



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 #19-9

SUBJECT: Delivery Charges
(Sales and Use Tax)

EFFECTIVE DATE: Applies to all periods open under statute.

SUPERSEDES: All previous advisory opinions and any oral directives in conflict herewith.

REFERENCES: S.C. Code Ann. Section 12-36-910 (2014)
S.C. Code Ann. Section 12-36-1310 (2014)
S.C. Code Ann. Section 12-36-90 (2014)
S.C. Code Ann. Section 12-36-130 (2014)
SC Regulation 117.310

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 It is the Department's position until superseded or modified by a change in statute, regulation, court decision, or another Department advisory opinion.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

The purpose of this advisory opinion is to address recent questions regarding the applicability of the sales and use tax to delivery charges¹ when the tangible personal property being delivered is not taxable or when the tangible personal property being delivered includes both taxable and nontaxable items.

LAW AND DISCUSSION

Code Section 12-36-910(A) imposes a sales tax upon every person engaged or continuing within this State in the business of selling tangible personal property at retail. The measure or basis of

¹ The term "delivery charges" used in this advisory opinion includes the terms transportation charges, freight charges, shipping charges, fuel charges, or other similar term.

the sales tax is “gross proceeds of sales.” Code Section 12-36-90 provides that “gross proceeds” is the value proceeding or accruing from the sale of tangible personal property. It includes the proceeds from the sale of tangible personal property without any deduction for the cost of goods sold; cost of materials, labor, or service; transportation costs; or any other expenses.

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, regardless of whether the retailer is or is not engaged in business in this State. The measure or basis of the use tax is the “sales price.” Code Section 12-36-130 provides that “sales price” is the total amount for which tangible personal property is sold, without any deduction for the cost of the property sold, the cost of the materials used, labor or service cost, any services or transportation costs that are a part of the sale, or any other expenses.

Based upon the above, the “measure” of the sales and use tax is the total proceeds of a sale (i.e., it is the sum total of all consideration received in conjunction with the sale of tangible personal property, without any deductions, unless specifically provided.)²

Regulation 117-310 provides guidance with respect to when delivery charges are includable in the tax base and when delivery charges are not includable in the tax base. The regulation is summarized below.

Delivery charges are includable in the measure of the sales and use tax where the seller sells tangible personal property and charges a delivery charge for delivery:

- By use of the retailer’s truck;
- By use of a common carrier and the sale is made F.O.B. point of destination or place of business of the buyer; or
- By delivery from the factory directly to the seller’s customer when the transportation is paid by the seller either to a transportation company, the manufacturer, or by way of credit to his customer for transportation costs paid by the customer and deducted from the seller’s invoice.³

Delivery charges are not includable in the measure of the sales and use tax where the seller sells tangible personal property and charges a delivery charge for delivery:

- By use of a common carrier and the sale is made F.O.B. point of origin (shipping point).

QUESTIONS AND ANSWERS

The following questions and examples assist in explaining the taxability of a delivery charge where the seller sells tangible personal property and charges a delivery charge. In each example,

² Code Section 12-36-90, defining “gross proceeds,” and Code Section 12-36-130, defining “sales price,” provide certain exclusions.

³ SC Regulation 117-310.1.

the tangible personal property is delivered (1) by the seller's own trucks or (2) via a common carrier F.O.B. point of destination to the buyer's place of business, except as noted in Question 4.

1. Exempt Retail Sale

Q. Is a delivery charge subject to tax when the retail sale of the tangible personal property being delivered is exempt from sales and use tax?

A. No. If a transaction is exempt from the sales and use tax (e.g., an exemption applies to the transaction), then any charge for delivery with respect to the exempt sale is part of the "gross proceeds of sales" or "sales price" (i.e., the measure or basis of the tax) of an exempt sale. Accordingly, the delivery charge (whether separately stated or included in the price of the item) is not subject to sales and use tax.

Example. Retailer A sells a \$100,000 machine to Company B and charges a \$3,000 delivery charge. The machine qualifies for the exemption for machines used in manufacturing tangible personal property for sale (Code Section 12-36-2120(17)). Therefore, the entire \$103,000 "gross proceeds of sales" or "sales price" (\$100,000 machine plus \$3,000 delivery charge) is exempt from sales and use tax. The answer is the same whether the delivery charge is separately stated or included in the sales price of the machine.

2. Wholesale Sale (Items are sold for resale)⁴

Q. Is a delivery charge subject to tax when the sale of tangible personal property being delivered is a wholesale sale and excluded from sales and use tax?

A. No. If a transaction is excluded from the sales and use tax (e.g., the sale is a sale for resale and not subject to tax), then any delivery charge with respect to the excluded sale is part of the total proceeds (i.e., the measure or basis of the tax) of an excluded sale. Accordingly, the delivery charge (whether separately stated or included in the price of the item) is not subject to sales and use tax.

Example. Retailer Y purchases a large quantity of appliances from Manufacturer Z for \$500,000 for resale to individuals. The property is delivered to Y's warehouse and retail stores for a \$10,000 charge. The entire \$510,000 (\$500,000 appliances plus \$10,000 delivery charge) is excluded from sales and use tax. Sales by Manufacturer Z to Retailer Y are wholesale sales; therefore, any delivery charge associated with the wholesale sale is not subject to the tax. The answer is the same whether the delivery charge is separately stated or included in the sales price of the appliances.

The following week, Retailer Y sells two appliances in inventory to Individual A for use in his home for \$1,200. Y's customary delivery fee is \$75, but offers free delivery on sales over \$1,000. The amount subject to sales and use tax is \$1,200 (\$1,200 appliances plus any delivery charge - \$0 in this example.)

⁴ A "retail sale" of tangible personal property is a sale to the user or consumer of the property. The term does not include a sale of tangible personal property for resale. See Code Section 12-36-110 defining "retail sale" and Code Section 12-36-120 defining "wholesale sale."

3. Delivery Charge for Combination of Taxable and Nontaxable Items

Q. Is a single delivery charge imposed for the delivery by the seller of multiple products subject to sales and use tax when the items sold include both exempt and taxable items?

A. It depends. If the seller can reasonably prorate the delivery charge between the taxable items and nontaxable items sold based on his books and records, then the tax is only due on that portion of the delivery charge related to the taxable items. If the delivery charge breakdown, however, unreasonable or unsupported by the records of the seller, then the entire delivery charge is subject to tax.⁵ Examples of reasonable methods to prorate a delivery charge include, but are not limited to, a proration based on product cost, a proration based on product weight, etc.

Note: A seller may use different proration methods if the retailer uses different methods of determining delivery charges for different products, provided such is supported by the seller's books and records and is reasonably related to how the delivery charge is calculated.

Example – Delivery Charge Based on Weight

Marketplace facilitator, Retailer A, sells High School C a computer for use in its business office for \$200 and 60 textbooks for use in a tax class for \$1,000. The total delivery charge is \$50. The computer is subject to sales and use tax, however, the textbooks qualify for the exemption for textbooks used as part of a course of study at institutions of higher learning (Code Section 12-36-2120(3)). The computer weighs 10 pounds and the textbooks weigh 40 pounds.

Based upon the books and records of Retailer A, delivery charges of computers and textbooks are by weight. Of the \$1,250 total proceeds, \$210 is subject to sales and use tax (\$200 sales price of the computer and \$10 prorated computer delivery charge), and \$1,040 is exempt from sales and use tax (\$1,000 textbooks and \$40 prorated textbook shipping charge.)⁶

Example – Delivery Charge Based on Standard Delivery Charge for an Item

Mail order Retailer B sells Individual X one prescription medicine refill of 60 pills for his pet for \$1,000 and a 50 pound bag special diet pet food for \$200. The total delivery charge is \$50. The pet medicine qualifies for the exemption for medicine sold by prescription (Code Section 12-36-2120(28)) and the pet food is subject to sales and use tax.

Based upon the books and records of Retailer B, a \$5 delivery charge is made for each prescription filled. Of the \$1,250 total proceeds, \$245 is subject to sales and use tax (\$200 sales price of the pet food and \$45 prorated food delivery charge)⁷, and \$1,005 is exempt from sales and use tax (\$1,000 prescription medicine and \$5 prorated medicine shipping charge.)

⁵ See Q and A #4 for an exception.

⁶ Based on the combined transaction total weight of 50 pounds, the \$50 delivery fee is prorated 10 pounds/50 pounds for the computer ($1/5 \times \$50 = \10) and 40 pounds/50 pounds for the textbooks ($4/5 \times \$50 = \40).

⁷ Of the \$50 delivery charge, \$5 is a set delivery charge for the prescription. The remaining \$45 delivery charge is allocated to the dog food.

4. Taxable Sale with Delivery F.O.B. Point of Origin by a Common Carrier – Exception under Regulation 117-310 (c)

Q. Is a charge for delivery F.O.B. point of origin by a common carrier included in the sales price of tangible personal property subject to sales and use tax?

A. No. Although a transaction is subject to sales and use tax, any charge for delivery F.O.B. point of origin by a common carrier (See SC Regulation 117-310 Example (c)) is specifically not includable “gross proceeds of sales” (sales tax) or “sales price” (use tax). Accordingly, the delivery charge is not subject to sales and use tax.

Example. Retailer A sells a \$100,000 machine to Company B and charges \$3,000 for delivery costs. The machine is delivered via common carrier F.O.B. point of origin (shipping point) to Company B. The machine does not qualify for any sales and use tax exemption. The \$100,000 sales price of the machine is subject to sales and use tax. The \$3,000 delivery charge, however, is specifically excluded from “gross proceeds of sales” or “sales price” under Regulation 117-310, and therefore, is not subject to sales and use tax.

5. Delivery of Item Not Associated with a Sale of Tangible Personal Property

Q. Is a charge for transporting tangible personal property subject to sales and use tax when the transportation is not in conjunction with the retail sale of the tangible personal property?

A. No. The charge for transporting tangible personal property that is not in conjunction with the retail sale of tangible personal property is not subject to sales and use tax.

Example: Individual A purchases a watch for \$300. The following month A ships the watch to a friend using a local delivery service. The local delivery service charges A \$50 to ship the watch. The \$50 charge by the local delivery service is not subject to sales and use tax since it is not in conjunction with the retail sale of tangible personal property, and therefore, not a part of the “gross proceeds of sales” (sales tax), or “sales price” (use tax), of the retail sale of tangible personal property.

SOUTH CAROLINA DEPARTMENT OF REVENUE

s/W. Hartley Powell

W. Hartley Powell, Director

December 4, 2019
Columbia, South Carolina