



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

SC REVENUE RULING #90-11

SUBJECT: Local Option Sales & Use Tax
(Sales, Use & Property)

TAX MANAGER: Jerry Knight

EFFECTIVE DATE: January 1, 1991

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

REFERENCE: S.C. Code Ann. Section 4-10-10, et. seq.
(Effective February, 1990)

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 A Revenue Ruling is public information and remains a permanent document until superseded by a Regulation or is rescinded by a subsequent Revenue Ruling.

FACTS:

Effective February 2, 1990, the Code of Laws of South Carolina was amended by adding Chapter 10 to Title 4, which allows the counties to levy a one percent (1%) local sales and use tax to be used "to provide a credit against the property tax liability of taxpayers in the count[ies] and municipalit[ies]". A referendum was held on November 6, 1990 and, in those counties which approved the tax, can go into effect July 1, 1991.

For the purposes of this document, the local option sales tax will be referred to as the "1% sales tax" and the local option use tax will be referred to as the "1% use tax".

QUESTIONS & ANSWERS CONCERNING THE 1% SALES AND USE TAX:

"BUSINESS LOCATION" DEFINED:

1. Q. For purposes of the 1% sales and use tax, only, what is meant by the term "business location"?
- A. For purposes of the 1% sales and use tax, only, the term "business location" means a permanent branch, establishment or agency where, as a normal and regular practice, orders for tangible personal property are received, resulting in sales subject to the sales tax under Chapter 36 of Title 12. The term includes stores, warehouses, mail order houses, sales offices, sales outlets and other locations where employees of the retailer receive sales orders and perform other work related duties. A post office box or mail drop is not a "business location".

GENERAL REPORTING REQUIREMENTS:

2. Q. How are retailers with a business location in South Carolina to report their sales?
- A. These retailers are to report their sales by county and municipality where their business location is situated; regardless of the fact that merchandise may be delivered to customers at a place other than the retailer's business location. Retailers with multiple business locations, are to maintain their records so as to clearly show which sales are attributable to each location.
3. Q. How are retailers with business locations in the State to report sales made via catalog, mail, fax or telephone?
- A. These sales are to be reported by the business location which receives the orders, if the orders are received by an in-state business location. If the orders are received by an out-of-state business location, then the retailer's sales are reportable by customer location.
4. Q. How are "artists and craftsmen" who are licensed under Code Section 12-36-510(A)(2) and "transient or temporary" retailers licensed under Code Section 12-36-510(A)(3) to report their sales?
- A. Such retailers are to report their sales by municipality and county in which each retail sale is made.
5. Q. How are those retailers who make sales which are reportable by a business location and who also make sales from temporary locations to report their sales?
- A. Sales which are reportable by a particular business location are to be reported by county and municipality where the business location is situated. Sales made at temporary locations are to be reported by county and municipality where the temporary locations are situated.

6. Q. Code Section 12-36-110(c) defines "retail sale" to include "the withdrawal, use, or consumption of tangible personal property by anyone who purchases it at wholesale". How are such "retail sales" to be reported?
- A. These retail sales are to be reported by county and municipality where first withdrawn, used or consumed.
7. Q. How are retailers who do not have a business location in the State (nonresident retailers) to report their sales?
- A. Nonresident retailers are required to "identify the county or municipality in the county area in which tangible personal property purchased at retail is stored, used or consumed in this State" (Code Section 4-10-20).
8. Q. How are persons who make purchases from nonresident retailers who are not authorized to collect the use tax to report their purchases (Code Section 12-36-1360)?
- A. Their purchases are to be reported by county and municipality where the property is first stored, used or consumed in South Carolina.

SALES MADE VIA OUTSIDE SALESMEN:

9. Q. How are retailers with in-state business locations to report sales made by outside salesmen?
- A. Their sales are to be reported by the in-state business location where the sales orders are received from the salesmen. If sales orders are received at an out-of-state business location, then question #11 applies.
10. Q. How are retailers with in-state business locations to report sales made by outside salesmen who, at the time of taking the order, also deliver the merchandise to the customer?
- A. Their sales are to be reported by the business location where the salesmen turn in their sales invoices, route books or other sales records.
11. Q. How are retailers who do not have a business location in South Carolina, but who solicit orders via outside salesmen, to report their sales?
- A. Their sales are to be reported by county and municipality where their customers are located.

EFFECT OF "DIRECT PAY" CERTIFICATES:

12. Q. What effect, if any, does the use of a "direct pay" exemption certificate (Code Section 12-36-2510) have on the reporting of the 1% sales and use tax?

A. By using a so-called "direct pay" exemption certificate, a taxpayer can make all purchases tax free and must pay any taxes due directly to the Commission. The taxpayer is liable for any taxes due and the tax (sales or use) is due upon the property being "withdrawn, used or consumed by the taxpayer". For purposes of the 1% sales and use tax, such withdrawals, use or consumption are reportable by county and municipality where the property is first withdrawn, used or consumed.

13. Q. For those taxpayers who use a "direct pay" exemption certificate, what is the effect on the 1% sales and use tax if the property is merely transferred from one locale to another? By "transferred", it is meant the property is not withdrawn from inventory for use or consumption.

A. Merely transferring property from one locale to another does not trigger the tax. The tax is due when the property is withdrawn, used or consumed by the taxpayer and such use or consumption is reportable by the county and municipality where first withdrawn, used or consumed.

14. Q. What effect, if any, does use of a "limited" exemption certificate have on the reporting of the 1% sales and use tax?

A. Unlike a "direct pay" exemption certificate, which allows the holder to make all purchases free of the tax, a so-called "limited" exemption certificate only allows specific items, which are exempt under Code Section 12-36-2120, to be purchased tax-free.

If the holder of the limited exemption certificate purchases an item which falls within an exemption provided by Code Section 12-36-2120, then the purchase is exempt from the 5% state tax and the 1% local tax. However, if the holder uses the certificate to purchase an item not exempt under Code Section 12-36-2120, then the holder of the certificate is liable for any tax due.

Purchases made with a limited exemption certificate which are subject to the 1% sales tax are reportable by the county and municipality where the business location of the seller is located.

Purchases made with a limited exemption certificate which are subject to the 1% use tax are reportable by the county and municipality where the property is first stored, used or consumed by the purchaser.

TRANSACTIONS NOT SUBJECT TO THE 1% TAX:

15. Q. Are there any transactions which are not subject to the 1% sales and use tax?

A. Yes. The following transactions are exempted or excluded from the 1% sales and use tax:

(1) Sales of "items with a maximum tax levied in accordance with [Section 12-36-2110]" are exempt from the 1% tax.

"Items with a maximum tax" are aircraft, motor vehicles, motorcycles, boats, trailers and semitrailers pulled by truck tractors, self-propelled light construction equipment, unassembled aircraft, mobile homes and musical instruments and office equipment purchased by certain religious organizations.

- (2) Transactions subject to the Casual Excise Tax under Article 17 of Title 12 are exempt from the 1% tax.

That Article imposes "an excise tax for the issuance of every certificate of title, or other proof of ownership, for every motor vehicle, motorcycle, boat, motor, or airplane, required to be registered, titled, or licensed".

- (3) Those transactions exempted or excluded from the imposition of the 5% state sales or use tax are exempt from the 1% tax.

CONSTRUCTION CONTRACTS:

16. Q. How does the 1% sales and use tax apply to construction contracts?

- A. Section 4-10-25 provides "[t]he gross proceeds of sales of tangible personal property delivered after the imposition date of the tax levied under Section 4-10-20 in a county, either under the terms of a construction contract executed before the imposition date, or a written bid submitted before the imposition date culminating in a construction contract entered into before or after the imposition date are exempt from the local sales and use tax...provided a verified copy of the contract is filed with the South Carolina Tax Commission within six months after the imposition of the local option sales and use tax".

1% Sales Tax: Purchases from in-state suppliers

For those transactions which are not exempt under the provisions of Code Section 4-10-25 (see above), the 1% sales tax is reportable by the contractor's supplier in the county and municipality where the supplier has his business location. If the supplier is located in a county which has imposed the tax, then the tax is due. If the supplier is located in a county which has not imposed the tax, then the tax is not due. It does not matter if the county of delivery has imposed the 1% sales tax.

1% Use Tax: Purchases from out-of-state suppliers

For those transactions which are not exempt under the provisions of Code Section 4-10-25 (see above), the 1% use tax is reportable in the county and municipality where the property is first stored, used or consumed by the contractor. If the county in which the property is first stored, used or consumed has imposed the tax, then the 1% use tax is due. If the county in which the property is first stored, used or consumed has not imposed the 1% tax, then the tax is not due.

17. Q. Code Section 12-36-110(1)(d) includes in the definition of "retail sale" "the use within this State of tangible personal property by its manufacturer as building materials in the performance of a construction contract".

How are such businesses, which are generally referred to as "manufacturer/contractors", to report these "retail sales"?

A. "Manufacturer/contractors" are to report the 1% sales or use tax by county and municipality where the property is used or consumed - the location of the construction site.

VENDING MACHINE OPERATORS

18. Q. How are businesses which make sales from vending machines to report their sales?

A. 1% Sales Tax:

Items to be sold from vending machines, except for cigarettes and soft drinks in closed containers, which are purchased from in-state suppliers, are subject to the 1% sales tax when purchased by the vending machine operator. The vending machine operator's supplier is liable for the tax on such purchases and the supplier is to account for his sales by the county and municipality where his business location is situated.

Sales of cigarettes and soft drinks in closed containers are subject to the 1% sales tax upon being sold from the vending machines. The liability for the tax is on the vending machine operator and he is to account for such sales by county and municipality in which the vending machines are located.

1% Use Tax:

Items to be sold from vending machines, except for cigarettes and soft drinks in closed containers, which are purchased from outside the State, are subject to the 1% use tax and is due at the time of purchase. The vending machine operator is liable for the tax and is to account for such purchases by county and municipality where the items are first stored or, if not stored, by machine location.

Purchases of cigarettes and soft drinks in closed containers for sale from vending machines are not subject to the 1% use tax. The 1% sales tax is due upon such items being sold from the machines and is the liability of the vending machine operator. Again, such sales are to be accounted for by county and municipality where the machines are located.

UTILITIES

19. Q. How are utilities to report the 1% sales or use tax?

- A. Code Section 4-10-20 requires utilities "to report sales in the county or municipality in which consumption of the tangible personal property occurs". In other words, utilities are to report their sales by county and municipality where their customers are located.

20. Q. For purposes of question #19, what is a "utility"?

- A. A "utility" is an entity which sells products or services subject to the 5% state sales and use tax and transmits or delivers its products or services via electronic transmissions or pipelines (i.e. electric and gas companies, telephone companies, cable TV companies and other communications companies).

NOTE: Entities which sell water via pipelines to the public are also "utilities"; however, their sales are exempt from the 5% sales and use tax.

BUSINESSES WHICH BILL ON A MONTHLY BASIS:

21. Q. For those taxpayers who sell and bill their services on a monthly basis (i.e. electric utilities and cable TV companies), when are they to begin reporting the 1% sales or use tax?

- A. Section 4-10-100 requires such persons to report the 1% tax "beginning on the first day of the billing period beginning on or after the date of general imposition". The phrase "date of general imposition" means the date the 1% tax becomes effective in a particular county (e.g. July 1, 1991). For example, if an electric power company has a billing period ending July 10, 1991, the first "billing cycle" subject to the 1% tax would be the period beginning July 11, 1991. The period July 1st through July 10th would not be subject to the 1% tax.

LEASES:

22. Q. If a lease of tangible personal property is executed prior to the imposition date of the 1% tax in a particular county and the lease period extends beyond the imposition date, does the 1% sales or use tax apply to those lease payments made after the imposition date?

- A. Yes. The 1% sales or use tax would apply to those lease payments made after the imposition date.

ACCOMMODATIONS:

23. Q. Does the 1% sales tax apply to charges for accommodations?

- A. Yes. The 1% sales tax applies to charges for accommodations.

24. Q. How are taxpayers who are subject to the sales tax on accommodations to report the 1% sales tax if they own or manage rental units in different counties or municipalities?

- A. Section 4-10-20 provides that such taxpayers "shall report separately in [their] sales tax return the total gross proceeds from business done in each county or municipality".

CREDIT FOR SALES AND USE TAXES PAID IN ANOTHER STATE:

25. Q. May credit be taken against the 1% use tax for sales and use tax due and paid in another state?

A. Yes. Credit may be taken against the 1% use tax for sales and use tax due and paid in another state, as provided below:

- (1) If the total tax due and paid in another state (state plus local) is less than 6% and property is stored, used or consumed in a South Carolina county which has imposed the 1% use tax, then the use tax owed in South Carolina is to be allocated 5/6 to the State and 1/6 to the county.

For example, Georgia has a 4% state tax and a 1% local tax; therefore, if a taxpayer makes a purchase in Georgia with a sales price of \$1,000, upon which the 5% tax was due and paid in Georgia, and stores, uses or consumes the property in a South Carolina county which has imposed the 1% use tax, the difference owed in South Carolina (1%) is to be allocated as follows -

$$\text{State portion} = 5/6 \text{ times } 1\% \text{ times } \$1,000 = \$ 8.30$$

$$\text{Local portion} = 1/6 \text{ times } 1\% \text{ times } \$1,000 = 1.70$$

$$\text{Total due} \qquad \qquad \qquad \$10.00$$

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- (2) If the total sales and use taxes due and paid in another state (state plus local) is greater than 6%, no tax will be due in South Carolina (either state or local).
- (3) If the property is stored, used or consumed in a S.C. county which has not imposed the 1% sales and use tax, credit will be allowed against the 5% state use tax up to the amount of state and local taxes due and paid in the other state.

SEPARATION OF TAXES, ESTIMATED TAXES, DISCOUNTS AND QUARTERLY FILINGS:

26. Q. Are retailers required to separately state the 5% state tax from the 1% sales or use tax?

A. No. Retailers are not required to separately state the 5% state tax from the 1% sales or use tax.

27. Q. Is the 1% sales or use tax to be considered in determining whether or not a taxpayer is required to pay estimated taxes?

A. No. Code Section 12-36-2600 was amended to specifically exclude the 1% sales and use tax from the estimated tax provisions.

28. Q. Do the discount provisions for filing and paying timely (Code Section 12-36-2610) apply to the 1% sales and use tax?

A. Yes. Code Section 12-36-2610 allows the discount on returns "required by Section 12-36-2570 [state tax] and Chapter 10 of Title 4 [1% sales and use tax]".

29. Q. If the answer to question #28 is "yes", how is the discount amount(s) to be computed?

A. The discount amount is to be computed by applying the appropriate discount rate to the total tax due on the return (the 5% state combined with the 1% local tax). The discount allowed is 3% if the total tax liability on a return is less than \$100; and 2% if the total tax is \$100 or more.

The total discount amount for a particular taxpayer (state plus local) cannot exceed \$10,000 during any one state fiscal year.

30. Q. Is the 1% sales and use tax to be considered in determining whether or not a taxpayer may be permitted to file a quarterly return?

A. Yes. The 1% sales and use tax should be considered in determining whether or not a taxpayer may be permitted to file a quarterly return. In other words, the 1% tax should be added to the state tax liability.

31. Q. Do the penalty and interest provisions of Chapter 54 of Title 12 apply to the 1% sales and use tax?

A. Yes. Section 4-10-20 provides that the 1% sales and use tax are "subject to...the enforcement provisions of Chapter 54 of Title 12".

32. Q. If the answer to question #31 is "yes", are the penalties and interest to be applied to the 1% sales and use tax separately from the state tax?

A. Yes. Penalties and interest are to be applied to the 1% sales and use tax separately from the state tax.

PROPERTY TAX

33. Q. In computing the credit against the property tax provided by Code Section 4-10-40(B), is the \$20,000 "homestead exemption" amount (Code Section 12-37-250) to be included in "taxable property"?

A. No. The \$20,000 "homestead exemption" amount is not to be included in "taxable property".

34. Q. In computing the credit against the property tax provided by Code Section 4-40-40(B), what value is to be placed on agricultural real property?

A. The value to be placed on agricultural real property is the property's "fair market value for agricultural purposes", as defined by Code Section 12-43-220.

35. Q. Code Section 4-10-90(B) requires the revenue generated from the 1% sales and use tax to be allocated to the Property Tax Credit Fund and the County/Municipal Revenue Fund, during the first year after the effective date of the act, in a ratio of 63% to 37%. Over the next four years, the percentage going to the Property Tax Credit Fund will increase, while the percentage going to the County/Municipal Revenue Fund will decrease. During the fifth year, the percentages will level out at 71% and 29%, respectively.

If a county imposes the 1% tax for a year other than the first year (July 1, 1991 through June 30, 1992), which percentages are to be used for allocation purposes - 63% and 37% (the first year's percentages) or the applicable percentages in effect for the year of imposition?

A. If the 1% tax is imposed for a year other than the first year after the effective date of the act (July 1, 1991 through June 30, 1992), the allocation percentages to be used are those in effect for the year imposed. For example, if the tax is imposed in a county starting January 1, 1998, 71% of the revenue from the 1% tax is to be allocated to the Property Tax Credit Fund and 29% to the County/Municipal Revenue Fund.

NOTIFICATION OF IMPOSITION OF THE 1% TAX

36. Q. When are those counties which approve the 1% tax in a year subsequent to the first referendum year (1990) to notify the Tax Commission and the State Treasurer that they have adopted a resolution to impose the 1% sales and use tax?

A. For those counties approving the referendum in subsequent years, the resolution must be delivered within ten days of the referendum to be imposed at the beginning of the next quarter. If a county wishes to delay imposition of the tax to a later quarter, then it must deliver the resolution no later than 45 days before the first day of the quarter in which the tax is to be imposed.

SOUTH CAROLINA TAX COMMISSION

s/S. Hunter Howard Jr.

S. Hunter Howard, Jr., Chairman

s/A. Crawford Clarkson Jr.

A. Crawford Clarkson, Jr., Commissioner

s/T. R. McConnell

T.R. McConnell, Commissioner

Columbia, South Carolina
November 21, 1990