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

SC REVENUE RULING #99-3

SUBJECT: Farm Trailers
(Tax)

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

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

REFERENCES: S. C. Code Ann. Section 12-36-2120(16) (Supp. 1998)
S. C. Code Ann. Section 12-36-930 (Supp. 1998)
SC Regulation 117-174.243
SC Regulation 117-174.21

AUTHORITY: S. C. Code Ann. Section 12-4-320 (Supp. 1998)
SC Revenue Procedure #97-8

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 It is valid and remains in effect until superseded or modified by a change in the statute or regulations or a subsequent court decision, Revenue Ruling or Revenue Procedure.

Questions:

1. How does the sales and use tax apply to the sale or purchase of a flatbed trailer for use by a farmer in hauling farm crops (i.e., hay, corn, peaches), tractors, or harvesting equipment on his farm, to the buyer, or to market or a stock trailer for use by a farmer in hauling farm crops (i.e., hay, corn, peaches) or cattle on his farm, to the buyer, or to market?
2. If the sale of a trailer, semitrailer, or pole trailer to a nonresident does not qualify for the sales and use tax exemption under Code Section 12-36-2120(16), then how is the sales and use tax determined?

Conclusion:

1. The sale or purchase of a flatbed trailer or a stock trailer for use in hauling farm crops (i.e., hay, corn, peaches) is exempt under Code Section 12-36-2120(16) if the flatbed trailer or stock trailer will be used solely in the “planting, cultivating, or harvesting” of such farm crops for sale in their “original state of production or preparation for sale.” See SC Regulation 117-174.243 for definitions of the terms “planting,” “cultivating,” and “harvesting.” (This exemption does not apply to automobiles and trucks.)

The sale or purchase of a flatbed trailer or a stock trailer is **not** exempt under Code Section 12-36-2120(16) if the flatbed trailer or stock trailer will be used solely for a purpose other than the “planting, cultivating, or harvesting” of farm crops (i.e., hay, corn, peaches) for sale in their “original state of production or preparation for sale.” For example, the sale or purchase of a flatbed or stock trailer for use solely in:

- (a) hauling tractors, harvesting equipment, or cattle; or
- (b) hauling farm crops (i.e., hay, corn, peaches) from a storage area to market or to a buyer

is **not** exempt from the sales and use tax under Code Section 12-36-2120(16).

If a flatbed trailer or a stock trailer is used for both exempt and nonexempt purposes, then the sale or purchase of the trailer is exempt from the sales and use tax if it is used substantially (not merely incidentally) in the “planting, cultivating, or harvesting” of farm crops (i.e., hay, corn, peaches) for sale in their “original state of production or preparation for sale.”

Note 1: While not an issue in this advisory opinion, it should be noted that the exemption also applies to “bulk coolers (farm dairy tanks) used in the production and preservation of milk on dairy farms, and [to] machines used in the production of poultry and poultry products on poultry farms, when such products are sold in the original state of production or preparation for sale.”

Note 2: The Department of Revenue provides an “Agricultural Exemption Certificate,” Form ST-8F, that can be used by purchasers to certify to the seller that the trailer will be used in the “planting, cultivating, or harvesting” of farm crops (i.e., hay, corn, peaches) for sale in their “original state of production or preparation for sale.” The use of this form shifts the liability for the tax from the seller to the purchaser.

2. The tax due on the sale of a trailer, semitrailer, or pole trailer (of a type required to be registered and licensed) to a nonresident, unless exempt under Code Section 12-36-2120(16) is the lesser of the “amount equal to the sales tax, which would be imposed in the purchaser’s state of residence or the tax that would be due under [the South Carolina Sales and Use Tax law.]”

The department periodically surveys other states to determine the “amount equal to the sales tax, which would be imposed in the purchaser’s state of residence.” The results of the most recent survey have been published by the department in SC Information Letter #98-17. In addition, the department has developed a form (Form ST-385) that may be used by retailers in obtaining, as required under Code Section 12-36-930, the purchaser’s “notarized statement of ... intent to license the vehicle, within ten days, in [his] state of residence.”¹

¹It should be noted that some trailers and semitrailers, while of a type to be registered and licensed in South Carolina, are not required to be registered and licensed in the purchaser’s state of residence. The provisions of Code Section 12-36-930 are still applicable to such trailers and semitrailers; however, the notarized statement required by the statute should be modified to state that, while the trailer or semitrailer is not required to be licensed to the purchaser’s state of residence, the situs of the trailer or semitrailer will be the purchaser’s state of residence and not in South Carolina.

Therefore, retailers should use the most recent published survey to determine the tax due on the sale of a trailer, semitrailer or pole trailer (of a type required to be registered and licensed) to a resident of another state. However, if a customer states that the sale of the trailer, semitrailer or pole trailer in question is exempt in his state, then the retailer may do one of the following to determine if the sale should be exempt from the tax under Code Section 12-36-930:

1. Request from the customer a copy of the exemption statute in his state of residence that indicates that the sale is exempt or a copy of an exemption certificate or some other evidence from his state of residence that indicates that the sale is exempt.
2. Contact the applicable state agency (Revenue Department or Department of Motor Vehicles) in the customer's state of residence to determine if the sale is exempt and request that they verify in writing whether the sale is exempt. Retain the name and telephone number of the person who provided you the information for your records.
3. Contact the Office Services Division of the South Carolina Department of Revenue at (803) 898-5788. In order to receive a prompt reply, the complete facts of the transaction and statutory authority from the nonresident's state and the name and phone number of the applicable state agency in the nonresident's state should be provided when calling the department at the above number.

Facts:

The first issue concerns the taxability of certain trailers used by farmers. The trailers in questions are:

Flatbed Trailers used by the farmer to haul farm crops (i.e., hay, corn, peaches) and to haul tractors and harvesting equipment, and,

Stock Trailers used to haul farm crops (i.e. hay, corn, peaches) and cattle.

The second issue concerns the sale of these same trailers to residents of other states that will immediately transport the trailer to their state of residence.

Discussion:

Farm Machinery: Code Section 12-36-2120(16) exempts from the sales and use tax:

farm machinery and their replacement parts and attachments, used in planting, cultivating, or harvesting farm crops, . . . when such products are sold in the original state of production or preparation for sale. This exemption does not include automobiles or trucks.

SC Regulation 117-174.243 defines the terms "planting," "cultivating," or "harvesting" as used in the above exemption statute, and reads in part:

In order to qualify for the exemption, the item must first constitute a machine; secondly, it must be animal or motor drawn or operated; and thirdly, it must be used in the planting, cultivating or harvesting of farm crops.

The word “planting” is construed to include all necessary steps in the preparation of the soil prior to and including the actual planting or sowing of the seed.

“Cultivation” is construed to include loosening of the soil around growing plants, control of moisture content of the soil, weed and pest control.

“Harvesting” is deemed to commence with the gathering of the crop and to be complete when the crop is placed in a temporary or permanent storage area. Provided, however, that the term shall also include the further preparation for storage or sale of certain crops such as curing tobacco, grains, peanuts, and the grading and packaging of peaches, cucumbers, tomatoes, etc.

SC Regulation 117-174.21 reads:

Farm wagons sold to farmers for use in planting, cultivating, and harvesting of farm crops are exempt from the sales and use tax under provisions of [Section 12-36-2120(16)], Code of Laws, [Supp. 1997].

Based on the above, the sale or purchase of a flatbed trailer or a stock trailer is exempt under Code Section 12-36-2120(16) if the flatbed trailer or stock trailer will be used in the “planting, cultivating, or harvesting” of farm crops (i.e., hay, corn, peaches) for sale in their “original state of production or preparation for sale.” If the flatbed trailer or stock trailer is not used, or is only incidentally used, in the “planting, cultivating, or harvesting” of farm crops (i.e., hay, corn, peaches) for sale in their “original state of production or preparation for sale,” then the exemption is not applicable. For example, a trailer used to haul cattle does not come within the exemption. While cattle are products of the farm, they are not farm crops and therefore the exemption under Code Section 12-36-2120(16) is not applicable.

Finally, it should be noted that, in accordance with the South Carolina Supreme Court in Hercules Contractors and Engineers, Inc. v. South Carolina Tax Commission, 280 S.C. 426, 313 S.E. 2d 300 (1984), a machine must be substantially used for the exempt purpose in order to qualify for the exemption. As such, if a flatbed trailer or a stock trailer is used for both exempt and nonexempt purposes, then the sale or purchase of the trailer is exempt from the sales and use tax if it is used substantially (not merely incidentally) in the “planting, cultivating, or harvesting” of farm crops (i.e., hay, corn, peaches) for sale in their “original state of production or preparation for sale.”

Note: While not an issue in this advisory opinion, it should be noted that the exemption also applies to “bulk coolers (farm dairy tanks) used in the production and preservation of milk on dairy farms, and [to] machines used in the production of poultry and poultry products on poultry farms, when such products are sold in the original state of production or preparation for sale.”

Sales to Nonresidents: Code Section 12-36-930 reads:

(A) The tax imposed by this article on sales of motor vehicles, as defined in Section 56-1-10, trailers, semitrailers, or pole trailers of a type to be registered and licensed, to a resident of another state, is the lesser of:

- (1) an amount equal to the sales tax, which would be imposed in the purchaser's state of residence, or
- (2) the tax that would be due under this chapter.

(B) At the time of the sale, the seller shall:

- (1) obtain from the purchaser a notarized statement of the purchasers (sic) intent to license the vehicle, within ten days, in the purchasers (sic) state of residence; and
- (2) retain a signed copy of the notarized statement. The purchaser shall give a copy to the sales tax agency of the purchasers (sic) state of residence.

(C) No tax is due if a nonresident will not receive credit in his state of residence for sales tax paid to this State under this section.

As a result of this code section, the department periodically surveys other states to determine the "amount equal to the sales tax, which would be imposed in the purchaser's state of residence." The most recent Information Letter published concerning this matter is SC Information Letter #98-17. In addition, the department has developed a form (Form ST-385) that may be used by retailers in obtaining the purchaser's "notarized statement of ... intent to license the vehicle, within ten days, in [his] state of residence."²

In determining the tax due on the sale of a trailer, semitrailer or pole trailer (of a type required to be registered and licensed) to a resident of another state, retailers should use the most recent published Information Letter on this subject. However, if a customer states that the sale of the trailer, semitrailer or pole trailer in question is exempt in his state and this exemption is not reflected in the above information letter (SC Information Letter #98-17), then the retailer should do one of the following to determine if the sale should be exempt from the tax under Code Section 12-36-930:

1. Request from the customer a copy of the exemption statute in his state of residence that indicates that the sale is exempt or a copy of an exemption certificate or some other evidence from his state of residence that indicates that the sale is exempt.

² See footnote #1.

2. Contact the applicable state agency (Revenue Department or Department of Motor Vehicles) in the customer's state of residence to determine if the sale is exempt and request that they verify in writing whether the sale is exempt. Retain the name and telephone number of the person who provided you the information for your records.

3. Contact the Office Services Division of the South Carolina Department of Revenue at (803) 898-5788. In order to receive a prompt reply, the complete facts of the transaction and statutory authority from the nonresident's state and the name and phone number of the applicable state agency in the nonresident's state should be provided when calling the department at the above number.

SOUTH CAROLINA DEPARTMENT OF REVENUE

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

Columbia, South Carolina
January 11, 1999