

117-334 Interstate Commerce

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117-334 Interstate Commerce.

The purpose of this regulation is to determine which tax applies, the sales tax or the use tax, when tangible personal property is shipped into, or otherwise brought into, South Carolina and to address the application of the tax when goods are shipped from this State.

117.334.1. Goods coming into this State - Sales Tax:

(A) When tangible personal property is purchased for use or consumption in this State and (1) the seller is engaged or continuing within this State in the business of selling tangible personal property at retail and (2) delivery is made in this State, such sale is subject to the sales tax if the order for the future delivery of tangible personal property is sent by the purchaser to, or the subsequent delivery of the property is made by, any local branch, office, outlet or other place of business of the retailer in this State, or agent or representative operating out of or having any connection with, such local branch, office, outlet or other place of business. The term "other place of business" as used herein includes, but is not limited to, the homes of district managers, representatives, and other resident employees, who perform services in relation to the seller's functions in this State. Participation in the transaction in any way by the local office, branch, outlet or other place of business is sufficient to sustain the sales tax.

If the conditions above are met it is immaterial (1) that the contract of sale is closed by acceptance outside the State or (2) that the contract is made before the property is brought into the State.

Delivery is held to have taken place in this State (1) when physical possession of the tangible personal property is actually transferred to the purchaser or the purchaser's designee within this State, or (2) when the tangible personal property is placed in the mails at a point outside this State and directed to the purchaser or the purchaser's designee in this State or (3) when the tangible personal property is placed on board a carrier at a point outside this State (regardless of shipping terms) and directed to the purchaser or the purchaser's designee in this State.

The term "engaged or continuing within this State in the business of selling tangible personal property at retail" as used in this regulation shall have the same meaning as the term "retailer maintaining a place of business in this State" as defined in Code Section 12-36-80.

(B) When tangible personal property is brought into this State by the seller, or an agent, salesman, or other representative of the seller, for sale at a permanent or temporary location (carnivals, festivals, roadside, etc.) or from a truck or other vehicle, such sale is subject to the sales tax.

117-334.2. Goods coming into this State - Use Tax:

(A) When tangible personal property is purchased for use or consumption in this State and delivery is made in this State, such sale is subject to the use tax if the order for future delivery is sent by the purchaser directly to the seller at a point outside this State, and the property is shipped into this State from a point outside this State directly to the purchaser or the purchaser's designee, provided there is no participation whatever in the transaction by any local branch, office, outlet or other place of business of the retailer or by any agent or representative of the retailer having any connection with such branch, office, outlet, or other place of business. The term "other place of business" as used herein includes, but is not limited to, the homes of district managers, service representatives, and other resident employees, who perform substantial services in relation to the seller's functions in this State.

The purchaser is liable for the use tax on the purchases outlined above in this subsection (117.334.2(A)) until the tax is paid to the State. In addition, a receipt, that shows the South Carolina tax, from a seller who is registered with the Department of Revenue to collect and remit the tax will relieve the purchaser of the liability for the tax on the purchase. However, a seller who is registered with the Department of Revenue to collect and remit the tax has a debt to the State for the use tax required to be collected under the law. If the purchaser is not relieved from his liability for the use tax as stated above, then the Department may assess the purchaser or the seller for the use tax.

(B) When tangible personal property is otherwise brought into this State by the purchaser for first use or consumption in this State, such use or consumption is subject to the use tax. See SC Regulation 117-320.1 for information concerning property purchased and used outside of South Carolina and later used in South Carolina and see Code Sections 12-36-1320 and 12-36-150 for a special imposition of the tax on transient construction property.

(C) When tangible personal property is purchased for use or consumption in this State and the property is shipped from a point outside this State directly to the purchaser or the purchaser's designee at a point in this State, there is a rebuttable presumption that the purchase is subject to the use tax. If the receipt from a seller does not separately state the South Carolina tax, the Department may assess either the purchaser or the seller (if licensed or nexus exists) for the use tax.

117-334.3. Goods coming into this State and Delivered onto the Catawba Indian Reservation.

When tangible personal property is purchased for use or consumption on the Catawba Indian Reservation and delivery is made from a retail location outside of South Carolina to the

Catawba Indian Reservation, such sale, based on the provisions of Code Section 27-16-130(H), is:

(a) subject to the State use tax if the retailer is registered with the Department to remit the State tax. Local use taxes are not applicable.

(b) subject to the Tribal use tax if retailer is not registered with the Department to remit the State tax. The Tribal use tax is equal to the combined State and local tax rate for the county in which the reservation is located and in which the delivery occurs. The Catawba Indian Tribe is responsible for collecting the tribal use tax.

117-334.4. Application of the Sales or Use Tax under Other Circumstances.

The application of either the sales tax or the use tax under circumstances not addressed in this regulation will be determined on a case by case basis. The determination as to which tax will apply will consider whether or not the seller, as required for the application of the sales tax under Code Section 12-36-910, is “engaged or continuing within this State in the business of selling tangible personal property at retail,” whether or not the seller has sufficient “nexus” with South Carolina under current case law, and whether or not the retail sale occurs in this State.

117-334.5. Goods shipped from this State.

When tangible personal property is sold within the State and the seller is obligated to deliver it to the purchaser or to an agent or designee of the purchaser at a point outside of the State or to deliver it to a carrier or to the mails for transportation to the purchaser or to an agent or designee of the purchaser at a point outside this State, the retail sales tax does not apply provided the property is not returned to a point within the State. The most acceptable proof of transportation outside the State is:

(a) A way-bill or bill of lading made out to the seller’s order and calling for delivery; or

(b) An insurance receipt or registry issued by the United States Postal Department, or a Post Office Department receipt Form 3817; or

(c) A trip sheet signed by the seller’s delivery agent and showing the signature and address of the person outside this State who received the goods delivered.

However, where tangible personal property pursuant to a sale is delivered in this State to the purchaser or to an agent or designee of the purchaser, other than a common carrier, the retail sales tax applies notwithstanding that the purchaser or the purchaser’s agent or designee may subsequently transport the property out of the State.

The department will be asking the Administrative Law Court, in accordance with S.C. Code Ann. Section 1-23-111 (2005), to issue a report that the proposal to amend the regulation is needed and reasonable.

HISTORY: Added by State Register Volume 26, Issue No. 6, Part 2, eff June 28, 2002. Amended by State Register Volume 30, Issue No. 6, eff June 23, 2006.