
State of South Carolina
Department of Revenue
301 Gervais Street, P. O. Box 125, Columbia, South Carolina 29214

SC REVENUE RULING #95-12 (TAX/DMV)

SUBJECT: Collection of Casual Excise Tax and Use Tax

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

SUPERSEDES: DMV Procedural Memorandum No. 94-15
All previous documents and any oral directives in conflict herewith.

REFERENCES: S. C. Code Ann. Section 12-36-1710 (Supp. 1994)

AUTHORITY: S. C. Code Ann. Section 12-4-320 (Supp. 1994)
SC Revenue Procedure #94-1

SCOPE: A Revenue Ruling is the Department of Revenue's official advisory opinion of how laws administered by the Department are to be applied to a specific issue or a specific set of facts, and is provided as guidance for all persons or a particular group. It is valid and remains in effect until superseded or modified by a change in the statute or regulations or a subsequent court decision, Revenue Ruling or Revenue Procedure.

INTRODUCTION

In general, a South Carolina retailer collects and remits sales tax to the Department of Revenue upon the sale of a motor vehicle, motorcycle, boat, motor, airplane, trailer, semitrailer, or pole trailer. At times, however, the item is purchased from an individual or from a retailer located outside of South Carolina who is not responsible for collecting sales or use tax.

The purpose of this document is to provide detailed information concerning how much, if any, casual excise tax or use tax is due on transactions in which the sales tax has not previously been paid.

Four major categories are used in this document to explain the general tax provisions and the types of transfers that are not subject to tax. These categories are:

1. Casual Excise Tax,
2. Maximum Tax,
3. Transfers of Boats, Motors, and Boat Trailers, and
4. Use Tax.

For easy reference, definitions of terms used in this document, such as motor vehicle, trailer, etc., are provided at the end of this document.

CASUAL EXCISE TAX - GENERAL PROVISIONS

1. What is the casual excise tax and when is it imposed on sales of motor vehicles, motorcycles, boats, motors, or airplanes?

The casual excise tax is imposed upon the issuance of a certificate of title or other proof of ownership for every (1) motor vehicle, (2) motorcycle, (3) boat, (4) motor or (5) airplane required to be registered, titled or licensed. It applies only to the last sale before the application for title. (See Code Sections 12-36-1710(A) and 12-36-1720.) The casual excise tax does not apply to trailers, semitrailers, or pole trailers.

2. What is the casual excise tax rate?

The tax is 5% of the "fair market value" of the motor vehicle, motorcycle, airplane, boat, and motor. (See Question 3 for the definition of "fair market value".) However, Code Section 12-36-2110 provides that the casual excise tax may not exceed \$300 on certain transactions. (See Questions 6, 7 and 8 concerning the maximum tax.)

3. On what amount is the casual excise tax computed?

The casual excise tax is computed on the "fair market value" which is defined as (1) the total purchase price (i.e price agreed upon by the buyer and seller) less any trade-in allowance of the motor vehicle, motorcycle, boat, motor or airplane, or (2) the valuation shown in a national publication adopted by the Department. The valuation shown in a national publication of used values, however, is used only in cases of necessity, for example, when closely held stock is exchanged for a motor vehicle.

The price agreed upon by the buyer and seller, less any trade in, includes: (1) the amount of cash paid, (2) the amount of any loan assumed, (3) the value of any property exchanges, or (4) the amount paid at delinquent property tax sales.

NOTE: This conclusion is based upon the following legal analysis:

Code Section 12-36-1710(A) imposes the casual excise tax on the fair market value of the motor vehicle, motorcycle, boat, motor, or airplane. The term "fair market value" is defined in Code Section 12-36-1710(C) as "the total purchase price less any trade-in, or the valuation shown in a national publication of used values adopted by the [Department], less any trade-in". The term "total purchase price" is defined in Code Section 12-36-1710(D) as "the price of a motor vehicle, motorcycle, boat, motor, or airplane agreed upon by the buyer and seller with an allowance for a trade-in, if applicable." In looking at the definition of fair market value above, the determination must be made as to when the casual excise tax is imposed on the total purchase price and when it is imposed on the valuation shown in a national publication. The court, in Investors Premium Corp. v. South Carolina Tax Commission, 193 S.E. 2d 642 (1973), addressed a similar issue. The court stated that "the word 'or' used in a statute marks an alternative, and ordinarily means one or the other of two, but not both. We are of the opinion that...'or', while marking an alternative, must also be construed as introducing a substitute. That is, it does not set up an alternative of choice available to the Tax Commission but allows an alternative of necessity. We can find no logic in a purely equal alternative, and yet we must give some significance to the 'or' and the alternative it provides."

SPECIFIC TRANSFERS NOT SUBJECT TO THE CASUAL EXCISE TAX

4. What types of transfers are not subject to the casual excise tax?

The following transfers of motor vehicles, motorcycles, boats, motors, or airplanes are excluded from the casual excise tax pursuant to Code Section 12-36-1710 and 12-36-1720:

- a. transfers to members of the immediate family ("immediate family" is spouse, parent, child, sister, brother, grandparent, and grandchild);
- b. transfers to a legal heir, legatee, or distributee;
- c. transfers from an individual to a partnership upon formation, or from a stockholder to a corporation upon formation;
- d. transfers to a licensed motor vehicle dealer or licensed motorcycle dealer for the purpose of resale;
- e. transfers to a financial institution for the purpose of resale;
- f. transfers to any other secured party, as a result of repossession, for the purpose of resale;
- g. transfers to the seller or secured party in partial payment (eg. trade-ins);
- h. transfers where a sales or use tax has been paid on the transaction necessitating the transfer (this includes sales tax paid to an auctioneer licensed as a retailer);
- i. transfers of motor vehicles, motorcycles, or airplanes specifically exempted by Section 12-36-2120 from the sales or use tax (see Question 5 below);
- j. transfers that are a gift or prize (see Question 5 below); and,
- k. vessels registered and documented by the United States Commissioner of Customs.

5. What transfers are exempt from the casual excise tax because they are exempt from sales or use tax under Section 12-36-2120?

Sales to Nonresident Military Personnel -

Motor vehicles, as described below, or motorcycles sold to military personnel stationed in South Carolina by reason of orders of the U.S. Armed Forces who are not residents of South Carolina are exempt from South Carolina sales and use tax, and casual excise tax, provided (1) a copy of Form ST-178, "Nonresident Military Tax Exemption Certificate" that is furnished to the seller is provided to the Department or (2) a leave and earnings statement from the appropriate department of the armed services is provided that designates the state of residence of the buyer. This information must be furnished within ten days of the sale.

This exemption applies only to the sale of motor vehicles that are primarily designed to carry passengers, such as cars, passenger vans, and sports utility vehicles (e.g. Broncos, Explorers, Troopers). Sales and use tax is due on sales of motor vehicles designed primarily to carry cargo, such as trucks or cargo vans.

Sales to the Federal Government -

Sales of a motor vehicle, motorcycle, boat, motor, or airplane to the federal government are exempt from sales or use taxes under Code Section 12-36-2120(2). When agents of the federal government purchase one of these items on behalf of the federal government, the purchase is not subject to sales and use taxes providing the credit of the agent is not advanced or risked, the purchase order discloses the purchase is made on behalf of the federal government, title to the property vests in the federal government, and the vendor is paid directly from the federal government.

Transfers to an Insurance Company -

Vehicles that have been declared a total loss and are transferred to an insurance company in settlement of a claim are exempt from casual excise tax and sales and use taxes under Code Section 56-19-480. (See SC Revenue Ruling #93-13.)

Sales of Farm Machinery -

Airplanes used in planting, cultivating or harvesting farm crops (e.g. crop dusting) are exempt from South Carolina sales and use tax, and casual excise tax, pursuant to Code Section 12-36-2120(16). The tax, however, applies to automobiles or trucks used in farming.

Gifts and Prizes -

The casual excise tax does not apply to property transferred as a gift or prize since there has not been a "sale" to the recipient. A gift includes a motor vehicle, motorcycle, boat, motor, or airplane transferred by "love and affection". (See Code Section 12-36-1720 and SC Revenue Ruling #92-10.)

THE MAXIMUM TAX - GENERAL PROVISIONS

6. What transfers are subject to the \$300 maximum tax?

Code Section 12-36-2110 provides that the maximum tax imposed by Chapter 36 (Sales and Use Tax Act) is \$300 for sales or leases of each:

- a. aircraft;
- b. motor vehicle;

- c. motorcycle;
- d. boat (See Question 8 for a complete explanation);
- e. trailer or semitrailer capable of being pulled only by a truck tractor;
- f. recreational vehicle, including tent campers, travel trailers, park trailers, motor homes and fifth wheels;
- g. self-propelled light construction equipment with compatible attachments limited to a maximum of 160 net engine horsepower; and,
- h. horse trailers.

NOTE: Code Section 12-36-2110 provides that the maximum tax imposed is \$300 for **each sale**. In order for a lease to qualify for the \$300 maximum tax, a lease must specifically state the term of, and remain in force for, a period in excess of ninety continuous days.

7. What transfers may exceed the \$300 maximum tax?

Pursuant to Code Section 12-36-2110(5), the maximum tax does not apply to sales or leases of:

- a. trailers or semitrailers capable of being pulled by vehicles other than a truck tractor;
- b. pole trailers; and,
- c. boat trailers (See Question 8 for a complete explanation).

Note: The 1% local option use tax applies to these sales that are not subject to the \$300 maximum tax.

TRANSFERS OF BOATS, MOTORS, AND BOAT TRAILERS

8. What is the sales, use, or casual excise tax rate when a boat, motor, or boat trailer is sold individually or as a complete package?

SC Revenue Ruling #92-12 sets forth the following guidelines concerning the tax rates applicable to the sale of boats, motors, or boat trailers:

- a. A boat sold alone is taxed at the lesser of 5% of the purchase price or \$300.
- b. A motor sold alone is taxed at 5% of the purchase price.
- c. A boat trailer sold alone is taxed at 5% of the purchase price. (As stated in Question 1, the casual excise tax does not apply to boat trailers.)

- d. A boat sold with a motor permanently attached to it is taxed at the lesser of 5% of the purchase price of the boat and motor or \$300.
- e. A boat trailer sold in conjunction with the sale of a boat is taxed at 5% of the purchase price of the boat trailer. The boat is taxed at the lesser of 5% of the purchase price of the boat or \$300. (Boat trailers do not include trailers which must be pulled by truck tractors or boat trailers which are used by manufacturers to transport boats to dealerships).
- f. A boat trailer sold in conjunction with the sale of a boat that has a permanently attached motor is taxed at 5% of the purchase price of the trailer. The boat with a permanently attached motor is taxed at the lesser of 5% of the purchase price of the boat and motor or \$300. (Note: If the price of the boat trailer is not separately stated from the price of the boat and motor, the boat trailer is subject to tax at 5% of the fair market value of the boat trailer. If the price of the boat trailer is separately stated from the price of the boat and motor, the price breakdown must be reasonable and supported by the records of the taxpayer, otherwise the trailer will be taxed at 5% of its fair market value.)

NOTE: A boat motor is considered permanently attached to a boat if it is (1) an inboard motor or (2) an outboard motor sold mounted to the boat, connected to a permanent steering mechanism, and included in the price of the boat.

USE TAX - GENERAL PROVISIONS

9. What is the use tax and when is it imposed on sales of motor vehicles, motorcycles, boats, motors, airplanes, trailers, semitrailers, or pole trailers?

The use tax is imposed on the storage, use, or consumption in South Carolina of motor vehicles, motorcycles, boats, motors, airplanes, trailers, semitrailers, or pole trailers purchased from retailers who are not engaged in business in South Carolina. (See Code Section 12-36-1310.)

10. What is the use tax rate?

The use tax is 5% of the sales price of the motor vehicle, motorcycle, boat, motor, airplane, or trailer, semitrailer, or pole trailer purchased. However, Code Section 12-36-2110 provides that the use tax may not exceed \$300 on certain transactions. (See Questions 6, 7, and 8 concerning the maximum tax.)

11. Is a credit allowed for state and local sales tax paid in other states?

Yes, South Carolina allows a credit against the use tax due in South Carolina for the state and local sales or use tax due and paid in another state provided: (1) the state in which the property was purchased allows a substantially similar credit and (2) the purchaser has proof of payment of the sales or use tax. (See Code Section 12-36-1310(C)).

See SC Information Letter #95-9 for a list of states for which South Carolina will allow a tax credit.

SPECIFIC TRANSFERS NOT SUBJECT TO THE USE TAX

12. What sales or purchases of motor vehicles, motorcycles, boats, motors, airplanes, trailers, semitrailers, or pole trailers are not subject to the use tax?

The following transfers of motor vehicles, motorcycles, boats, motors, airplanes, trailers, semitrailers, or pole trailers are excluded from the use tax:

- a. Purchases from another state that have been substantially used outside South Carolina by the purchaser before being titled, registered or licensed in South Carolina. The purchaser must show proof that the property was titled, registered or licensed in another state. (See Code Section 12-36-1310 and Regulation 117-174.157.)
- b. Purchases in which the purchaser has a receipt from an out of state seller or retailer authorized to collect South Carolina's use tax that shows the seller has collected the tax from the purchaser. (See Code Section 12-36-1330.)
- c. Sales to dealers for resale. The liability for tax will shift from the seller to the purchaser if the seller receives a properly completed Form ST-8A, "Resale Certificate", from the purchaser. (See Code Sections 12-36-120, 12-36-1370, and South Carolina Revenue Procedure #95-1.)
- d. Sales to nonresident military personnel, sales to the federal government, transfers to an insurance company, and sales of airplanes used in farming as provided in Question 5.

SPECIAL PROVISION FOR PERSONS 85 OR OLDER

For purposes of the casual excise tax and the sales and use tax, the tax rate imposed on a purchase by an individual 85 years old or older who titles or registers a motor vehicle, motorcycle, boat, motor, airplane, trailer, semitrailer or pole trailer for his own personal use is 4%, instead of 5%. (See Code Section 12-36-2640.)

1% LOCAL SALES AND USE TAXES

Transfers subject to the casual excise tax and sales subject to the \$300 maximum tax are **exempt** from the 1% local sales and use taxes. The local option tax applies to all other sales. (See Question 7 for transfers that may exceed the \$300 maximum tax.)

DEFINITIONS

For purposes of computing the casual excise tax, maximum tax, or use tax, Code Section 56-3-20 provides the following definitions of motor vehicle, vehicle, trailer, semitrailer, pole trailer, and truck tractor:

Motor Vehicle - Every vehicle which is self-propelled, except mopeds, and every vehicle which is propelled by electric power obtained from overhead trolley wires, but not operated upon rails.

Vehicle - Every device in, upon or by which any person or property is or may be transported or drawn upon a highway, except devices moved by human power or used exclusively upon stationary rails or tracks.

Trailer - Every vehicle with or without motive power, other than a pole trailer, designed for carrying persons or property and for being drawn by a motor vehicle and so constructed that no part of its weight rests upon the towing vehicle.

Semitrailer - Every vehicle with or without motive power, other than a pole trailer, designed for carrying persons or property and for being drawn by a motor vehicle and so constructed that some part of its weight and that of its load rests upon or is carried by another vehicle.

Pole Trailer - Every vehicle without motive power designed to be drawn by another vehicle and attached to the towing vehicle by means of a reach or pole or by being boomed or otherwise secured to the towing vehicle and ordinarily used for transporting long or irregularly shaped loads such as poles, pipes or structural members capable, generally, of sustaining themselves as beams between the supporting connections.

Truck Tractor - Every motor vehicle designed and used primarily for drawing other vehicles and not so constructed as to carry a load other than a part of the weight of the vehicle and load so drawn.

SOUTH CAROLINA DEPARTMENT OF REVENUE

s/Burnet R. Maybank III

Burnet R. Maybank, III, Director

Columbia, South Carolina
July 19 _____, 1995

EXHIBIT A - TAX WORKSHEET

The following amounts must be shown on the ST-236A and ST-236B:

- 1. Purchase Price¹ _____
- 2. Less: Trade-in _____
- 3. Measure of Tax (line 1 less line 2) _____
- 4. Multiply by SC Tax Rate² _____
- 5. Tax Due (Generally not to exceed \$300) _____

¹ See Question 3 to determine the proper amount.

² The tax rate is 5%. However, the tax rate is 4% on a purchase by an individual 85 years old or older who titles or registers a motor vehicle, motorcycle, boat, motor, or airplane for his own personal use. (See Code Section 12-36-2640.)

EXHIBIT B - TAX FORMS

Form ST-236A is the "Use Tax Return" and Form ST-236B is the "Casual Excise Tax Return". A blank, four part form - Form ST-236 - is used to print forms ST-236A and ST-236B. These forms must be computer prepared unless the purchase is (1) \$100,000 or more, (2) to a person 85 years old or older who is titling or registering the property for his own personal use, or (3) a boat equipped with steering and motor that is purchased from the same seller - the form must be manually prepared to separately list the serial numbers of the boat and the motor.

If the transaction is not subject to tax and the purchaser has completed the Casual Excise Tax Exemption on Form 400 - "Application for Certificate of Title/Registration", then a ST-236B does **not** have to be prepared.

If an error is made on the computer generated ST-236A or ST-236B it must be voided on-line and another form prepared. The reason for the void must be stated on the form. There will be no manual corrections or changes to the computer generated ST-236A or ST-236B. If an error is made on a manually generated ST-236A or ST-236B a Sales Exception Document must be completed.

The ST-236A and ST-236B will be distributed as follows:

White Copy (Original)	-	Title Application Taxpayer Copy, if boat
Yellow Copy	-	Taxpayer Copy
Blue Copy	-	Branch Office File Copy
Manila Copy	-	License Revenue Accounting Copy

The total amount of tax calculated to be due on computer prepared form ST-236A or form ST-236B must be added to Form 479-R - "Individual Reconciliation Report". Manually prepared ST-236A and ST-236B forms must be added to page 3 of Form 479-R. The beginning and ending form numbers must be listed on the appropriate line of Form 479 - "Daily License Transaction Report".

EXHIBIT C - MISCELLANEOUS

1. Authorized retailers are listed in the MTCX computer file. If it appears a retailer is authorized, but is not listed in the MTCX file, call the Sales Tax Section at 737-4788 for confirmation.
2. Rates of credit allowed for state and local sales tax paid in other states are programmed in the computer system and will be updated as needed.