



STATE OF SOUTH CAROLINA
DEPARTMENT OF REVENUE

300A Outlet Pointe Blvd., Columbia, South Carolina 29210
P.O. Box 125, Columbia, South Carolina 29214-0575

SC REVENUE RULING #25-3

SUBJECT: Withdrawals for Use (Sales and Use Tax)

EFFECTIVE DATE: All periods open under the statute.

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

REFERENCES: S.C. Code Ann. Section 12-36-90 (2014)
S.C. Code Ann. Section 12-36-110 (2014)
S.C. Code Ann. Section 12-36-120 (2014)
S.C. Code Ann. Section 12-36-910 (2014)
S.C. Regulation 117-300.5
S.C. Regulation 117-302.1 and 302.2
S.C. Regulation 117-305.3
S.C. Regulation 117-306
S.C. Regulation 117-307.1
S.C. Regulation 117-308.7
S.C. Regulation 117-309.11 and 309.15 and 309.17
S.C. Regulation 117-311.1
S.C. Regulation 117-318.4
S.C. Regulation 117-324
S.C. Regulation 117-331

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 It is the Department's position until superseded or modified by a change in statute, regulation, court decision, or another Department advisory opinion.

INTRODUCTION:

This ruling explains the sales tax implications of a retail business withdrawing items from its inventory for the business' own use. This ruling also explains South Carolina's specific provisions on withdrawals for use for certain industries.

LAW AND DISCUSSION:

South Carolina law imposes “[a] sales tax, equal to [six]¹ percent of the gross proceeds of sales . . . upon every person engaged or continuing within this State in the business of selling tangible personal property at retail.” A “sale at retail” or “retail sale” includes “all sales of tangible personal property except those defined as wholesale sales.”² It also includes “the withdrawal, use, or consumption of tangible personal property by anyone who purchases it at wholesale.”³

Thus, if a retailer withdraws tangible personal property previously purchased at wholesale from the retailer’s inventory for its own use or consumption, South Carolina law defines this withdrawal as a retail sale subject to the sales tax. For example, if an appliance store removes a new refrigerator from inventory and places the refrigerator in the employee break room for use by the store’s employees, South Carolina law defines this withdrawal of the refrigerator by the store as a retail sale. In this example, the appliance store must report and remit sales tax on the withdrawal of the refrigerator.

I. TAX BASE

The measure or basis of the sales tax is calculated on the “gross proceeds of sales,” which is defined as “the value proceeding or accruing from the sale, lease, or rental of tangible personal property.”⁴ The gross proceeds of sales includes “the fair market value of tangible personal property previously purchased at wholesale which is withdrawn from the business or stock and used or consumed in connection with the business or used or consumed by any person withdrawing it”⁵ The fair market value is the price at which the tangible personal property is offered for sale by the retailer withdrawing the item.⁶

Example: Big Box Store, LLC, (Big Box) sells paper towel rolls in its store at \$3.00 per roll. One of Big Box’s employees removes a paper towel roll off of the shelf in order to clean up a spill in the store. This is a withdrawal for use in connection with Big Box’s business, so Big Box is responsible for reporting and remitting sales tax on the withdrawal of this roll of paper towels. The base upon which Big Box will remit the sales tax is \$3.00, which is the fair market value of the paper towel roll (the price at which Big Box offers paper towel rolls for sale).

¹ S.C. Code Ann. § 12-36-910(A) imposes a 5% sales and use tax. S.C. Code Ann. § 12-36-1110 imposes an additional 1% sales and use tax rate.

² S.C. Code Ann. § 12-36-110.

³ S.C. Code Ann. § 12-36-110(1)(c). Furthermore, S.C. Code Ann. § 4-10-20 provides counties with the option of levying a local sales and use tax “of one percent on the gross proceeds of sales within the county area which are subject to tax under Chapter 36 of Title 12.” Because withdrawals for use are subject to tax under Chapter 36 of Title 12, a taxpayer must pay any local option sales and use taxes imposed within the county where the taxpayer makes a withdrawal for use.

⁴ S.C. Code Ann. § 12-36-90.

⁵ S.C. Code Ann. § 12-36-90(1)(c).

⁶ S.C. Regulation 117-309.17.

If a retailer purchases tangible personal property at wholesale for resale and then offers a discount to customers on the retail price of the tangible personal property, the retailer is able to deduct any cash or other customary discounts provided to customers from the fair market value when determining the tax base upon which to report and remit sales tax on any withdrawals for use.⁷

Example: Big Box's employee withdraws a roll of paper towels from the shelf in order to clean a spill in the store. However, at the time of the withdrawal, Big Box had paper towel rolls on sale, where customers could purchase paper towel rolls for \$2.50 instead of \$3.00. Because South Carolina law allows Big Box to deduct all cash or customary discounts offered to customers from the fair market value of its paper towel rolls, Big Box may report and remit sales tax on \$2.50 per paper towel roll instead of \$3.00.

If a retailer purchases tangible personal property at wholesale for resale and then transfers it to a customer for no consideration, a nominal consideration, or an amount significantly below cost, then the presumption is that the tangible personal property is a promotional item withdrawn from inventory and used or consumed by the retailer. In those cases, the retailer is liable for the sales tax on the withdrawal for use based on the fair market value of the tangible personal property, i.e., the amount it is offered for sale by the retailer, unless otherwise exempt or excluded.⁸

Example: Big Box purchases paper towel rolls at wholesale for \$2.00 per roll and sells them at retail in its store at \$3.00 per roll. Big Box also has a loyalty program, where customers who are enrolled in the loyalty program can earn points on Big Box purchases. The customer can later redeem these points for a reduced cost on Big Box products. A loyalty program customer wishes to redeem loyalty points for a reduced price on a roll of paper towels at Big Box. The customer has earned enough points to reduce the price of a roll of paper towels to just \$.50. Because this sale is for a nominal consideration, or an amount significantly below cost, the presumption is that this roll of paper towels is a promotional item withdrawn from inventory and used or consumed by Big Box. Because of this presumption, Big Box must report and remit sales tax on \$3.00, the amount Big Box offers paper towel rolls for sale to its customers.

However, if the retailer is withdrawing that same product for use or consumption in connection with the business at the same nominal consideration, or an amount significantly below cost, then the retailer must remit the sales tax based on the price the retailer paid when it purchased the item at wholesale.

Example: Big Box purchases paper towel rolls at wholesale for \$2.00 per roll and sells them at retail in its store at \$3.00 per roll. Big Box is now going out-of-business and is having an out-of-business sale, where it is now selling paper towel

⁷ S.C. Regulation 117-309.17.

⁸ This is consistent with S.C. Private Letter Ruling #11-5 (stating this presumption may be rebutted for clearance sales, end-of-season sales, fire sales, going-out-of-business sales, two-for-one sales, and other traditional sales where the retailer can document that the transaction is a "true" sale and not a promotional give-away).

rolls at \$1.00 per roll. During this sale, an employee withdraws a roll of paper towels off the shelf to clean a spill in the store. Because Big Box is withdrawing for use a roll of paper towels that is being sold at a retail price significantly below cost, Big Box must report and remit sales tax on this withdrawal for use no less than the wholesale price, which is \$2.00 per roll.

In this case, the fair market value is based on the wholesale cost and not the price at which the tangible personal property is offered for sale because the retailer is selling the item to itself by way of a withdrawal below cost and the retailer is prohibited from remitting sales tax on a withdrawal based on a value below the wholesale cost.⁹

II. EXCLUSIONS

South Carolina law excludes certain withdrawals from the sales tax. Section 12-36-90(1)(c) excludes items from the “gross proceeds of sales.” Section 12-36-110(1)(c) excludes items from “retail sales” or “sales at retail.” In either case, if the facts and circumstances of the withdrawal do not fit within the terms of the exclusion statutes and regulations, then the withdrawal is subject to sales tax.

a. Exclusions from “Gross Proceeds of Sales”

Withdrawals Previously Withdrawn and Taxed. Gross proceeds of sales do not include the withdrawal of tangible personal property that was previously withdrawn and taxed.¹⁰ For example, if an item is withdrawn from inventory to be used as a sample or display for customers and then returned to inventory, sales tax is due on the withdrawal of the item based upon its fair market value.¹¹ If the item is later withdrawn to be used again as a sample or display, there is no sales tax due on the subsequent withdrawal for such use.¹²

If, however, the item is returned to inventory after its use as a sample or display and is subsequently sold for retail, the sale is a second, separate and distinct transaction that is subject to the sales tax. However, if the item is sold at a discount, the sales tax is based on the discounted price of the item, provided the sale is a retail sale occurring in South Carolina.¹³

⁹ See S.C. Regulation 117-309.17 (“All cash or other customary discounts which [the retailer] would allow to [its] customers may be deducted; however, in no event can the amount used as gross proceeds of sales be less than the amount paid for the goods by the [retailer] making the withdrawal”).

¹⁰ See S.C. Code Ann. § 12-36-90(1)(c)(i).

¹¹ See S.C. Revenue Ruling #08-11. This assumes that the item is unavailable for sale during the time it is used as a sample or display for customers. If the item is available for sale during that time, the item is not subject to sales tax unless (1) otherwise used or consumed by the employee or business during its display, or (2) until the item is sold at retail in South Carolina.

¹² See S.C. Revenue Ruling #08-11.

¹³ See S.C. Revenue Ruling #08-11.

Ingredient or Component Part. Gross proceeds of sales does not include any tangible personal property that becomes an ingredient or component part of tangible personal property manufactured or compounded for sale.¹⁴

Example: A lumber dealer who is also in the business of making wooden furniture. If the lumber dealer uses the lumber from the lumber business to make wooden furniture, the lumber dealer would not owe sales tax on lumber withdrawn from inventory for use in creating the hand-made wooden furniture. Instead, the lumber dealer must collect sales tax on the sales price of the furniture.

Replacing Defective Parts Underwritten in Warranty Contracts. Gross proceeds of sales does not include tangible personal property used to replace defective parts under written warranty contracts.¹⁵ Such withdrawals are excluded from the sales tax if:

- A. the warranty contract is given without charge at the time of the original purchase of the defective property;
- B. the tax was paid on the sale of the defective part or on the sale of the item of which the defective part was a component; and
- C. the warrantee is not charged for any labor or materials.¹⁶

Automobiles from Dealership Inventories. Gross proceeds of sales does not include (1) automobiles furnished without charge to a high school for use solely in student driver training programs,¹⁷ or (2) new motor vehicles used by a dealer as a demonstrator.¹⁸

b. Exclusions from “Sale at Retail” or “Retail Sale”

South Carolina excludes certain withdrawals from the sales tax by deeming such withdrawals as “wholesale sales” or “sales at wholesale.”¹⁹

Tangible Personal Property Used Directly in Manufacturing, Compounding, or Processing Tangible Personal Property for Sale. A sale at retail or retail sale does not include tangible personal property used directly in manufacturing, compounding, or processing tangible personal property for sale.²⁰ Instead, South Carolina law defines these transactions as “wholesale sales” or “sales at wholesale,” which do not have a sales tax liability.²¹

¹⁴ S.C. Code Ann. § 12-36-90(1)(c)(ii).

¹⁵ S.C. Code Ann. § 12-36-90(1)(c)(iii).

¹⁶ S.C. Code Ann. § 12-36-90(1)(c)(iii). See also S.C. Regulation 117-331.7(b) for an example of this exclusion regarding repair services conducted by airport fixed based operators.

¹⁷ S.C. Code Ann. § 12-36-90(1)(c)(iv).

¹⁸ S.C. Code Ann. § 12-36-90(1)(c)(v). See also S.C. Code Ann. §§ 12-36-110(1)(c)(v) (excluding the withdrawal of motor vehicles “operated with a dealer, transporter, or manufacturer, or education license plate . . . from the terms “sale at retail” or “retail sale” for sales and use tax purposes); and 12-36-90(2)(e) (excluding the same items in Section 12-36-110(1)(c)(v) from the term “gross proceeds of sales”).

¹⁹ See S.C. Code Ann. §§ 12-36-120(3) and (4).

²⁰ S.C. Code Ann. § 12-36-110(1)(c)(iii).

²¹ See S.C. Code Ann. § 12-36-120(3).

This exclusion requires the withdrawn materials or products to come in direct contact with and contribute to bring about some chemical or physical change in the ingredient or component properties during the period in which the processing takes place.²²

This exclusion applies to:

- (a) odorants purchased by gas companies and used in compounding gas for sale;
- (b) chemicals, such as soda, ash, alum, chlorine, etc., used in treating water for sale by municipalities and others engaged in the business of processing or compounding water for sale;
- (c) refrigerants used by manufacturers to produce ice for sale;
- (d) acetylene, oxygen, and other gases sold to manufacturers or compounders which enter into and become an ingredient or component part of the tangible personal property or products which are manufactured or compounded for sale, or which are used directly in fabricating, converting, or processing the materials or products being manufactured or compounded for sale; and
- (e) plates attached by the manufacturer to the product for identification purposes and which become a part of the product.²³

The exclusion does not apply to sales of acetylene, oxygen, and other gases for use by repairmen, welders, dentists, junk dealers, and others and are subject to the sales or use tax, whichever applies.²⁴

Materials, Containers, or Bags. A sale at retail or retail sale does not include materials, containers, cores, labels, sacks, or bags used incident to the sale and delivery of tangible personal property.²⁵ Instead, these transactions are “wholesale sales” or “sales at wholesale,” which do not have a sales tax liability.²⁶

S.C. Regulation 117-302.2 defines several of these items for purposes of determining what is a sale at retail or a sale at wholesale:

“Materials” is defined to include, among other things, wrapping paper, twine, strapping, nails, staples, wire, lumber, cardboard, adhesives, tape, waxed paper, plastic materials, aluminum foils, and pallets used in packaging tangible personal property incident to its

²² See S.C. Regulation 117-302.1(b).

²³ Id.

²⁴ Id.

²⁵ S.C. Code Ann. § 12-36-110(1)(c)(iv)

²⁶ See S.C. Code Ann. § 12-36-120(4)

sales and delivery and used by manufacturers, processors, or compounders in shipping tangible personal property.

“Containers” is defined to include, but are not limited to, such items as, paper, plastic or cloth sacks, bags, boxes, bottles, cans, cartons, drums, barrels, kegs, carboys, cylinders, and crates.

“Cores” is defined to include spools, spindles, cylindrical tubes and the like on which tangible personal property is wound.

The exclusion applies to:

(a) labels affixed to manufactured articles to identify such products only when such labels are passed on to the ultimate consumer of such products.

(b) excelsior, cellulose wadding, paper stuffing, sawdust and other packing materials used to protect products in transit . . . [as well as] materials such as strapping and dunnage to temporarily brace or block tangible personal property within trucks and railroad cars as a protection during shipment.

(c) hogsheads, when used by a manufacturer, compounder or processor for the purpose of packaging tobacco for shipment or sale.²⁷

The above withdrawals are “wholesale sales” or “sales at wholesale” and therefore excluded from the sales tax. However, the exclusion does not apply to address stickers and shipping tags or materials such as dry ice and rust preventives used to preserve property during shipment.²⁸

III. DUAL BUSINESSES

Operators of businesses who make both retail sales and withdrawals for use from the same stock of goods that are purchased at wholesale are dual businesses.²⁹ Operators of dual businesses must report sales tax on both retail sales and withdrawals for use based on the fair market value of the materials (i.e., the retail price the business charges its customers for the materials).³⁰ The dual business regulation only applies to those retail businesses that have a substantial number of retail sales.³¹

²⁷ S.C. Regulation 117-302.2.

²⁸ Id.

²⁹ S.C. Regulation 117-324.

³⁰ See S.C. Regulation 117-309.17; see also *Lowe’s Home Centers, LLC, v. S.C. Dep’t of Revenue*, 443 S.C. 388, 403-404, 904 S.E.2d 880, 888 (Ct. App. 2024) (petition for writ of certiorari denied December 10, 2024).

³¹ S.C. Regulation 117-324.

Example: Education and medical institutions and food service companies that sell items and also withdraw the same items for use should purchase everything at wholesale.³² They must then report their sales and withdrawals of these items to the Department, basing the total sales and withdrawals on the items' fair market values, i.e., the amount for which the institution offers the items for sale.³³

The dual business regulation does not apply to contractors, plumbers, repairmen, and others who make isolated or accommodation sales and who have not set themselves up as being engaged in selling.³⁴ If the business makes only isolated sales, that business may not purchase its stock of goods at wholesale; instead, tax should be paid on all taxable property it purchases.³⁵

IV. SPECIAL PROVISIONS FOR CERTAIN BUSINESS OPERATIONS AND INDUSTRIES

South Carolina regulations also include special provisions regarding withdrawals for use for certain business operations and industries.

Renting or Leasing. Businesses that customarily rent tangible personal property and withdraw the property for the businesses' own use, storage, or consumption must pay sales tax each time an item is withdrawn for use.³⁶ The tax for each withdrawal is measured by the amount that is customarily received when the item is rented for a like period of time.³⁷ Alternatively, the business may pay the tax on the retail purchase price at the time the business purchases the tangible personal property and incur no further liability on any future withdrawals for use.³⁸ The business must continue to use the chosen method for paying taxes until permission has been received from the Department to change the method.³⁹ Regardless of the method, the tax is due on all amounts proceeding or accruing from the rental, lease, or sale of the property.⁴⁰

Example: A dealer purchases a backhoe for purposes of renting or leasing it to customers. The dealer purchases the backhoe at wholesale. The dealer occasionally withdraws and uses the backhoe to perform a service, after which the backhoe is returned to the rental inventory. The dealer must pay the sales tax on each withdrawal for use, measuring the tax by the amount the dealer would customarily receive as rent had the backhoe been leased or rented for a like period of time.

³² See S.C. Regulation 117-305.3. In order to purchase all of their goods at wholesale, these institutions and food service companies should use a Resale Certificate (Form ST-8A), which can be found on the Department's website. The institution should complete the Resale Certificate and then provide it to their suppliers prior to making purchases.

³³ Id.

³⁴ Id. These businesses should pay tax on all taxable purchases; filing a sales tax return for their occasional sales is not necessary.

³⁵ Id.

³⁶ S.C. Regulations 117-309.15 and 117-318.4.

³⁷ Id.

³⁸ Id.

³⁹ Id.

⁴⁰ Id.

Alternatively, the dealer could pay the tax on the retail purchase price at the time the dealer purchases the backhoe and incur no further liability on any future withdrawals for use.

Airport Fixed Based Operators. Airport fixed based operators (FBOs) sell new and used planes. They also may offer charter services, lease or rent planes, provide flight instruction, sell gasoline or oils, and provide repair services.⁴¹

Pursuant to S.C. Regulation 117-331, when an FBO withdraws a plane for flight lessons or charter services, the FBO must pay sales tax on the withdrawal.⁴² South Carolina measures this tax based on the plane's fair market value or purchase price.⁴³ The FBO must also pay taxes when it later sells the plane.⁴⁴ South Carolina does not require sales tax on the withdrawal of planes used for charter flights that start and end outside of South Carolina.⁴⁵

S.C. Regulation 117-331 also addresses the withdrawal of replacement parts by FBOs under free written warranty contracts, providing that such withdrawals are not subject to sales tax, so long as the buyer has already paid tax on either the defective part or the item containing the defective part and the seller does not charge the warrantee for labor or materials.⁴⁶ There is also no tax on parts that are withdrawn to repair or recondition planes for sale.⁴⁷

Sellers of Ice. Licensed retailers who sell ice to consumers must report and remit sales tax to the Department on any withdrawals of ice for its own use based on the fair market value of the ice, i.e. the amount for which the retailer offers the ice for sale to customers.⁴⁸

Hotels (Meals). Some hotels may include a complimentary breakfast to guests in their nightly room rate. In those cases, if the price of the room includes a complimentary breakfast, the hotel's withdrawal of the food from inventory is subject to the sales tax based on the food's fair market value.⁴⁹

Railroads. Some railroads maintain storehouses in South Carolina to temporarily store materials and supplies.⁵⁰ These railroads may use some of these materials in South Carolina and some in

⁴¹ See S.C. Regulation 117-331.

⁴² Id. S.C. Regulation 117-331 further states that the charges for charter services are not subject to sales tax. Accordingly, while the withdrawal of an aircraft used in charter services is subject to sales tax, charges for the charter services themselves are charges for nontaxable services and thus are not subject to sales tax.

⁴³ Id. However, see S.C. Regulation 117-331 for determining the tax base when an aircraft is purchased for resale and is regularly demonstrated for that purpose and is also used for charter, instruction, or for the owner's private use.

⁴⁴ Id.

⁴⁵ Id.

⁴⁶ Id.

⁴⁷ Id.

⁴⁸ See S.C. Regulation 117-309.11; see also S.C. Regulation 117-309.17.

⁴⁹ See S.C. Regulation 117-307.1.

⁵⁰ See S.C. Regulation 117-311.1

other states.⁵¹ Often, when the suppliers send these materials to the storehouses, the railroad does not know which materials it will use in South Carolina (taxable) and which it will use in other states (not taxable).⁵²

Because of the difficulty in determining which materials are taxable when the railroad buys them, the railroad may apply to the Department for one of two certificates under S.C. Code Ann. § 12-36-2510: a Direct Pay Certificate or an Exemption Certificate.⁵³ This allows the railroad to buy materials at wholesale and then pay the tax on the materials withdrawn for use in South Carolina based on the retail price at which the railroad purchased the materials or supplies.⁵⁴

Ophthalmologists, Oculists and Optometrists. Pursuant to S.C. Regulation 117-308.7, ophthalmologists, oculists, and optometrists who provide professional services and also maintain a retail eyeglass business by making and selling glasses as opticians must pay sales tax based on the reasonable and fair market value of all materials withdrawn from inventory to fill their own prescriptions.⁵⁵ “Reasonable and fair market value” means the retail price at which the property is sold to the public in the absence of affirmative proof of the contrary.⁵⁶ Fair market value cannot be less than the cost of materials, labor, and other expenses, but does not include charges for examining the patient.⁵⁷

Ophthalmologists, oculists, or optometrists who provide professional services, as well as make substantial retail sales as an optician and make withdrawals from the same stock of goods to fill their own prescriptions are dual businesses. As a dual business, they purchase all of the goods so sold or used at wholesale and report both retail sales and withdrawals for use.⁵⁸ The measure of the tax on any withdrawals to fill its own prescription is the retail sales price at which the property is offered for sale to the public.⁵⁹

This portion of S.C Regulation 117-308.7 concerning a dual business (i.e. an ophthalmologist, oculist, or optometrist providing professional services, as well as making substantial retail sales as an optician) applies “when the professional services business and the retail eyeglass business . . . are the same legal entity (including disregarded legal entities).”⁶⁰ On the other hand, if the professional services business is a separate legal entity from the retail eyeglass business, then this portion of S.C. Regulation 117-308.7 does not apply and “the application of the sales tax applies to each legal entity separately depending on the type of business conducted.”⁶¹

⁵¹ Id.

⁵² Id.

⁵³ Id.; see also S.C. Code Ann. § 12-36-2510

⁵⁴ See S.C. Regulation 117-311.1; see also S.C. Code Ann. § 12-36-2510

⁵⁵ See S.C. Regulation 117-308.7.

⁵⁶ Id.

⁵⁷ Id. For a detailed example on when this particular provision applies, see S.C. Revenue Ruling #21-14, Example 6 under Section III.

⁵⁸ See S.C. Regulation 117-324; see also S.C. Revenue Ruling #21-14.

⁵⁹ See S.C. Regulation 117-308.7; see also S.C. Revenue Ruling #21-14.

⁶⁰ S.C. Revenue Ruling #21-14.

⁶¹ Id.

CONCLUSION:

In conclusion, South Carolina imposes a sales tax on all retail sales, which includes “the withdrawal, use, or consumption of tangible personal property by anyone who purchases it at wholesale.”⁶² Unless an enumerated exclusion applies,⁶³ all withdrawals for use are “retail sales” and must be included in the “gross proceeds of sales” when determining the sales tax base.

SOUTH CAROLINA DEPARTMENT OF REVENUE

s/W. Hartley Powell

W. Hartley Powell, Director

March 20 _____, 2025
Columbia, South Carolina

⁶² See S.C. Code Ann. § 12-36-910(1)(c); S.C. Code Ann. § 12-36-110(1)(c).

⁶³ See S.C. Code Ann. § 12-36-110(1)(c)(i)-(v); S.C. Code Ann. § 12-36-90(1)(c)(i)-(v).