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

SC REVENUE RULING #96-9 (TAX)

SUBJECT: Cherokee County School District #1 Sales & Use Tax
(Sales and Use Tax)

EFFECTIVE DATE: July 1, 1996

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

REFERENCE: Act 588 of 1994

AUTHORITY: S.C. Code Ann. Section 12-4-320 (Supp. 1995)
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 It is valid and remains in effect until superseded or modified by a change in the statute or regulations or a subsequent court decision, Revenue Ruling or Revenue Procedure.

FACTS:

On May 11, 1994 the General Assembly enacted the Cherokee County School District One School Bond-Property Tax Relief Act. This Act provides that upon public approval in a referendum conducted by the Cherokee County Election Commission, a 1% optional sales and use tax may be imposed in Cherokee County for not more than 20 years. The revenue from this 1% sales and use tax will be used to pay debt service on general obligation bonds which were issued to defray the costs of specified improvements for Cherokee County School District One. The imposition of the 1% sales and use tax was approved in the referendum.

Later in 1994, the constitutionality of this legislation was challenged by a Cherokee County resident. The school board, in a resolution dated October 11, 1994, decided to delay the implementation of the tax while the matter was being litigated. The resolution authorizes the imposition of the tax "beginning July 1, 1996, or upon the first day of the third full month following the adoption of a subsequent resolution of [the] Board requiring the imposition of the tax, whichever occurs earlier."

On May 2, 1996, the Supreme Court of South Carolina ruled that the legislation, Act 588 of 1994, was constitutional.

Based on the above cited resolution, the 1% sales and use tax will be imposed in Cherokee County (not just area within Cherokee County School District One) beginning July 1, 1996.

LIABILITY FOR 1% CHEROKEE COUNTY TAX: A SUMMARY

1% Sales Tax: If a retailer is located in Cherokee County, he is liable for the 1% Cherokee County sales tax on sales of tangible personal property delivered within the county in which he is located. (See Question #15 for transactions not subject to the 1% Cherokee County tax.)

1% Use Tax: If a retailer delivers tangible personal property into Cherokee County, the person taking delivery and first storing, using or consuming the property in Cherokee County is liable for the 1% Cherokee County use tax.

However, if certain criteria are met, the retailer making deliveries into Cherokee County can be required to collect the 1% Cherokee County's use tax. (See Questions #1 - #5.)

If the retailer is required to collect Cherokee County's 1% use tax, he does not become the taxpayer, but is held accountable for the tax as a collection agent for the State. Therefore, if upon being audited, it is found such retailer has failed to collect Cherokee County's 1% use tax on any taxable sales, the Department may assess the retailer for Cherokee County's 1% use tax.

If a person purchases tangible personal property in another county or outside of South Carolina and brings the property into Cherokee County for storage, use, or consumption, then the purchaser is liable for the 1% Cherokee county use tax. (See the Note below.)

NOTE: A purchaser is not liable for Cherokee County's 1% use tax if he takes delivery in another county and pays the 1% local option sales tax in that county. Also, the purchaser is relieved of the liability for the 1% Cherokee County use tax if he has a receipt from a retailer showing the retailer has collected the 1% Cherokee County use tax.

HOW PLACE OF DELIVERY IS DETERMINED:

For purposes of the 1% Cherokee County tax and this document, delivery of tangible personal property is defined to occur when and where title or possession of tangible personal property transfers from the retailer to his customer. Following are guidelines to be used in determining when and where delivery occurs:

FOB Destination Or Similar Terms: Delivery is considered to take place at the purchaser's location or wherever delivered to the purchaser (at the purchaser's direction).

FOB Shipping Point Or Similar Terms: Delivery is considered to take place at the retailer's location. Retailers with multiple retail locations are to maintain their records so as to clearly show which sales are attributable to each location.

Shipping Terms Are Unspecified: Delivery is considered to take place at the purchaser's location or wherever delivered to the purchaser (at the purchaser's direction).

Retailer Uses Own Vehicle: If a retailer uses his own vehicle(s) for making deliveries, delivery is considered to take place at the purchaser's location or wherever delivered at the direction of the purchaser. This applies whether the vehicles are owned or leased by the retailer.

Situations Where Title Transfers, But Not Possession: Delivery is considered to take place at the retailer's location.

For example, a printer may produce business cards for a customer. The cards include all needed information except for the employee's name. The printer keeps possession of, but not title to, the cards. At the direction of the customer, the printer will imprint the customer's cards with an employee's name and send the imprinted cards to the customer. Since title transferred, but not possession, delivery is considered to take place at the retailer's location.

Retailers with multiple retail locations are to maintain their records so as to clearly show which sales are attributable to each location.

QUESTIONS & ANSWERS CONCERNING THE 1% CHEROKEE COUNTY SALES AND USE TAXES:

IN-STATE RETAILERS - REPORTING REQUIREMENTS:

1. How is a retailer who is located in Cherokee County to report his sales for purposes of the 1% Cherokee County sales and use taxes?
 - A. **1% Cherokee County Sales Tax:** A retailer located in Cherokee County is subject to the 1% Cherokee County sales tax on sales of tangible personal property delivered inside Cherokee County. (See Question #15.)

1% Cherokee County Use Tax: A retailer located in another county who makes deliveries into Cherokee County is required to collect the Cherokee County 1% use tax, if certain criteria are met. (See Questions #3 and #15.)
2. Q. How is a retailer who is located in a county other than Cherokee County to report his sales for purposes of the 1% Cherokee County sales and use taxes?
 - A. **1% Cherokee County Sales Tax:** A retailer located in a county other than Cherokee County is not subject to the 1% Cherokee County sales tax.

1% Cherokee County Use Tax: A retailer located in a county other than Cherokee County who makes deliveries into Cherokee County is required to collect Cherokee County's 1% use tax, if certain criteria are met. (See Questions #3 and #15.)
3. Q. What are the criteria that must be met to require a retailer to collect Cherokee County's 1% use tax?

- A. Whether or not a retailer can be required to collect Cherokee County's 1% use tax is dependent upon the controlling facts and the extent of the seller's activities within Cherokee County.

Retailers Using Their Own Vehicles: A retailer can be required to collect Cherokee County's 1% use tax if the retailer is shipping property into Cherokee County, using his own vehicles (whether owned or leased), and any one of the following criteria is met:

- (a) The retailer maintains, temporarily or permanently, directly or by subsidiary, an office, warehouse, distribution house, sales house, other place of business, or property in Cherokee County.
- (b) The retailer or a subsidiary has, temporarily or permanently, an agent, salesman, or employee operating within Cherokee County.
- (c) The retailer advertises, on a regular basis, via advertising media located in Cherokee County (e.g., newspapers, television, radio).
- (d) The retailer advertises, on a regular basis, via advertising media located outside Cherokee County but which has extensive coverage within Cherokee County.

Retailers Using Other Than Their Own Vehicles: A retailer can be required to collect Cherokee County's 1% use tax if the retailer is shipping property into Cherokee County, using other than his own vehicles (e.g., common carrier, UPS, the mail), and any one of the following criteria is met:

- (a) The retailer maintains, temporarily or permanently, directly or by subsidiary, an office, warehouse, distribution house, sales house, other place of business, or property in Cherokee County.
- (b) The retailer or a subsidiary has, temporarily or permanently, an agent, salesman, or employee operating within Cherokee County.

Other Situations: All other situations must be considered on a case-by-case basis, in light of current case law.

NOTE: If upon being audited, it is found a retailer has sufficient activities in Cherokee County to require him to collect Cherokee County's 1% use tax, but has failed to collect Cherokee County's 1% use tax on any taxable sales, the Department may assess the retailer for Cherokee County's 1% use tax.

4. Q. May an in-state retailer, who does not have sufficient activities in Cherokee County to require the retailer to collect Cherokee County's 1% use tax, voluntarily collect Cherokee County's 1% use tax?

- A. Yes. If a retailer voluntarily collects the 1% use tax, he has an obligation to remit the tax to the Department.

OUT-OF-STATE RETAILERS - REPORTING REQUIREMENTS :

- 5. Q. How are out-of-state retailers (nonresident retailers) to report their sales?

- A. Nonresident retailers are required to "identify the county in which tangible personal property purchased at retail is stored, used or consumed in this state." (Act 588 of 1994, Section 5(C)).

Therefore, such retailers must identify to the Department when tangible personal property purchased at retail is stored, used or consumed in Cherokee County. This can be done by using and attaching Form ST-389 to the sales and use tax return.

PURCHASERS - REPORTING REQUIREMENTS :

- 6. Q. The liability for the 1% Cherokee County use tax, as with the 5% state use tax, is on the purchaser. The retailer may, however, be required to collect the tax from the purchaser. If the retailer does not collect the 1% Cherokee County use tax from the purchaser, then the purchaser must pay the tax directly to the Department on his return.

In those situations where the retailer does not collect the 1% use tax, how is the purchaser to report the tax?

- A. Purchases from Outside South Carolina: Purchases of tangible personal property (not for resale) from outside South Carolina, first stored, used or consumed in Cherokee County, are subject to the 1% Cherokee County use tax, in addition to the 5% state use tax. Such purchases are to be reported to the Department as being first stored, used or consumed in Cherokee County by use of Form ST-389, which is attached to the sales or use tax return (ST-3, ST-388, or UT-3). (Note: The UT-3 is a return that allows an individual who is not required to file a sales tax return but who has use tax to report on purchases made from out of state or, in the case of the 1% Cherokee County use tax, has Cherokee County use tax to report on purchases made in another county that has not imposed the local option sales and use tax.)

Purchases from Inside South Carolina: Purchases of tangible personal property (not for resale) from another county, which is first stored, used or consumed in Cherokee County, are subject to the 1% Cherokee County use tax. Such purchases are to be reported to the Department as being first stored, used or consumed in Cherokee County by use of Form ST-389, which is attached to the sales or use tax return (ST -3, ST-388, or UT-3).

NOTE: The purchaser is not liable for Cherokee County's 1% use tax if he takes delivery in another county and pays the other county's 1% local option sales tax. Also, the purchaser is relieved of the liability for the 1% Cherokee County use tax if he has a receipt from a retailer showing the retailer has collected the 1% Cherokee County use tax from the purchaser.

ARTISTS, CRAFTSMEN & TRANSIENT OR TEMPORARY RETAILERS:

7. Q. How are "artists and craftsmen" 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 where delivery is made. (See Questions #1 and #2.) This can be done by using and attaching Form ST-389 to the sales and use tax return in order to report sales made within or into Cherokee County.

WITHDRAWALS FOR USE:

8. 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 using Form ST-389 to report that the property was first withdrawn, used or consumed in Cherokee County.

SALES MADE VIA OUTSIDE SALESMEN:

9. Q. How are in-state retailers to report sales made as a result of orders taken by outside salesmen?
- A. Such retailers must use Form ST-389 to report all deliveries made into Cherokee County. (See Questions #1 and #2.)
10. Q. How are in-state retailers to report sales made by outside salesmen who, at the time of taking the order, also deliver the merchandise to the customer?
- A. Such retailers must use Form ST-389 to report all deliveries made into Cherokee County. (See Questions #1 and #2.)
11. Q. How are out-of-state retailers who solicit orders via salesmen to report their sales?
- A. Such retailers must use Form ST-389 to report all deliveries made into Cherokee County. (See Questions #1 and #2.)

"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% Cherokee County 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 Department. 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% Cherokee County sales and use tax, such withdrawals, use or consumption are reportable, using Form ST-389, when the property is first withdrawn, used or consumed in Cherokee County.

13. Q. For those taxpayers who use a "direct pay" exemption certificate, what is the effect on the 1% Cherokee County 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, but is merely moved from one location to another.
- 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, using Form ST-389, by the county and municipality where first withdrawn, used or consumed.

"LIMITED" EXEMPTION CERTIFICATES:

14. Q. What effect, if any, does use of a "limited" exemption certificate have on the reporting of the 1% Cherokee County 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% Cherokee County 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 upon the property being withdrawn, used or consumed. For purposes of the 1% Cherokee County sales and use tax, such withdrawals, use or consumption are reportable, using Form ST-389, when the property is first withdrawn, used or consumed in Cherokee County.

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% Cherokee County sales and use tax:

(1) Sales of "items subject to a maximum tax in Chapter 36 of Title 12 [Section 12-36-2110]" are exempt from the 1% Cherokee County tax.

"Items subject to 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.

NOTE: Sales of trailers that can be pulled by vehicles other than truck tractors, sales of pole trailers and sales of boat motors not attached to a boat at the time of sale are not exempt from the 1% Cherokee County sales and use tax. With respect to sales of boats and/or motors, see SC Revenue Ruling #92-12.

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

(3) Sales of food which may lawfully be purchased with United States Department of Agriculture food stamps are exempt from the 1% Cherokee County sales and use tax. This exemption from the 1% Cherokee County sales and use tax applies to everyone, not just persons using food stamps. (Such sales are still subject to the 5% state sales and use tax.)

Foods which may be purchased with foods stamps and are exempt from the 1% Cherokee County sales and use tax include:

- * Any food intended to be eaten at home by people, including snacks
- * Seeds and plants intended to grow food (not flowers or birdseed)
- * Cold prepared items, such as salads or sandwiches, intended to be eaten at home

Items which cannot be purchased with food stamps and are, therefore, subject to the 1% Cherokee County sales and use tax are:

- * Alcoholic beverages
- * Tobacco
- * Hot foods ready to eat
- * Foods designed to be heated in the store
- * Hot and cold food to be eaten at a lunch counter, in a dining area or anywhere else in the store
- * Vitamins and medicines (Note: Medicines sold by prescription are exempt from the 1% Cherokee County tax since medicines sold by prescription are exempt from the 5% state sales and use tax.)
- * Pet food
- * Any non-food items such as tissue, soap or other household goods

CONSTRUCTION CONTRACTS:

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

A. Section 5(F) of Act 588 of 1994 provides "[t]he gross proceeds of sales of tangible personal property delivered after the imposition date of the tax levied under the Act in Cherokee 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 special local sales and use tax [Cherokee County] ... provided in this section if a verified copy of the contract is filed with the Department of Revenue and Taxation within six months after the imposition of the special local option sales and use tax."

1% Sales Tax:

For those transactions which are not exempt under the above provisions, the 1% Cherokee County sales tax is reportable by the contractor's supplier if the property is delivered within Cherokee County.

1% Use Tax:

For those transactions which are not exempt under the above provisions, the 1% Cherokee County use tax is reportable if the property is first stored, used or consumed in Cherokee County.

The liability for the 1% use tax, as with the 5% state use tax, is on the contractor. The supplier may, however, be required to collect the tax from the contractor. (See Questions #1 - #5.)

If the contractor takes delivery in a local option county and pays that county's 1% sales tax to the supplier, he is not liable for the 1% Cherokee County use tax if he takes the property to Cherokee County and stores, uses or consumes the property in Cherokee County.

Also, the contractor is relieved of the liability for the 1% Cherokee County use tax if he has a receipt from the supplier showing the supplier has collected the 1% Cherokee County use tax from the contractor.

Note: An exemption certificate issued to a contractor in order to exempt purchases by the contractor from the 1% local option tax imposed in various counties in the state will not exempt the contractor from the 1% Cherokee County sales and use tax. In addition, an exemption certificate issued to a contractor in order to exempt purchases by the contractor from the 1% Cherokee County tax will not exempt the contractor from the 1% local option sales and use tax imposed in other counties in the state.

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% Cherokee County sales or use tax if the property is used or consumed (the location of the construction site) in Cherokee County.

VENDING MACHINE OPERATORS

18. Q. How are businesses that 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, purchased from suppliers located in Cherokee County are subject to the 1% Cherokee County sales tax if delivered to the vending machine operator in Cherokee County. The vending machine operator's supplier is liable for the tax on such sales and is to account for his sales using Form ST-389 when the property is delivered to the vending machine operator in Cherokee County.

Sales of cigarettes and soft drinks in closed containers are subject to the 1% Cherokee County sales tax upon being sold from the vending machines, if the machines are located in Cherokee County. The liability for the tax is on the vending machine operator and he is to account for such sales using Form ST-389 if the vending machines are located in Cherokee County.

1% Use Tax:

Items to be sold from vending machines in Cherokee County, except for cigarettes and soft drinks in closed containers, which are purchased from suppliers located outside the state or outside Cherokee County, are subject to the 1% Cherokee County use tax. The vending machine operator is not liable for Cherokee County's 1% use tax if he takes delivery in another county and pays the other county's 1% local option sales tax.

If the supplier (whether in-state or out-of-state) does not collect the 1% Cherokee County use tax from the vending machine operator (who is liable for the 1% Cherokee County use tax), or the 1% Cherokee County sales tax is not paid, then the vending machine operator is to pay the tax directly to the Department on his return. (See Question #6)

Purchases of cigarettes and soft drinks in closed containers for sale from vending machines are not subject to the 1% Cherokee County use tax. The 1% Cherokee County sales tax is due upon such items being sold from machines located in Cherokee County. The liability for the 1% Cherokee County sales tax is on the vending machine operator.

Again, such sales are to be accounted for using Form ST-389 if the machines are located in Cherokee County.

UTILITIES

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

A. Section 5(D) of the Act requires utilities "to report sales in the county in which consumption of the tangible personal property occurs". In other words, utilities are to report their sales using Form ST -389 for customers located in Cherokee County.

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% Cherokee County sales or use tax?

A. Section 5 (G) of the Act requires such persons to report the 1% Cherokee County tax "beginning on the first day of the billing period beginning on or after the imposition date." The phrase "imposition date" means July 1, 1996.

For example, if an electric power company has a billing period ending July 10, 1996, the first "billing cycle" subject to the 1% Cherokee County tax would be the period beginning July 11, 1996. The period July 1st through July 10th would not be subject to the 1% Cherokee County tax.

LEASES:

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

- A. No. The 1% Cherokee County sales or use tax would not apply to those lease payments made after the imposition date on leases entered into before the imposition date of the 1% Cherokee County tax.

NOTE: For more information concerning leases, see SC Revenue Ruling #91-9.

INSTALLMENT SALES:

23. Q. Code Section 12-36-2560, which concerns sales made on an installment basis, allows a retailer to elect "to include in the return only the portion of the sales price actually received by the retailer during the taxable period or to include the entire sales price in the return for the taxable period during which the sale was consummated".

If the retailer has elected to pay the tax as payments are received, are payments received after the imposition date of the 1% Cherokee County tax subject to the 1% Cherokee County sales or use tax?

- A. For sales made after the imposition date of July 1, 1996, the 1% Cherokee County sales or use tax applies to all payments received. For sales made before the imposition date of July 1, 1996, the 1% Cherokee County sales or use tax would not apply.

For those sales made on or after the imposition date of July 1, 1996 of the 1% Cherokee County tax, and on which the retailer does not collect the 1% Cherokee County use tax from the purchaser (if he delivers to the purchaser in Cherokee County), the purchaser must pay Cherokee County's 1% use tax on his return directly to the Department. If the purchaser must pay the 1% Cherokee County use tax, the tax is due on the entire purchase price. The purchaser may not pay the 1% Cherokee County use tax as payments are made to the retailer.

ACCOMMODATIONS:

24. Q. Does the 1% Cherokee County sales tax apply to charges for accommodations? See Code Section 12-36-920(A).

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

25. Q. Does the 1% Cherokee County sales tax apply to "additional guest charges", as defined at Code Section 12-36-920(B)?

- A. Yes. The 1% Cherokee County sales tax applies to charges for "additional guest charges".

26. Q. How are taxpayers who are subject to the sales tax on accommodations and "additional guest charges" to report the 1% Cherokee County sales tax if they own or manage rental units in different counties or municipalities?

- A. Taxpayers who own or manage rental units in different counties or municipalities must use Form ST-389 in order to report sales of accommodations and payment of "additional guest charges" in Cherokee County.

CREDIT FOR SALES AND USE TAXES PAID IN ANOTHER STATE:

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

- A. Yes. Credit may be taken against the 1% Cherokee County 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 Cherokee County, then the use tax owed in South Carolina is to be allocated 5/6 to the state and 1/6 to Cherokee 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 Cherokee County, the difference owed in South Carolina (1%) is to be allocated as follows -

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

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

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

(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).

NOTE: If the purchaser takes delivery of tangible personal property in a local option tax county and pays that county's 1% sales tax, the purchaser is not liable for the 1% Cherokee County use tax if the property is first stored, used or consumed in Cherokee County.

REFUNDS OF THE STATE & LOCAL SALES AND USE TAXES:

28. Q. If a retailer pays taxes which should not have been paid, who is entitled to a refund - the retailer or the purchaser?

- A. Sales Made By In-State Retailers. If a retailer is located in Cherokee County and delivers property in Cherokee County, the retailer may receive a refund for the 5% state sales tax and the 1% Cherokee County sales tax, if the tax should not have been paid.

If an in-state retailer delivers property into a Cherokee County, the retailer may receive a refund for the 5% state sales tax, if the tax should not have been paid. The retailer may not, however, receive a refund for the 1% Cherokee County use tax.

The purchaser is the taxpayer for purposes of the 1% Cherokee County use tax and is, therefore, the only one entitled to the refund for the 1% Cherokee County use tax. To receive the refund, the purchaser must have documentation showing he has paid the 1% Cherokee County use tax to the retailer or on his own tax return.

Sales Made By Out-of-State Retailers. If an out-of-state retailer delivers property into Cherokee County, the retailer may not receive a refund for the 5% state use tax or the 1% Cherokee County use tax, if the tax should not have been paid.

The purchaser is the taxpayer for purposes of the 5% state use tax and the 1% Cherokee County use tax and is, therefore, the only one entitled to the refund for the state and Cherokee County use taxes. To receive the refund, the purchaser must have documentation showing he has paid the state and Cherokee County use taxes to the retailer or on his own tax return.

How To Request A Refund. Taxpayers who are entitled to a refund of the 1% local option tax may send a letter to:

S.C. Department of Revenue
Office Audit - Sales Tax
P.O. Box 125
Columbia, S.C. 29214

This letter must contain, pursuant to Code Section 12-60-470 of the Revenue Procedure Act:

- (1) the taxpayer's name, address, telephone number and retail license number;
- (2) a statement of facts supporting the request for refund;
- (3) reason(s) for the refund, including law and other authority; and
- (4) a schedule showing (by month) a breakdown by county and municipality where the tax was originally reported. This schedule must also show the type tax (sales or use) and amount to be refunded.

All refunds are subject to verification by audit, either before or after issuance.

HOW TAXES SHOULD BE SHOWN ON BILLINGS TO CUSTOMERS:

29. Q. Are retailers required to show the 5% state tax and the 1% Cherokee County tax separate from the sales price on billings to their customers?

- A. Both the state and local sales taxes are the liability of the retailer. Code Section 12-36-940 allows, but does not require, the retailer to include in the sales price the amount of the sales tax.

The state and local use taxes are the liability of the purchaser. Code Section 12-36-1350 requires the retailer to "collect the use tax from the purchaser and give to the purchaser a receipt showing the amount subject to the tax and the amount of tax collected".

Sales By In-State Retailers. An in-state retailer located in Cherokee County, and making deliveries in Cherokee County, is not required to separately show either the 5% state sales tax or the 1% local sales tax from the sales price on billings to his customers. The retailer, however, does have the option under Code Section 12-36-940 to separately show the sales taxes from the sales price.

An in-state retailer making deliveries into Cherokee County is not required to separately show the 5% state sales tax from the sales price. The retailer, however, does have the option under Code Section 12-36-940 to separately show the sales tax from the sales price. However, if he collects the 1% use tax, he is required to separately show the 1% Cherokee County use tax from the sales price.

Sales Made By Out-of-State Retailers. An out-of-state retailer making deliveries into Cherokee County is required to separately show the 5% state use tax and the 1% Cherokee County use tax from the sales price on billings to his customers. The retailer is not required to separate the two taxes. He can just show a 6% South Carolina tax was collected.

OTHER INFORMATION:

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

- A. Yes. Section 5(A) of the Act states that the tax "must be administered and collected ... in the same manner that other sales and use taxes are collected".

31. Q. If the answer to question #30 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% Cherokee County 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 \$3,000 during any one state fiscal year or \$10,000 during any one state fiscal year for "persons who cannot be required to register for sales and use tax under applicable law but who nevertheless voluntarily registers to collect and remit use tax on items of tangible personal property sold to customers in this State." See Code Section 12-36-2610.

32. Q. Is the 1% Cherokee County 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% Cherokee County 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% Cherokee County tax should be added to the state tax liability.
33. Q. Do the penalty and interest provisions of Chapter 54 of Title 12 apply to the 1% Cherokee County sales and use tax?
- A. Yes. Section 5(B) provides that the 1% Cherokee County sales and use taxes are "subject to...the enforcement provisions of Chapter 54 of Title 12."
34. Q. Are the penalties and interest to be applied to the 1% Cherokee County sales and use tax separately from the state tax?
- A. Yes. Penalties and interest are to be applied to the 1% Cherokee County sales and use tax separately from the state tax.
35. Q. Is the 1% Cherokee County tax to be considered in computing warrant costs, pursuant to Code Section 12-53-40?
- A. Yes. Pursuant to Code Section 12-53-40, warrant costs are to be computed on "the total of the warrant or tax execution."
36. Q. Are warrant costs shared with Cherokee County?
- A. No. Warrant costs are collected from taxpayers for costs incurred by the state in collecting warrants and tax executions.

South Carolina Department of Revenue

s/Burnet R. Maybank III
Burnet R. Maybank, III, Director

June 30, 1996
Columbia, South Carolina