



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

SC REVENUE RULING #91-9

- SUBJECT:** Lease or Rental of Tangible Personal Property
(Sales & Use Tax)
- TAX ANALYST:** Steve C. Hallman
- EFFECTIVE DATE:** Applies to all periods open under the statute.
- SUPERSEDES:** All previous documents and any oral directives in conflict herewith.
- REFERENCE:** S.C. Code Ann. Section 12-36-70 (Supp. 1990)
S.C. Code Ann. Section 12-36-100 (Supp. 1990)
S.C. Code Ann. Section 12-36-910(A) (Supp. 1990)
S.C. Code Ann. Section 12-36-1310 (Supp. 1990)
S.C. Code Ann. Section 12-36-2120(36) (Supp. 1990)
S.C. Code Ann. Section 12-36-2520 (Supp. 1990)
S.C. Code Ann. Section 12-36-2530 (Supp. 1990)
Regulation 117-170
Regulation 117-174.157
Regulation 117-174.220
- 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 A Revenue Ruling is public information and remains a permanent document until superseded by a Regulation or is rescinded by a subsequent Revenue Ruling.

Questions:

The lease or rental of tangible personal property has given rise to several questions regarding the application of the sales and use tax law to such activities. More specifically, the questions concern which payments, if any, are subject to the sales or use tax when property is delivered in South Carolina and the property is taken out of the State or when property is delivered outside this State and the property is brought into South Carolina.

Which lease or rental payments, if any, are taxable in South Carolina assuming the following independent situations? (This ruling does not consider the tax treatment of leases of "transient construction equipment". "Transient construction equipment" is specifically dealt with in S.C. Code Sections 12-36-150 and 12-36-1320.)

1. Tangible personal property is leased or rented from a retailer located within South Carolina and delivery of the property is made to the lessee in South Carolina. After using the property in this State for a period of time, the property is taken to another state by the lessee and used thereafter in the other state.
2. Tangible personal property is leased or rented from a retailer located within South Carolina and delivery of the property is made to the lessee in South Carolina. Upon taking delivery, the property is immediately removed from the State by the lessee for use outside South Carolina.
3. Tangible personal property is leased or rented from a retailer located within South Carolina and the property is delivered to the lessee outside this State. The property is thereafter used outside this State.
4. Tangible personal property is leased or rented from a retailer located outside South Carolina and the property is delivered to the lessee outside South Carolina. After using the property outside this State for a period of time, it is brought into South Carolina by the lessee for use.
5. Tangible personal property is leased or rented from a retailer located outside South Carolina and the property is delivered to the lessee outside South Carolina. The property is immediately brought into this State by the lessee for use.
6. Tangible personal property is leased or rented from a retailer located outside South Carolina and the property is delivered to the lessee at a point within South Carolina. The property is thereafter used in this State.

Discussion:

Leases executed in South Carolina.

Code Section 12-36-910(A) reads:

A sales tax, equal to five percent of the gross proceeds of sales, is imposed upon every person engaged or continuing within this State in the business of selling tangible personal property at retail.

Code Section 12-36-100 states, in part:

"Sale" and "purchase" mean any transfer, exchange, or barter, conditional or otherwise, of tangible personal property for a consideration including:

* * * *

(2) a rental, lease, or other form of agreement;...

Further, Code Section 12-36-70 defines the terms "retailer" and "seller" to include every person "renting, leasing, or otherwise furnishing tangible personal property for a consideration."

S.C. Code Section 12-36-2530 provides:

...Where, pursuant to a retail sale, tangible personal property is delivered in this State to the buyer [lessee] or to an agent of the buyer [lessee] other than a carrier, the retail sales tax applies notwithstanding that the buyer [lessee] may transport subsequently the property out of the State.

Yet, Code Section 12-36-2120(36) exempts from sales and use tax the gross proceeds of sales, or sales price of:

tangible personal property where the seller [lessor], by contract of sale, is obligated to deliver to the buyer [lessee], or to an agent or donee of the buyer [lessee], at a point outside this State or to deliver it to a carrier or to the mails for transportation to the buyer [lessee], or to an agent or donee of the buyer [lessee], at a point outside this State...

Further, Regulation 117-170 reads, in pertinent part:

...When tangible personal property is sold [leased] within the State and the seller [lessor] is obligated to deliver it to the buyer [lessee] or to an agent of the buyer [lessee] at a point outside of the State or to deliver it to a carrier or to the mails for transportation to the buyer [lessee] or to an agent of the buyer [lessee] at a point outside this State, the retail sales tax does not apply...

* * * *

However, where tangible personal property pursuant to a sale [lease] is delivered in this State to the buyer [lessee] or to an agent of his, other than a common carrier, the retail sales tax applies notwithstanding that the buyer [lessee] may subsequently transport the property out of the state.

Also, pursuant to Code Section 12-36-2520, if a lessor delivers tangible personal property to the lessee in a state other than South Carolina and receives a statement from the lessee, given under oath, that the property was leased for storage, use or other consumption outside of South Carolina and will not be returned to South Carolina for storage, use or other consumption, then the liability for the tax is transferred to the lessee if the property is returned by the lessee to South Carolina.

Therefore, where a lessee accepts delivery of tangible personal property within this State from a lessor, the transaction is subject to sales tax, even though the lessee may transport the property out of the State. But, if the lessor is obligated to deliver the tangible personal property to the lessee at a point outside this State or delivers the property to a carrier who will transport the property to the lessee at a point outside this State, the transaction is not subject to sales tax.

Leases executed outside South Carolina.

Code Section 12-36-1310 states:

- (A) A use tax is imposed on the storage, use, or other consumption in this State of tangible personal property purchased [leased] at retail for storage, use, or other consumption in this State, at the rate of five percent of the sales price of the property, regardless of whether the retailer is or is not engaged in business in this State.

* * * *

- (C) When a taxpayer is liable for the use tax imposed by this section on tangible personal property purchased [leased] in another state, upon which a sales or use tax was due and paid in the other state, the amount of the sales or use tax due and paid in the other state is allowed as a credit against the use tax due this State, upon proof of payment of the sales or use tax. The provisions of this section do not apply if the state in which the property was purchased does not allow substantially similar tax credits for tangible personal property purchased in this State. If the amount of the sales or use tax paid in the other state is less than the amount of use tax imposed by this article, the user shall pay the difference to the commission.

In other words, for the use tax to be imposed, tangible personal property must be purchased [leased] for storage, use or other consumption in this State. Also, under certain circumstances, credit will be allowed against this State's use tax for any sales or use tax due and paid on the lease in another state.

Regulation 117-174.157, entitled "Transferred Property, Use Tax Liability", provides in part:

...The assumption that the property was purchased [leased] for use, storage, or consumption in South Carolina is overcome when it is shown that there has been a real and substantial use of the property outside of this state prior to its transfer into this state...

In addition, Regulation 117-174.220 entitled "Use Tax, Property Purchased and Used Without the State... Later Used in South Carolina" reads, in pertinent part:

Where property purchased [leased] in another state and used outside the State of South Carolina, is later brought into the State for use, storage or consumption in South Carolina, the use tax will apply unless the following conditions are conclusively established: (1) That the property when purchased [leased] was intended for a bona fide use outside the

State of South Carolina; (2) That the first actual use of the property was outside the State of South Carolina; and (3) That the first actual use of the property was substantial and constituted the primary use for which the property was purchased [leased].

The responsibility for proof rests upon the purchaser [lessee] and until the above facts are established to the satisfaction of the South Carolina Tax Commission, it will be presumed that the use of such property in South Carolina is subject to a use tax....

Conclusions:

Leases executed in South Carolina.

1. & 2.

If tangible personal property is leased or rented from a retailer located within South Carolina and delivery of the property is made to the lessee in this State, then all payments are subject to the South Carolina sales tax. This is the case even if the property is subsequently taken out of the State.

3. If tangible personal property is leased or rented from a retailer located within South Carolina and the requirements of Code Section 12-36-2120(36) (out-of-state delivery) are met, then none of the payments are subject to South Carolina's sales tax.

Also, if the lessor takes a statement from the lessee pursuant to Code Section 12-36-2520 and the lessee later brings the property into South Carolina for storage, use or consumption, then the lessee will be held liable for the tax.

Leases executed outside South Carolina.

4. If tangible personal property is leased or rented from a retailer located outside South Carolina and the lessee brings the property into South Carolina after the property has been used outside this State for a period of time, then none of the payments will be subject to the South Carolina use tax provided the requirements in the next paragraph are met.

As provided by regulation 117-174.220, the lessee has the burden of proving that the property was: (1) leased or rented for use outside South Carolina; (2) the first actual use of the property was outside South Carolina; and (3) the first use of the property was substantial and constituted the primary use for which the property was leased or rented.

5. & 6.

If tangible personal property is leased or rented from a retailer located outside South Carolina and the property is delivered to the lessee in this State or the lessee brings the property into this State, for first storage, use or other consumption by the lessee, then all payments are subject to the South Carolina use tax.

Pursuant to Code Section 12-36-1310(C), a credit will be allowed against the South Carolina use tax for sales tax due and paid in another state.

NOTE: This document does not cover the tax treatment of "transient construction equipment".

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
May 22, 1991