



301 Gervais Street, P.O. Box 125, Columbia, South Carolina 29214

SC REVENUE RULING #89-4

**SUBJECT:** Six Year Statute of Limitation Retail Sales/Wholesale Sales  
(Sales Tax)

**EFFECTIVE DATE:** Applies to all periods open under statute.

**REFERENCE:** S.C. Code Ann. Section 12-54-80(2) (Supp. 1988)  
S.C. Code Ann. Section 12-35-510 (1976)  
S.C. Code Ann. Section 12-35-530 (1976)  
S.C. Code Ann. Section 12-35-1250 (Supp. 1988)  
S.C. Code Ann. Section 12-35-550 (1976 and Supp. 1988)

**AUTHORITY:** S.C. Code Ann. Section 12-3-170 (1976)  
SC Revenue Procedure #87-3

**SCOPE:** A Revenue Ruling is the Commission's official interpretation of how tax law is to be applied to a specific set of facts. A Revenue Ruling is public information and remains a permanent document until superseded by a Regulation or is rescinded by a subsequent Revenue Ruling.

Question:

For the purpose of applying the six year statute of limitations under Code Section 12-54-80(2), does the term "gross proceeds of sales" include only taxable sales or both taxable and nontaxable sales?

Facts:

ABC Corporation is a taxpayer who conducts both a wholesale and a retail business.

A significant percentage of the taxpayer's sales are wholesale sales to grocery stores and convenience stores. The taxpayer, when filing its monthly sales tax return, only reports retail sales (net of wholesale sales). Additional sales tax is due; however, the understatement is not in excess of twenty-five percent of retail sales. If unreported wholesale sales are taken into consideration in computing an understatement of gross proceeds of sales, then the taxpayer does have an omission greater than 25%.

Code Section 12-54-80 reads, in part:

In the case of any tax administered by the Commission, if the taxpayer omits twenty-five percent of gross income, sales price, gross receipts, gross proceeds of sale, or gross estate properly includable therein on any tax return due to be filed under provisions of law administered by the Commission, the tax may be assessed within six years after the return was filed.

Discussion:

S.C. Code Section 12-35-510 imposes the sales tax upon persons in the "business of selling at retail...[in] an amount equal to [five] percent of the gross proceeds of sales of the business" (emphasis added).

Code Section 12-35-530 reads:

Any person engaging or continuing in business as a retailer and also as a wholesaler or jobber shall pay the tax required on the gross proceeds of the retail sales of his business at the rates specified in [Section] 12-35-510 when his books are kept so as to show separately the gross proceeds of sale of each business, and when his books are not so kept he shall pay the tax as a retailer on the gross sales of the entire business. (emphasis added)

Code Section 12-35-1250 also emphasizes that a person operating as both a wholesaler and a retailer is conducting two distinct businesses. That section reads, in part, that "[a]ny person selling both at wholesale and at retail shall keep his books so as to show separately the gross proceeds of wholesale sales and the gross proceeds of retail sales".

In a Decision dated April 10, 1987, the Commission stated that the provisions of Code Section 12-54-80(2) "allowed an assessment to be made within six years of the filing of a return if there had been a 25% omission of total sales prices or gross receipts subject to the use tax" (emphasis added).

Furthermore, Code Section 12-35-550 exempts from the sales tax the gross proceeds of sales of specific retail sales.

In summary, the law draws a distinction between a retail business and a wholesale business.

However, Code Section 12-35-570, which concerns the sales tax return, reads:

The taxes levied under the provisions of this article, except as otherwise provided, are due and payable in monthly installments on or before the twentieth day of the month next succeeding the month in which the tax accrues. On or before the twentieth day of each month, every person on whom the taxes levied by this article are imposed must render to the Commission, on a form prescribed by the Commission, a true and correct statement showing by location the gross sales, the gross proceeds of sales, or gross receipts of his

business, as the case may be, for the next preceding month and the amount of gross proceeds or gross receipts which are not subject to the tax or are not to be used as a measurement of the taxes due by the person, and the nature thereof, together with other information as the Commission may demand and require, and at the time of making a monthly report the person must compute the taxes due and must pay to the Commission the amount of taxes shown to be due. A return must be considered to be timely filed if the return is mailed and has a postmark dated on or before the date the return is required by law to be filed (emphasis added).

In summary, the statute requires the taxpayer, on a form prescribed by the Commission, to report wholesale sales and exempt retail sales ("gross proceeds...which are not subject to the tax or are not to be used as a measurement of the [tax]") on the return, as well as, nonexempt (taxable) retail sales. On the form designed by the Commission, taxpayers must report all sales, both retail and wholesale, on Line 1 of the return and take the allowable deductions for exempt sales and wholesale sales on Line 5 of the return.

Conclusion:

Code Section 12-35-510 imposes the sales tax on the "gross proceeds of sales of persons in business of selling at retail." Code Section 12-35-550 provides exemptions for specific retail sales. Therefore, the term "gross proceeds of sale" as used in Code Section 12-54-80(2) includes the total retail sales of a business, prior to deductions for specific retail exemptions. The term does not include nontaxable wholesale sales. In applying the six year statute of limitation, only retail sales are used in determining whether or not the taxpayer has a twenty-five percent understatement on the return. However, if the taxpayer fails to separately account for wholesale sales and retail sales, all sales shall be presumed retail sales (pursuant to Code Section 12-35-530) for purposes of determining the amount omitted from the return.

Furthermore, it should be noted that even though wholesale sales are not used in determining whether or not there is a twenty-five percent understatement, taxpayers are required to report wholesale and retail sales on Line 1 of the return, pursuant to Code Section 12-35-570.

SOUTH CAROLINA TAX COMMISSION

s/S. Hunter Howard, Jr.

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S. Hunter Howard, Jr., Chairman

s/A. Crawford Clarkson, Jr.

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A. Crawford Clarkson, Jr., Commissioner

s/T.R. McConnell

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T. R. McConnell, Commissioner

Columbia, South Carolina

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