

## Chapter 16

### Construction Contractors

#### A. General Information

A construction contractor is the user or consumer of everything he buys. A “construction contractor” is a person or business making repairs, alterations, or additions to real property.<sup>1</sup>

In general, all purchases by construction contractors, including building materials,<sup>2</sup> are retail purchases and are subject to South Carolina sales or use tax. A contractor who buys building materials in another state and brings them into South Carolina for use on a construction contract in South Carolina is liable for South Carolina use tax.<sup>3</sup> A credit is allowed against South Carolina use tax for the total taxes (state and local) due and paid in another state.<sup>4</sup>

The following are examples of transactions where the contractor is not subject to South Carolina sales and use tax:

- (1) The contractor buys property from a South Carolina supplier and the supplier delivers the property to the contractor (or to an agent or donee of the contractor) outside South Carolina.<sup>5</sup>
- (2) The contractor purchases tangible personal property in South Carolina for use on contracts outside South Carolina. To come within this exclusion, the contractor must perform some work on the property in South Carolina and the property must not be brought back into South Carolina.<sup>6</sup>

#### B. Retailer vs. Contractor

##### Statutes and Regulations

In making the determination as to whether a person is a retailer making sales and installations or a contractor, the following provisions must be considered:

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<sup>1</sup> SC Regulation 117-314.2.

<sup>2</sup> SC Regulation 117-314.2 defines “building materials” to mean any material used in making repairs, alterations or additions to real property, including “such tangible personal property as lumber, timber, nails, screws, bolts, structural steel, elevators, reinforcing steel, cement, lime, sand, gravel, slag, stone, telephone poles, fencing, wire, electric cable, brick, tile, glass, plumbing supplies, plumbing fixtures, pipe, pipe fittings, prefabricated buildings, electrical fixtures, built-in cabinets and furniture, sheet metal, paint, roofing materials, road building materials, sprinkler systems, air conditioning systems, built-in-fans, heating systems, floorings, floor furnaces, crane ways, crossties, railroad rails, railroad track accessories, tanks, builders hardware, doors, door frames, window frames, water meters, gas meters, well pumps, and any and all other tangible personal property which becomes a part of real property.”

<sup>3</sup> South Carolina Code §12-36-1310(A) and South Carolina Revenue Ruling #89-16.

<sup>4</sup> South Carolina Code §12-36-1310(C).

<sup>5</sup> South Carolina Code §12-36-2120(36).

<sup>6</sup> South Carolina Code §12-36-110(2).

South Carolina Code §12-36-910(A) imposes the sales tax and reads:

A sales tax, equal to [six] 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.

South Carolina Code §12-36-1310(A) imposes the use tax and reads:

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

South Carolina Code §12-36-1340 concerns the collection of the use tax by the retailer, and states:

Each seller making retail sales of tangible personal property for storage, use, or other consumption in this State shall collect and remit the tax in accordance with this chapter and shall obtain from the department a retail license as provided in this chapter, if the retail seller:

- (1) maintains a place of business;
- (2) qualifies to do business;
- (3) solicits and receives purchases or orders by an agent, an independent contractor, a representative, an Internet website, or any other means;
- (4) distributes catalogs, or other advertising matter, and by reason of that distribution receives and accepts orders from residents within the State;
- (5) operates as a marketplace facilitator; or
- (6) meets constitutional standards for economic nexus with South Carolina for purposes of the sales and use tax.<sup>7</sup>

South Carolina Code §12-36-70 defines the term “retailer” and provides that a “retailer” includes every person:

- (1)(a) selling or auctioning tangible personal property whether owned by the person or others;

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<sup>7</sup> The retailer can only be required to register and collect the use tax if the retailer has nexus with South Carolina. See Chapter 13 and SC Revenue Ruling #18-14 for information on nexus.

- (b) furnishing accommodations to transients for a consideration, except an individual furnishing accommodations of less than six sleeping rooms on the same premises, which is the individuals [sic] place of abode;
- (c) renting, leasing, or otherwise furnishing tangible personal property for a consideration;
- (d) operating a laundry, cleaning, dyeing, or pressing establishment for a consideration;
- (e) selling electric power or energy;
- (f) selling or furnishing the ways or means for the transmission of the voice or of messages between persons in this State for a consideration. A person engaged in the business of selling or furnishing the ways or means for the transmission of the voice or messages as used in this subitem (f) is not considered a processor or manufacturer;

(2)(a) maintaining a place of business or qualifying to do business in this State; or

(b) not maintaining an office or location in this State but soliciting business by direct or indirect representatives, manufacturers agents, distribution of catalogs, or other advertising matter or by any other means, and by reason thereof receives orders for tangible personal property or for storage, use, consumption, or distribution in this State;

(3) operating as a marketplace facilitator, as defined in Section 12-36-71.<sup>8</sup>

South Carolina Code §12-36-110 defines the term “retail sale” to mean in part:

Sale at retail and retail sale mean all sales of tangible personal property except those defined as wholesale sales. The quantity or sales price of goods sold is immaterial in determining if a sale is at retail.

South Carolina Code §12-36-120 defines the term “wholesale sale,” in part, to mean:

a sale of . . . tangible personal property to licensed retail merchants, jobbers, dealers, or wholesalers for resale, and do not include sales to users or consumers not for resale;

However, South Carolina Code §12-36-110(1) further defines the term “retail sale” to include, in part:

(a) sales of building materials<sup>9</sup> to construction contractors, builders, or landowners for resale or use in the form of real estate;

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<sup>8</sup> The retailer can only be required to register and collect the use tax if the retailer has nexus with South Carolina. See Chapter 13 and SC Revenue Ruling #18-14 for information on nexus.

<sup>9</sup> SC Regulation 117-314.2 states:

“Building materials” when purchased by builders, contractors, or landowners for use in adding to, repairing or altering real property are subject to either the sales or use tax at the time of purchase by such builder, contractor, or landowner. “Building materials” as used in the Sales and Use Tax Law includes

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- (d) the use within this State of tangible personal property by its manufacturer as building materials in the performance of a construction contract. The manufacturer must pay the sales tax based on the fair market value at the time and place where used or consumed;
- (e) sales to contractors for use in the performance of construction contracts;

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Finally, SC Regulation 117-324, entitled “Dual Business,” states:

Operators of businesses who are both making retail sales and withdrawing for use from the same stock of goods are to purchase at wholesale all of the goods so sold or used and report both retail sales and withdrawals for use under the sales tax law.

This ruling applies only to those who actually carry on a retail business having a substantial number of retail sales and does not apply to contractors, plumbers, repairmen, and others who make isolated or accommodation sales and who have not set themselves up as being engaged in selling. Where only isolated sales are made, tax should be paid on all of the taxable property purchased with no sales tax return being required of the seller making such isolated or “accommodation” sales. (Emphasis added.)

The provisions above establish two types of businesses that may deal with the incorporation of tangible personal property into real property – retailers and contractors.

In other words, any person who sells tangible personal property at retail, or who sets himself up as being engaged in selling tangible personal property at retail, is a retailer. A person who makes improvement to real property but who is not engaged in selling tangible personal property at retail is a contractor.

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any material used in making repairs, alterations or additions to real property. “Builders,” “contractors,” and “landowners” mean and include any person, firm, association or corporation making repairs, or additions to real property. The term “building materials” includes such tangible personal property as lumber, timber, nails, screws, bolts, structural steel, elevators, reinforcing steel, cement, lime, sand, gravel, slag, stone, telephone poles, fencing, wire, electric cable, brick, tile, glass, plumbing supplies, plumbing fixtures, pipe, pipe fittings, prefabricated buildings, electrical fixtures, built-in cabinets and furniture, sheet metal, paint, roofing materials, road building materials, sprinkler systems, air conditioning systems, built-in-fans, heating systems, floorings, floor furnaces, crane ways, crossties, railroad rails, railroad track accessories, tanks, builders hardware, doors, door frames, window frames, water meters, gas meters, well pumps, and any and all other tangible personal property which becomes a part of real property.

## Sales and Use Tax Implications for Retailers and Contractors

Based on the above statutes and regulations, if a person is deemed to be a contractor, then the sales and use tax is due at the time all materials are purchased. The sales by a contractor that are isolated or accommodation sales are not subject to the sales and use tax.

If a person is deemed a retailer, then the purchases of materials for resale are not subject to the tax, but the subsequent sales at retail of such materials are subject to the tax based on the “gross proceeds of sales” or “sales price.”<sup>10</sup> However, installation labor, if separately stated on the bill to the customer and reasonable, would not be subject to the tax.

### Retailer vs. Contractor Determination

In South Carolina, the determination as to whether a person is a retailer making sales and installations or a contractor depends on the facts and circumstances.

Factors used in determining whether a person is a retailer making sales and installations or a contractor include, but are not limited to: how the person advertises his business (as a retailer or contractor); are retail sales made in which installation is not performed by the seller or on behalf of the seller; does the person have a showroom to display his products and how would this showroom be perceived by the general public; is the person licensed as a contractor under state law; does the person perform labor for a general contractor as a “subcontractor;” etc.

In addition, the determination as to whether a person is a retailer making sales and installations or a contractor may require a review of the various agreements or contracts between the taxpayer and his customers.

### Retailer-Contractor Making Sales and Installations

Where a person acts as both a retailer and a contractor, the following factors have been examined in determining that the taxpayer is acting as a retailer making sales and installations for particular transactions:

- (1) whether the person provides installation services to customers who have already purchased materials from somewhere else;
- (2) whether the customer purchases materials to be installed in a traditional retail transaction (i.e., the materials are selected from the tangible personal property sold by the person; the customer pays for the materials at the cash register and pays the retail sales price for the materials; and the cost of the materials is listed individually and separately from labor on the invoice);
- (3) whether the customer would perceive the transaction any different than a purchase of the identical materials in a traditional transaction; and

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<sup>10</sup> See *Home Depot U.S.A., Inc. v. South Carolina Dept. of Revenue*, No. 15-ALJ-17-0253-CC (3/12/18) and *Lowe’s Home Center, LLC v. South Carolina Dept. of Revenue*, No. 14-ALJ-17-0552-CC (12/11/20).

(4) whether the person used a resale certificate to purchase the materials.

*See Home Depot U.S.A., Inc. v. South Carolina Dept. of Revenue*, No. 15-ALJ-17-0253-CC (3/12/18) and *Lowe's Home Center, LLC v. South Carolina Dept. of Revenue*, No. 14-ALJ-17-0552-CC (12/11/20).

#### Retailer-Contractor Acting as Contractor

Finally, if a retailer truly serves as a contractor or subcontractor in the traditional sense for some transactions (e.g., bids on a project against others, enters into a contract upon winning the bid process, etc.), then the building materials purchased for those contracts may be purchased tax paid as a contractor. Generally, in order to purchase building material tax paid as a contractor, the retailer would need to demonstrate, based on its books and records and how it operates, that these purchases were purchases at retail for a construction contract. If the retailer is unable to demonstrate that the purchases were for a construction contract, the retailer's purchases are deemed to be wholesale purchases, and the retailer's transactions with its customers will be treated as retail sales.<sup>11</sup>

### **C. Construction Contracts with Manufacturers**

Unlike most purchases by construction contractors, the purchase of materials that are components of machines which are used in manufacturing tangible personal property for sale may be purchased tax free.<sup>12</sup> Often, a construction contractor will have a contract with a manufacturer, processor or compounder that has an exemption certificate and is entitled to the exemption for machines, parts and attachments.

Since construction contractors usually cannot make tax free purchases, the Department has developed several methods by which a contractor may purchase tax free all items to be used in building machines, parts and attachments for manufacturers that are exempt from tax. These methods are:

Manufacturer Letter to Contractor's Suppliers – The manufacturer furnishes documentation, in the form of a letter, to the contractor's suppliers establishing that the item is not subject to the tax. The manufacturer agrees to reimburse the party liable for the tax if a transaction is later determined to be subject to the tax. The contractor does not use the manufacturer's exemption certificate.

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<sup>11</sup> See Chapter 6 ("Gross Proceeds of Sales" and "Sales Price"), Section E for a discussion of "withdrawals for use." See also SC Regulation 117-309.17. See also *Home Depot U.S.A., Inc. v. South Carolina Dept. of Revenue*, No. 15-ALJ-17-0253-CC (3/12/18) and *Lowe's Home Center, LLC v. South Carolina Dept. of Revenue*, No. 14-ALJ-17-0552-CC (12/11/20), both holding the transactions in question to be retail sales and installations, rather than withdrawals for use. (Note: As discussed in Chapter 6, Section E, a withdrawal for use of tangible personal property purchased at wholesale constitutes a retail sale.)

<sup>12</sup> See SC Regulation 117-302.5.

Agency Agreement – The contractor enters into a limited agency agreement with the manufacturer, and the contractor is allowed to use the manufacturer’s exemption certificate. As an agent, the contractor is legally acting for the principal. The manufacturer is liable for any taxes due, so it is important for the agreement to be in writing and clearly state what the contractor can and cannot buy with the certificate. This is usually used for large projects.

Department Special Agreement – The Department executes a special agreement with the manufacturer whereby the manufacturer will accept liability and responsibility for payment of all the sales and use tax due on the project. This is only available for large projects and the use of this method is at the sole discretion of the Department. This is referred to as a “Special 19 Agreement.”

Single Sale Exemption Certificate – The contractor completes Form ST-8 and extends it to the supplier indicating the purchase is exempt under the “machine exemption.”<sup>13</sup> A certificate must be extended for each purchase. The contractor assumes full liability for the tax if it is determined that the purchase was used for a non-exempt purpose.

## **D. Light Construction Equipment**

The law provides a maximum tax of \$500 on purchases of light construction equipment used for construction purposes, *i.e.*, building or making additions to real property.<sup>14</sup> The equipment must be self-propelled with a maximum of 160 net engine horsepower. Form ST-405 may be completed by the purchaser and given to the retailer in order to limit the tax to \$500. The local option sales and use taxes collected by the Department do not apply to sales subject to the \$500 maximum tax.

If light construction equipment is leased, it is subject to the \$500 maximum tax if the lease is in writing and has a stated term of, and remains in force for, a period in excess of 90 continuous days. The taxpayer may pay the total tax due at the time the lease is executed or with each lease payment until the \$500 is paid.

The Department has concluded that the \$500 maximum tax does not apply to equipment used to maintain or repair property, such as tractors, loaders and other self-propelled equipment used to maintain golf courses, parks and campgrounds.<sup>15</sup>

## **E. Construction Material Used to Construct a Single Manufacturing or Distribution Facility**

South Carolina exempts from sales and use tax construction materials used in the construction of a new or expanded single manufacturing or distribution facility, or one that serves both purposes,

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<sup>13</sup> South Carolina Code §12-36-2120(17).

<sup>14</sup> South Carolina Code §12-36-2110(A)(1)(g).

<sup>15</sup> South Carolina Technical Advice Memorandum #89-13.

with a capital investment of at least \$100 million in real and personal property at a single site in the State over an 18 month period.<sup>16</sup>

South Carolina also exempts from sales and use tax construction materials used in the construction of a new or expanded single manufacturing facility where the taxpayer (1) invests at least \$750 million in real or personal property or both comprising or located at the facility over a seven year period and (2) creates at least 3,800 new, full-time jobs at the facility during that seven year period. **This exemption became effective November 1, 2009 and required that a notice be filed with the Department prior to October 31, 2015 in order for the taxpayer to qualify for the exemption. This exemption continues to be available to eligible taxpayers who notified the Department prior to October 31, 2015.**<sup>17</sup>

The taxpayer, with respect to either exemption for construction material, must notify the Department in writing before the first month it uses the exemption and must notify the Department in writing that it has met the investment requirement or, after the expiration of the applicable investment period (18 months or seven years), that it has not met the investment requirement. This notification must also include the beginning date of the investment period.

## **F. Contracts with the Federal Government<sup>18</sup>**

South Carolina exempts from sales and use tax tangible personal property purchased by a person under written contract with the federal government that

- becomes part of real or personal property owned by the federal government; or
- transfers to the federal government, pursuant to a written contract.<sup>19</sup>

The exemption does not apply to purchases of items that do not transfer to the federal government, such as tools. Purchases made by contractors under contracts with state, county and municipal governments are not exempt from sales and use tax.

Further, South Carolina Revenue Ruling #04-9 provides that purchases by a construction subcontractor for use in a federal government construction project in South Carolina are exempt if (a) the subcontractor has a written contract with the general construction contractor that in turn has a written contract for the project with the federal government and (b) the subcontractor is an agent for the general contractor. In addition, purchases by a subcontractor of the subcontractor for use in a federal government construction project in South Carolina are not subject to the sales and use tax if the general contractor that has the written contract with the federal government has

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<sup>16</sup> South Carolina Code §12-36-2120(67). A port facility as defined in Code Section 12-6-3375 is considered a distribution facility for purposes of South Carolina sales and use tax exemptions. See Code Section 12-36-2140. The Navy Base Intermodal Facility is considered to be a distribution facility for the purpose of sales and use tax exemptions associated with the purchase of equipment and construction materials for State Fiscal Year 2022-2023. See Temporary Proviso 50.20 (Act No. 239 of 2022, Part IB), respectively.

<sup>17</sup> Act No. 124 of 2009, Section 4B. See also SC Information Letter #15-18.

<sup>18</sup> SC Regulation 117-314.11 and South Carolina Revenue Ruling #04-9.

<sup>19</sup> South Carolina Code §12-36-2120(29).



specifically granted his agent the authority to appoint a subagent that can bind the general contractor. The agency agreements with the subcontractors (as agents or subagents) must be in writing to meet the exemption requirement.<sup>20</sup>

## **G. Contracts with State, County and Municipal Governments**

Sales to, or purchases by, contractors under contracts with state, county and municipal governments generally are **not** exempt from the sales and use taxes.

## **H. Contractors that Manufacture or Fabricate Items that they will Use in Constructing Real Property<sup>21</sup>**

The state sales and use tax applies to businesses that manufacture or fabricate items, that they will use in constructing real property, as follows:

### Standard Finished Products:

If the taxpayer produces “standard finished products” that it sells at wholesale or at retail on a regular and continuous basis; creates “a new and substantially different article having a distinctive name and substantially different character or use” than that of the raw materials from which it was made; and, is commonly thought of as a manufacturer, then the taxpayer is a “manufacturer” of “building materials.” As a manufacturer, if the taxpayer uses such building materials in the performance of a construction contract, then the taxpayer is a “manufacturer/contractor,” and is liable for the sales tax based on the fair market value of the building materials at the time and place where used or consumed - the job site. However, if the job site is located outside of South Carolina, then no tax is due.

In addition, as a “manufacturer/contractor,” the taxpayer is entitled, to the extent applicable, to the exemptions and exclusions provided in South Carolina Code §12-36-2120(9),<sup>22</sup> 12-36-2120(17),<sup>23</sup> 12-36-2120(19)<sup>24</sup> and 12-36-120.<sup>25</sup> Also, the credit provisions of South Carolina Code §12-36-1310(C)<sup>26</sup> may be applicable.

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<sup>20</sup> See South Carolina Revenue Ruling #04-9 for the conditions that must be met for a subcontractor to be an agent for a general contractor.

<sup>21</sup> South Carolina Revenue Ruling #94-2. See also *Metromont Materials Corp. v. South Carolina Tax Commission*, Spartanburg County Court of Common Pleas, No. 84-CP-42-14 (1985).

<sup>22</sup> This code section provides exemptions for coal, or coke or other fuel sold to manufacturers for (a) use or consumption in the production of by-products, (b) the generation of heat or power used in manufacturing tangible personal property for sale and (c) the generation of electric power or energy for use in manufacturing tangible personal property for sale.

<sup>23</sup> This code section provides an exemption for machines used in manufacturing tangible personal property for sale.

<sup>24</sup> This code section provides an exemption for electricity used by manufacturers to manufacture tangible personal property for sale.

<sup>25</sup> This code section provides exclusions for the sale of (a) tangible personal property to a manufacturer as an ingredient or component part of the tangible personal property or products manufactured for sale, (b) tangible personal property used directly in manufacturing tangible personal property into products for sale and (c) materials, containers, cores, labels, sacks, or bags used incident to the sale and delivery of tangible personal property, or used by manufacturers in shipping tangible personal property.

<sup>26</sup> This code section allows with respect to each purchase a credit against the South Carolina state and local use tax for sales or use taxes paid in another state.

“Standard finished products” are items that are not specifically designed for use on a particular construction project. Such items are standard or interchangeable and have a resale value and a fair market value. These items are generally mass-produced and are suitable for use on many construction projects.

#### Unique Products:

If the taxpayer produces “unique products” that it uses in the performance of a construction contract, then the taxpayer is a contractor. As such, sales to, and purchases by, the taxpayer of the raw materials used to fabricate (within South Carolina) the unique product are subject to the sales and use tax. However, if the fabricated item will be used, and become a part of realty, at a job site located outside of South Carolina, then the sales to, and purchases by, the taxpayer of the raw materials used in the fabrication of that unique product are not subject to the sales and use tax.

If the unique product is fabricated out-of-state, sales to or purchases by, the contractor of the materials used to fabricate the unique product are not subject to the sales and use tax, provided the materials were not sold and delivered to the contractor within South Carolina.

In addition, as a contractor, the taxpayer is not entitled to the exemptions and exclusions provided in South Carolina Code §§12-36-2120(9),<sup>27</sup> 12-36-2120(17),<sup>28</sup> 12-36-2120(19)<sup>29</sup> and 12-36-120,<sup>30</sup> unless a substantial portion of its business also includes the fabrication of “unique products” (and/or standard finished products) that it sells to contractors and other consumers. However, the credit provisions of South Carolina Code §12-36-1310(C)<sup>31</sup> may be applicable.

“Unique products” are items that are specifically designed for use on a particular construction project. Such items are not standard or interchangeable in any sense and have no resale value and no reasonable fair market value.

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<sup>27</sup> This code section provides exemptions for coal, or coke or other fuel sold to manufacturers for (a) use or consumption in the production of by-products, (b) the generation of heat or power used in manufacturing tangible personal property for sale and (c) the generation of electric power or energy for use in manufacturing tangible personal property for sale.

<sup>28</sup> This code section provides an exemption for machines used in manufacturing tangible personal property for sale.

<sup>29</sup> This code section provides an exemption for electricity used by manufacturers to manufacture tangible personal property for sale.

<sup>30</sup> This code section provides exclusions for the sale of (a) tangible personal property to a manufacturer as an ingredient or component part of the tangible personal property or products manufactured for sale, (b) tangible personal property used directly in manufacturing tangible personal property into products for sale and (c) materials, containers, cores, labels, sacks, or bags used incident to the sale and delivery of tangible personal property, or used by manufacturers in shipping tangible personal property.

<sup>31</sup> This code section allows with respect to each purchase a credit against the South Carolina state and local use tax for sales or use taxes paid in another state.

Note: Sales of “standard finished products” or “unique products” to contractors and other consumers who use them in the performance of a construction contract, or to otherwise make improvements to realty, are subject to the sales and use tax based upon gross proceeds of sales or sales price, unless otherwise excluded or exempted from the tax.

## **I. Transient Construction Property<sup>32</sup>**

When a contractor is hired to build an office complex somewhere in South Carolina, the contractor may purchase various machinery, tools and equipment from out-of-state vendors for use at the South Carolina job site. These purchases are subject to the South Carolina sales tax or the use tax.

In addition, the contractor may import or bring into this State other machinery, tools and equipment, owned by the contractor and previously and substantially used on other jobs outside of South Carolina. Such machinery, tools and equipment are known as “transient construction property.”<sup>33</sup>

“Transient construction property” is subject to a special imposition of the South Carolina use tax. This special imposition prorates the use tax to reflect the equipment’s duration of use in South Carolina. However, if the state in which the property was previously used does not prorate its use tax on, or depreciate the value for use tax purposes of, transient construction property used by South Carolina contractors operating in that state, the use tax, at six percent of the sales price, applies.<sup>34</sup>

In summary, the use tax imposed on the use of transient construction property is computed as follows:

Step #1: Multiply the Original Purchase Price by the State Tax Rate.<sup>35</sup>

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<sup>32</sup> South Carolina Code §12-36-1320 and South Carolina Revenue Ruling #89-11. Note: South Carolina Revenue Ruling #89-11 references the sales and use tax code sections prior to recodification in 1990; however, the taxation of transient construction property remained the same in South Carolina Code §12-36-1320 after recodification.

<sup>33</sup> South Carolina Code §12-36-150 defines “transient construction property” to mean “motor vehicles, machines, machinery, tools, or other equipment, other tangible personal property brought, imported, or caused to be brought into this State for use, or stored for use, in constructing, building, or repairing any building, highway, street, sidewalk, bridge, culvert, sewer or water system, drainage or dredging system, railway system, reservoir or dam, power plant, pipeline, transmission line, tower, dock, wharf, excavation, grading or other improvement or structure, or any part of it.”

<sup>34</sup> South Carolina Code §12-36-1320.

<sup>35</sup> The State tax rate is 6% on all transient construction property except items that qualify for the maximum tax under South Carolina Code §12-36-2110. Items that qualify for the maximum tax under South Carolina Code §12-36-2110 are taxed at a State rate of 5%. Items subject to the State rate of 6% are also subject to any applicable local taxes administered and collected by the Department on behalf of local jurisdictions. Items that qualify for the maximum tax under South Carolina Code §12-36-2110 are not subject to local taxes administered and collected by the Department on behalf of local jurisdictions.

Step #2: Divide the Duration of Time the Property is Used in South Carolina by the Property's Total Useful Life.<sup>36</sup>

Step #3: Multiply the Result of Step #1 by the Result of Step #2.

Step #4: The Result of Step #3 is the State Use Tax due South Carolina on the transient construction property.

South Carolina will also allow a credit (prorated to reflect the equipment's duration of use in South Carolina) for sales tax paid another state, against the South Carolina use tax, on equipment previously used in another state if the out-of-state contractor's state will allow a similar credit.

Note: Machinery, tools and equipment purchased for first use in South Carolina is not "transient construction property" and is subject to the full amount of use tax;<sup>37</sup> however, such purchases qualify for the credit for sales and use taxes, if any, legally due and paid in another state on the purchase of such machinery, tools and equipment.<sup>38</sup>

## **J. Local Sales and Use Taxes**

Retailers (i.e., the contractor's suppliers) who have nexus with South Carolina have nexus for sales and use tax purposes with all local jurisdictions in South Carolina and must collect and remit to the Department local sales and use tax for each jurisdiction where their products are delivered.

The supplier must report local sales or use tax by jurisdiction of delivery on Form ST-389, which is to be attached to the appropriate sales and use tax return, or through one of the Department's electronic filing and payment systems.

The liability for the local use tax, as with the state use tax, is on the contractor. The supplier may, however, be required to collect the tax from the contractor and remit it to the Department if the supplier has nexus with South Carolina.<sup>39</sup>

In those situations where the supplier does not collect the local use tax, the contractor must report the tax. Purchases of tangible personal property (not for resale) first stored, used, or consumed in a local tax jurisdiction are subject to the local use tax. Such purchases are to be reported by county and/or municipality where the property is first stored, used, or consumed using the applicable form (e.g., ST-389, UT-3) or through one of the Department's electronic filing and payment systems. See SC Revenue Ruling #18-15 for more information on reporting requirements for purchasers.

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<sup>36</sup> The same unit of time (e.g., days, weeks, months) is used for both the duration of time the property is used in South Carolina and the total useful life of the property.

<sup>37</sup> South Carolina Code §12-36-1310(A).

<sup>38</sup> South Carolina Code §12-36-1310(C).

<sup>39</sup> See Chapter 13 of this manual for a detailed discussion of nexus.

Information as to which type of local sales and use tax must be reported by county and municipality and which type of local sales and use tax must be reported only by county or only by municipality can be found on Form ST-389 and the Department's electronic filing and payment systems.

If the contractor takes delivery in one local tax county and pays that county's local sales tax to the supplier, he is not liable for the local use tax if he takes the property to another local tax county and stores, uses, or consumes the property in that county, provided the local sales tax he paid is equal to or greater than the local use tax that would otherwise be due. If the local sales tax he paid is less than the local use tax, then the contractor owes the difference. Also, the contractor is relieved of the liability for the local use tax if he has a receipt from a retailer showing the retailer has collected the full local use tax due.

Construction contracts executed before the imposition date of the local option sales and use tax are exempt from the local option sales and use tax. The exemption from the local tax also applies to written bids that are submitted before the imposition date, and that culminate in a contract executed before or after the imposition date. To come within the exemption, contractors must apply to the Department, using Form ST-10-C. If the application is approved, an exemption certificate will be issued (ST-585). An application form must be filed for each contract, accompanied by a copy of each contract, within six months of the imposition date of the local option sales and use tax. A separate exemption certificate will be issued for each contract.