from a state that has **no** sales tax or did not collect any sales tax on the taxable transaction. Assume the purchase price was \$100. The South Carolina resident individual must remit \$7 (\$100 x 7%) use tax to the Department.

Individual 2 – This example illustrates a taxable purchase from a state that has a **lower** tax rate than South Carolina. Assume the purchase price was \$1,000 and the individual paid 4% sales tax (\$40) at the time of purchase. The total South Carolina use tax due based on his county of residence is \$70 (\$1,000 x 7%). The individual must remit \$30 use tax (\$70 total tax - \$40 paid in other state) to the Department.

Comment: If the purchase had taken place in a foreign country, the individual would owe South Carolina \$70 use tax since a “credit” for sales or use tax paid in a foreign country is not allowed under South Carolina law.

Individual 3 – This example illustrates a taxable purchase from a state that has a **higher** tax rate than South Carolina. Assume the purchase price is \$10,000 and the individual owed and paid state and local sales tax of \$875 (\$10,000 x 8.75%) at the time of purchase. Although the use tax due based on his county of residence in South Carolina is only \$600 (\$10,000 x 6%), he does not get a refund of the \$275 tax overpayment, nor can he use it to offset any use tax that may be due on another out-of-state transaction subject to use tax.

B. In-State Purchases - The following examples illustrate the South Carolina local use tax due from an individual from his purchase of a taxable item in a South Carolina county that is **not** his county of residence. The South Carolina state tax rate is 6% and is paid.

Purchaser	Local Tax Rate in the SC County of Purchase	Local Tax Rate in the Purchaser's SC County of Residence	Local Use Tax Due by the Purchaser
Individual 1	Local – 0%	Local – 2%	2% of Purchase Price
Individual 2	Local – 1%	Local – 0%	\$0 - No Local Tax Due and No Tax Refunded

Individual 1 – This example illustrates a purchase in a South Carolina county that has **no** local sales tax that is not the purchaser's county of residence. The purchaser intends to use the item in his county of residence, which imposes local use taxes of 2%. Assume the purchase price was \$1,000 and the 6% State tax rate was paid but \$0 local tax was collected by the retailer. The individual must remit \$20 ($\$1,000 \times 2\%$) local use tax to the Department.

Individual 2 – This example illustrates a taxable purchase in a South Carolina county that has a **higher** local tax rate than that imposed by the purchaser's county of residence. Assume the purchase price is \$10,000 and the individual paid \$700 ($\$10,000 \times 7\%$; i.e., the 6% State use tax rate + the 1% local tax rate) at the time of purchase. Although the county in which the purchaser resides and where the item will be consumed does not have a local tax, the purchaser does not get a refund of the \$100 local tax paid, nor can he use the \$100 to offset any state or local use tax that may be due on another transaction subject to use tax.