



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 #19-10

SUBJECT: Rental of Mobile Toilet Trailer, Hand Washing Station, or Portable Waste Holding Tank – Tax Exemption
(Sales and Use Tax)

EFFECTIVE DATE: With respect to conclusions #1 and #2, applies to all periods open under statute. With respect to conclusion #3, applies to waste removal and disposal services provided on or after January 1, 2020.¹

SUPERSEDES: SC Revenue Ruling #09-5 and all previous advisory opinions and any oral directives in conflict herewith.

REFERENCES: S.C. Code Ann. Section 12-36-90 (2014)
S.C. Code Ann. Section 12-36-100 (2014)
S.C. Code Ann. Section 12-36-910 (2014)
S.C. Code Ann. Section 12-36-2120(62) (2014)

AUTHORITY: S.C. Code Ann. Section 12-4-320 (2014)
S.C. Code Ann. Section 1-23-10(4) (2005)
S.C. 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 It is the Department's position until superseded or modified by a change in statute, regulation, court decision, or another Department advisory opinion.

QUESTIONS

1. Is the rental charge (e.g., rental amount, cleaning and pumping charges, delivery charge, etc.) for a mobile trailer containing a portable toilet and a portable sink, as described in the facts, entitled to the partial sales and use tax exemption under Code Section 12-36-2120(62)?

¹ Companies providing waste removal and disposal services must pay sales and use tax upon their purchase of portable waste holding tanks on or after January 1, 2020 since such companies are considered the user or consumer of such tank.

2. Is the rental charge (e.g., rental amount, cleaning fee, delivery charge, etc.) for a portable standalone hand washing station entitled to the partial sales and use tax exemption under Code Section 12-36-2120(62)?
3. Is the rental charge (e.g., tank rental amount, waste removal and disposal charges, delivery charge, etc.) for a portable waste holding tank, as described in the facts, entitled to the partial sales and use tax exemption under Code Section 12-36-2120(62)?

CONCLUSIONS

1. The rental charge for a mobile trailer containing a portable toilet and portable sink, as described in the facts, is entitled to the partial sales and use tax exemption under Code Section 12-36-2120(62). Therefore, the rental of the mobile trailer containing a portable toilet and portable sink is subject to the sales and use tax (state and local) based upon the total gross proceeds of sales (e.g., rental amount, cleaning and pumping charges, delivery charges, etc.) less the partial sales and use tax exemption (70% of the total gross proceeds of sales) under Code Section 12-36-2120(62).
2. The rental charge for a portable standalone hand washing station is not the rental of a “portable toilet” and is not entitled to the partial sales and use tax exemption under Code Section 12-36-2120(62). Therefore, the rental of the portable standalone hand washing station is subject to the sales and use tax (state and local) based upon the total gross proceeds of sales (e.g., rental amount, cleaning fee, delivery charge, etc.).
3. Since the “true object” of a transaction involving a portable waste holding tank, as described in the facts, is a service of waste removal and disposal and not the rental of tangible personal property, the charges for the service (e.g., charge for the monthly waste removal and disposal service, monthly tank rental fee, delivery charge, etc.) are not subject to the sales and use tax, regardless of how billed to the customer.

FACTS

Portable restrooms are often used at outdoor worksites, sporting events, weddings, and parks. They are usually self-contained and moveable and do not require any pre-existing services, such as running water or sewage disposal. They are often rented for a weekend, a week, or by the month and usually include servicing and cleaning. The sanitation unit provided may be a portable toilet, a standalone portable hand washing station, or a combination toilet and sink unit.

A portable toilet or mobile toilet is a toilet that may be easily moved around to quickly provide sanitation facilities. The toilet waste is collected in a holding tank that is incorporated into the unit. The tank is emptied frequently into a waste disposal tanker truck and then the contents are usually pumped into a sanitary sewer or delivered directly to a treatment plant.

The basic portable restroom contains only a portable toilet (often called a “porta potty”) designed for one person. The unit is typically free standing and stabilized by the weight of its waste tank. Newer portable restroom models include an internal hand washing station. Another new advancement is a portable restroom fixed to a trailer (often called a toilet trailer) that may have toilets, sinks, and heating and air conditioning.

In some instances, a standalone portable hand washing unit is rented separately. In other instances, a portable waste holding tank can be rented separately. Often an outdoor or mobile business owns a portable office trailer to use in the conduct of its business. The office trailer was purchased with basic restroom components (e.g., a toilet and a sink), but without a waste disposal system. When the office trailer is placed on a temporary job site, the outdoor or mobile business contracts with another company to provide, place, and connect a portable waste holding tank underneath the office trailer to store toilet waste from the office trailer restroom. The company providing the tank will disconnect and remove it from the job site at the end of the contract period. This company also provides the servicing and cleaning of the portable waste holding tank during the contract period.

DISCUSSION

The purpose of this advisory opinion is to address the applicability of the sales and use tax and the partial tax exemption for portable toilets to a mobile trailer containing a portable toilet and portable sink, a portable standalone hand washing station, or a portable waste holding tank.

Code Section 12-36-910(A) imposes a “sales tax, equal to [six] percent of the gross proceeds of sales, upon every person engaged...in the business of selling tangible personal property at retail.” Code Section 12-36-1310(A) imposes a “use tax...on the storage, use, or other consumption in this State of tangible personal property purchased at retail for storage, use, or other consumption in this State, at the rate of [six] percent of the sales price of the property, regardless of whether the retailer is or is not engaged in business in this State.”²

The term “sale” is defined in Code Section 12-36-100 to mean “any transfer...of tangible personal property for a consideration including...a rental, lease, or other form of agreement.” The tax is imposed on the “gross proceeds of sales” or “sales price,” as defined in Code Sections 12-36-90 and 12-36-130.

Code Section 12-36-2120 provides exemptions from the sales and use tax, including a partial exemption for the rental of “portable toilets.” The statute reads, in part:

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

* * *

(62) seventy percent of the gross proceeds of the rental or lease of portable toilets.

² The sales and use tax rate was increased from 5% to 6% in 2007. See Code Section 12-36-1110.

Based upon the above, the total amount charged in conjunction with the sale of tangible personal property is included in the tax base. Charges by a business for temporarily providing a portable toilet to another person constitute a rental of tangible personal property subject to the sales and use tax. Any additional charges for servicing the toilets (whether optional or mandatory) that are made in connection with, or as part of, the rental of portable toilets are includable in “gross proceeds of sales” or “sales price.” However, after application of the partial exemption, only 30% of the gross proceeds (e.g., rental fees, cleaning and pumping charges, and delivery charges) for the rental or lease of portable toilets is subject to the sales and use tax.

The partial exemption strictly applies to portable toilets; it does not apply to all bathroom components or separate elements of a sanitation system. Accordingly, a portable standalone hand washing station is not a “portable toilet.” As such, the partial sales and use tax exemption under Code Section 12-36-2120(62) does not apply.³ The rental of a portable standalone hand washing station is subject to sales and use tax (state and local) based upon the total gross proceeds of sales (e.g., rental amount, cleaning fee, delivery charge, etc.).

The application of the sales and use tax to a transaction involving a portable toilet is different from a transaction involving a portable waste holding tank and the service of waste removal and disposal. It has been established by the courts of South Carolina, that the “true object” of a transaction involving a portable toilet is the rental of tangible personal property.⁴ However, the “true object” of a transaction involving a portable waste holding tank, as described in the facts, is not the rental of tangible personal property; it is a service of waste removal and disposal. This transaction is akin to any transaction where a nontaxable service is the “true object” of the transaction and tangible personal property is provided with the service. The tangible personal property provided with a nontaxable service, where the nontaxable service is the “true object” of the transaction, is considered used or consumed by the service provider and not sold or rented to the customer. All charges associated with a nontaxable service that is the “true object” of the transaction are a part of the gross proceeds of the nontaxable service transaction and not subject to the sales and use tax.⁵

Therefore, since the true object of a transaction involving a waste holding tank, as described in the facts, is the service of collecting and disposing of waste, charges for the service are not subject to the sales and use tax. (While the charges for the service are not subject to tax, the purchase of the waste holding tank by the person providing the waste removal and disposal service is subject to sales and use tax.)

³ Exemptions in taxing statutes exist through legislative grace and one asserting an exemption must bring himself squarely within the statute authorizing the exemption. *Southern Weaving Co. v. Query*, 206 S.C. 307, 34 S.E.2d 51 (1945).

⁴ See *Boggero v. South Carolina Department of Revenue*, 414 S.C. 277, 777 S.E.2d 842 (2015), and SC Revenue Ruling #09-5.

⁵ For example, if an attorney charges \$500 for his professional services and also charges \$25 for copies of the will he prepared for his client, the attorney is considered to have charged \$525 for a nontaxable professional service. The \$25 is part of the nontaxable professional services provided. The purchase of paper, binder, and other tangible personal property used by the attorney in providing his service is subject to the sales and use tax. Note: In instances where a provider of a nontaxable service is also in the business of making sales of tangible personal property at retail, the service provider must obtain a retail license and remit the tax on such sales of tangible personal property. (See SC Regulation 117-308.) This determination is made based on the facts and circumstances. See also SC Private Letter Ruling #04-2 concerning a construction debris disposal service where it held that “customers are hiring the taxpayer to haul away and dispose of construction waste...and not renting containers from the taxpayer.”

The following examples provide guidance in determining applicability of the sales and use tax and the partial exemption for the rental or lease of portable toilets to various portable restrooms and components.

Standard Portable Toilet Rental. A homeowner rents a portable toilet for the month for \$100 while remodeling his home. The rental price includes a rental fee for the unit, a delivery charge, and a service charge for waste removal. The measure upon which the sales and use tax (state and local) is calculated is \$30 (\$100 total gross proceeds less \$70 partial 70% exemption).

Mobile Restroom Trailer. A couple rents a mobile restroom trailer unit for a weekend wedding event for \$500. The unit contains two portable toilets and sinks. The invoice also includes \$100 of optional items for air conditioning, solar lighting for night events, disposable seat covers, and toilet paper. The unit contains a waste holding tank. Since the primary purpose of the mobile restroom trailer unit is to provide a portable toilet, the partial sales and use tax exemption applies to the entire rental charge. The measure upon which the sales and use tax (state and local) is calculated is \$180 (\$600 total gross proceeds less \$420 partial 70% exemption).

Portable Standalone Hand Washing Unit Rental. A food festival rents a standalone hand washing unit for the week for \$1,000. The unit is set up outside restroom facilities and also near the food stands so people can wash their hands before eating or preparing food. The unit does not qualify for the partial sales and use tax exemption for portable toilets. The measure upon which the sales and use tax (state and local) is calculated is \$1,000.

Waste Removal Service and Waste Holding Tank Rental for use with Mobile Office Trailer. A construction company owns a portable office trailer for use at construction sites. For the convenience of its office staff, the construction company's office trailer contains an indoor restroom facility with a toilet and a sink that utilizes a portable waste holding tank located under the office trailer. The construction company contracts to have the waste removed by a waste removal company that provides a waste holding tank as part of the waste removal service. The waste removal company charges the construction company either a monthly fee of \$250 along with a one-time delivery fee of \$25 or charges a \$200 monthly waste removal and disposal service, a \$50 monthly tank rental fee, and a \$25 one-time tank delivery charge.

Since the partial exemption applies strictly to portable toilets and not to components or separate elements of a sanitation system, the waste holding tank rental does not qualify for the partial sales and use tax exemption for portable toilets provided under Code Section 12-36-2120(62). However, because the "true object" of the transaction is the service of waste removal and disposal, the total monthly fee of \$250, and the one-time tank delivery fee of \$25, are not subject to sales and use tax, regardless of how billed to the customer.

SOUTH CAROLINA DEPARTMENT OF REVENUE

s/W. Hartley Powell

W. Hartley Powell, Director

December 10, 2019
Columbia, South Carolina