

Chapter 23

Frequently Asked Questions

The following are some Frequently Asked Questions concerning the sales and use tax law. These questions are listed under the following categories:

- A. License and Registration
- B. Filing Returns
- C. Sales and Use Tax Rates
- D. What is Subject to the Sales and Use Tax?
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- T. Accommodations

The answers to these questions were written in a non-technical manner, and if you have further questions, please contact either the Department of Revenue or your tax professional. However, where deemed necessary, the answer is footnoted to reference code sections, regulations or advisory opinions that may help the reader better understand the issue.

A. License and Registration

1. Who needs a retail license or a use tax registration?

A retail license is required of every person in the business of selling or auctioning tangible personal property at retail, whether owned by the person or others, including persons operating as a marketplace facilitator as defined in Code Section 12-36-71. Out-of-state retailers who have physical presence nexus or economic presence nexus (i.e., remote sellers) with South Carolina are required to obtain a retail license. A license must be obtained for each location of a business selling tangible personal property at retail. (Since the sales tax law applies to certain services, a retail license is required for each location selling at retail any service specifically subject to the sales tax.) Remote sellers who meet the economic nexus requirements in SC Revenue Ruling #18-14 must also obtain a retail license.

A use tax registration is required of any business or nonprofit organization that is not licensed as a retailer and that regularly purchases tangible personal property for its own use from outside the state (not for resale) upon which the South Carolina sales or use tax has not been collected from the purchaser. (Since the use tax law applies to certain services, a use tax registration is required of any business or nonprofit organization that is not licensed as a retailer and that regularly purchases such a service for its own use from outside the state (not for resale) upon which the South Carolina sales or use tax has not been collected from the purchaser.)

Note: Retailers do not need to obtain a separate use tax registration since the sales tax return provides them the opportunity to remit the use tax on any property or service purchased for their own use (not for resale).

2. How do I obtain a retail license?

A retail license may be obtained by mail, online or in person.

To obtain a license by mail, complete Form SCDOR-111 or SCDOR-111 RS (for remote sellers) and mail the application, along with \$50.00, to:

SC Department of Revenue
Registration Section
Columbia, SC 29214-0140

To obtain a license online, go to the Department's website (dor.sc.gov) and click on MyDORWAY.

3. What is the cost of a retail license and how long is it valid? Do I need to renew it every year?

The cost of each retail license is \$50.00, and the license is valid as long as the same retailer continues to operate the business at that location (unless revoked by the Department). If ownership of the business changes the retail license is no longer valid and the new owner must obtain a new retail license.

4. Do I need a retail license for each location of my retail business? Can I use one license at multiple locations?

A license is required for each location of the business.

5. If I move my business to a new location, do I need to purchase a new retail license?

If a retailer closes a location so as to move the business to a new location, the retailer does not need to purchase a new license. However, the retailer must turn the license over to the Department and provide the information as to the new location so the Department can issue a license with the new address of the business.

6. What qualifications do I have to meet to apply for and obtain a retail license?

To obtain a retail license, a person (a) must be engaged in the business of selling tangible personal property, or one of the specifically taxed services, at retail; (b) must complete an application; (c) must remit the \$50.00 fee with the application; and (d) must not have any outstanding tax liabilities of any kind with the Department.

7. Why can't I transfer my retail license from my name to the new owner's name without paying another \$50?

Since the sales and use tax law specifically states that a retail license is not transferable or assignable, a retail license may not be transferred to another person when a business is sold.

8. Why can't I keep a retail license in case I "later on" decide to have a business?

Since a retail license may only be issued to a person engaged in the business of selling tangible personal property, or one of the specifically taxed services, at retail, a person who is no longer in that business must surrender the retail license to the Department immediately upon closing the business.

9. Where and what can I sell with this retail license?

A retail license is only valid for the one specific location; however, the Department also issues (i) a transient license to a business that does not have a permanent location in South Carolina but only operates at one location at a time and (ii) an artist or craftsman license that may only be used at one location at a time.

A retail license is for the purpose of selling as a business tangible personal property, or one of the specifically taxed services, at retail. For example, if a clothing store owner expands to begin selling furniture at the same location, a new retail license is not needed since both clothing and furniture are tangible personal property and the location where the sales take place has not changed.

10. Do I have to have a retail license for flea market sales even if the items to be sold are used items?

If you sell at flea markets only once a quarter, you do not need a retail license unless making retail sales at flea markets is a regular business in which you are engaged.

11. Do I have to have a license for a yard sale at my house?

If you conduct a yard sale only once a quarter, you do not need a retail license unless conducting yard sales is a regular business in which you are engaged.

12. What do I need to sell beer and wine?

Since beer and wine are tangible personal property, a person selling beer and wine at retail must have a retail license. In addition, the person must also obtain a beer and wine permit from the Department and may need to obtain permits or licenses from other state agencies and local governments.

13. I have a business that is 95% service. Why do I need to purchase a retail license for the small amount of product that I do sell? Is it not legal to just pay the sales tax on those items when purchased from the vendor and be done with it?

If a business is engaged in selling tangible personal property at retail, even if it is a small part of the overall business, the business must obtain a retail license and remit the sales tax on those sales. For example, if 95% of a hair salon's business is the result of the non-taxable service of cutting and styling hair and only 5% is from the sale of hair care products, the salon must still obtain a retail license and remit the sales tax on its sale of the hair care products.

14. I'm a contractor, how can I qualify to get a retail license?

A contractor provides a service and is considered the user or consumer of the building material the contractor buys to provide this construction service. Therefore, a contractor is not entitled to obtain a retail license unless the contractor has a "second" business of regularly selling tangible personal property at retail.

For example, a plumbing business that only contracts to provide the plumbing improvements to a general contractor of residential homes is not entitled to a retail license. However, if this plumbing business also operates a retail plumbing supply store, then it will need a retail license for the store.

15. If I am a landscaper, do I need a retail license?

A landscaper is a contractor that provides a service and is considered the user or consumer of the plants and other supplies the landscaper buys to provide this service. Therefore, a landscaper is not entitled to obtain a retail license unless the landscaper has a "second" business of regularly selling tangible personal property (plants, grass sod, etc.) at retail.

For example, a landscaper that only contracts to provide landscaping improvements to a general contractor of residential homes is not entitled to a retail license. However, if this landscaper also operates a retail nursery or rents indoor, potted plants, then it will need a retail license for the nursery or rental business.

16. If I'm located in North Carolina and purchase products from a South Carolina vendor for resale and request that the product be shipped to my South Carolina customer, do I need a South Carolina license to purchase items to resell — I do not have a business in South Carolina?

If you have either physical presence nexus or economic presence nexus with South Carolina, then you must obtain a retail license. If you do not obtain a retail license and collect and remit the sales or use tax, however, your South Carolina customer is liable for the use tax on any purchase at retail.

Physical presence includes, but is not limited to:

1. Out-of-state seller maintains, either directly or by subsidiary, an office, distribution house, warehouse, other place of business, or property in South Carolina.
2. Out-of-state seller has an agent, salesman, representative, independent contractor, or employee operating in South Carolina, either permanently or temporarily.

3. Out-of-state seller installs the property it sells in South Carolina.
4. Out-of-state seller regularly engages in any activity in connection with the lease or rental or servicing of property located in South Carolina.
5. Out-of-state seller delivers product to South Carolina customers in company vehicles.

Economic presence nexus is established if a business exceeds \$100,000 of gross revenue from sales into South Carolina in either the current or prior calendar year. See Chapter 13 of this manual and SC Revenue Ruling #18-14 for more information on nexus.

17. If I publish a booklet to be given away free (similar to the one used to sell houses and cars) to advertise different businesses and their products, do I need a retail license to collect and pay sales tax?

No. Since you are not selling the booklet, you do not need a retail license (provided you are not selling any other tangible personal property).

18. If I do not make retail sales, but I need to remit the use tax on my out-of-state purchases, do I need a retail license?

No. You would only need to register to remit the use tax. There is no charge for a use tax registration. For individuals, use tax may be reported and remitted on the South Carolina Individual Income Tax Return (Form SC 1040) or by filing a Use Tax Payment Return (Form SC UT-3). See SC Revenue Ruling #18-9 for more information on use tax for individuals, businesses, and nonprofits.

19. Do I need a retail license if I provide a service?

If the service you are providing is not one of the specifically taxed services under the sales and use tax, then you would not need a retail license.

If the service you are providing is one of the specifically taxed services under the sales and use tax, then you would need a retail license.

B. Filing Returns

1. When are sales and use tax returns due?

Sales and use tax returns are due by the 20th of the month following the end of the month, calendar quarter or year, depending on the seller's filing period.

For **monthly filers** (who constitute the vast majority of filers), the return is due on the 20th of the month following the month in which the sales occurred. For example, for sales that occur in March, the March return must be filed by April 20th.

For **calendar quarter filers**, the return is due on the 20th of the month following the end of the calendar quarter in which the sales occurred. For example, for sales that occur in the July through September calendar quarter, the quarterly return must be filed by October 20th.

For **calendar year filers**, the return is due on the 20th of the month following the end of the calendar year in which the sales occurred. For example, for sales that occur in the 2020 calendar year, the calendar year return must be filed by January 20, 2021.

2. Can I file quarterly or annually instead of monthly?

Yes, provided certain requirements are met and filing on a quarterly or annual basis has been approved by the Department.

3. How do I determine if I can file a use tax return monthly, quarterly, or yearly?

To determine if you are eligible to file quarterly or annually, please contact to the Department's Licenses and Registration Section or one of the Department's Taxpayer Service Centers. Generally, if the total tax due (state and local) on any return does not exceed \$100.00 for any month, a quarterly return may be filed provided it has been approved by the Department.

4. Do I need to file a return if I don't make any sales for a particular filing period (e.g., month, quarter)?

Yes.

5. Can I file my return online?

Yes. To file online, visit the Department's website at dor.sc.gov and click on MyDORWAY for information about filing a sales and use tax return online.

6. When is the sale complete?

A sale is complete, or has occurred, when the seller has delivered the tangible personal property to the customer and the customer has paid or has a binding obligation to pay.

For example, if a customer pays the retailer for a product on October 30th, but the product will not be delivered to the customer by the retailer until November 4th, the sale has occurred in November and should be reported on the retailer's November sales and use tax return.

7. What form or forms do I use to file my sales and use tax return?

Most taxpayers who are liable for the state and local taxes that are administered and collected by the Department must file Form ST-3. However, the type of form used depends on the taxpayer's business. The following forms are used depending on the taxpayer's business:

<u>Type</u>	<u>Form Number</u>	<u>Local Form Number</u>
Retail	ST-3	ST-389
Accommodations	ST-388	ST-389, ST-3T
Aviation Gasoline	ST-403	ST-389
Maximum Tax	ST-455	ST-389, ST-593
Individual Use Tax	UT-3/UT-3W	No local form required
Casual Excise/Use Tax	ST-236	No local form required

Note: With respect to local sales and use tax that is administered and collected by the Department, retailers who are located in a county that does not impose a local sales and use tax and do not make deliveries into other counties that do impose a local sales and use tax, do not need to file the ST-389 with the state form.

Retailers that are either located in a county that does impose a local sales and use tax or that make deliveries into counties that do impose a local sales and use tax for which they are responsible for remitting to the Department, must file the ST-389 with the state form. See Chapter 12 and SC Revenue Ruling #18-15 for information on a retailer's responsibilities for remitting local sales and use taxes.

8. If I am required to file the local tax form (ST-389), do I have to send all 3 pages of the local tax form, the ST-389?

Yes.

9. Why are the local option forms (ST-389) so complicated? Local option forms are very difficult for some people with small or home-based businesses.

The local sales and use tax form, the ST-389, has admittedly become complicated as a result of the various new local taxes that have been authorized over the years. In addition, while these local taxes are similar, they do not necessarily have the same tax base. This further complicates the form.

10. Does South Carolina allow a discount for a timely filed return? How is the timely filed discount calculated?

South Carolina will allow a discount for timely filing a sales and use tax return, provided the taxes due on the return are paid in full and by the due date. The discount is calculated based on the total taxes (state and local) due with the return.

For returns showing a total tax due (state and local) of less than \$100.00, the discount is 3% of the total tax due. For example, if a return shows a total tax due (state and local) of \$80.00, the discount allowed for that return is \$2.40 ($\$80.00 \times 3\%$) and the retailer would remit a total payment of \$77.60 ($\$80.00 - \2.40) with that return.

For returns showing a total tax due (state and local) of \$100.00 or more, the discount is 2% of the total tax due. For example, if a return shows a total tax due (state and local) of \$200.00, the discount allowed for that return is \$4.00 ($\$200.00 \times 2\%$) and the retailer would remit a total payment of \$196.00 ($\$200.00 - \4.00) with that return.

However, in no event may a taxpayer (regardless of the number of retail locations the taxpayer has in the state), receive a discount in excess of \$3,000 during any one state fiscal year (returns filed from July 1st through the following June 30th). This would be the June return filed in July through the May return filed in the following June. For taxpayers who file electronically, the discount maximum for a state fiscal year is \$3,100 instead of \$3,000. In addition, out-of-state taxpayers who cannot be required to file a sales and use tax return due to a lack of nexus with South Carolina, but who do so voluntarily, may also qualify for a discount.

11. What are the deductions that I can take on the worksheet on the return?

Deductions are the exclusions and the exemptions authorized under the sales and use tax law.

Exclusions: While there are several exclusions authorized in the law, the primary exclusions are “sales for resale” – which are also referred to as “wholesale sales.” “Sales for resale” are items sold by a wholesaler or retailer that are not sold to the ultimate user or consumer under the sales and use tax law, but are sold to another wholesaler or retailer who will in turn sell it. The presentation of a resale certificate (Form ST-8A) by a purchaser will relieve the seller of liability for the sales tax and switch the liability to the purchaser, provided (a) the resale certificate presented to the seller by the purchaser contains all the information required by the Department and has been fully and properly completed; (b) the seller did not fraudulently fail to collect or remit the tax, or both; and (c) the seller did not solicit a purchaser to participate in an unlawful claim that a sale was for resale.

For example, if Seller A, a new boat retailer, sells a used boat that he accepted as a trade-in to Seller B, a used boat retailer, the sale of the used boat from Seller A to Seller B is a sale for resale by Seller A. Seller A would report the sale on his tax return as part of his total sales and then take a deduction for it as a sale for resale.

By taking a deduction, Seller A would not pay tax on the sale since it was not a retail sale but a wholesale sale (sale for resale). Seller B would remit the tax on the used boat if and when he sells it to the ultimate consumer.

Exemptions: Exemptions are retail sales that have been specifically exempted from the tax by the General Assembly. Most of the exemptions from the sales and use tax can be found in South Carolina Code §12-36-2120. Examples of sales exempt from the sales and use tax under this section include but are not limited to:

- Sales to the federal government
- Sales of textbooks for use in a course of study in K through 12 as well as colleges
- Sales of livestock
- Sales of unprepared foods
- Sales of certain farm machinery
- Sales of certain manufacturing machines
- Sales of gasoline and diesel fuel subject to the state motor fuel user fee
- Sales of prescription medicine sold by prescriptions
- Sales exempt during the Sales Tax Holiday in August

For example, if Seller X sold office supplies to the federal government, then Seller X would report the sale on his tax return as part of his total sales and then take a deduction for it as an exempt retail sale to the federal government. By taking a deduction, Seller A would not pay tax on the sale since it was is an exempt retail sale.

A sale must fall squarely within the requirements of an exemption in order for the exemption to apply. Therefore, please review the wording of the exemptions in South Carolina Code §12-36-2120 carefully.

12. Can I merely report my taxable sales or must I report all sales and then report and deduct the applicable exclusions and exemption using the worksheet on page 2 of the return?

You must report all sales on the worksheet, report and deduct the applicable exclusions and exemptions on the worksheet, calculate the “net taxable sales” (all sales + all withdrawals for use + all out-of-state purchases subject to the use tax - applicable deductions) and remit the tax based upon your net taxable sales.

13. What is a sale for resale?

A “sale for resale” is a non-taxable wholesale sale. When a wholesaler or retailer makes a “sale for resale” the wholesaler or retailer is selling the item to another wholesaler or retailer who will in turn sell the item to another person – either another seller or to the ultimate consumer.

The presentation of a resale certificate (Form ST-8A) by a purchaser will relieve the seller of liability for the sales tax and switch the liability to the purchaser, provided (a) the resale certificate presented to the seller by the purchaser contains all the information required by the Department and has been fully and properly completed; (b) the seller did not fraudulently fail to collect or remit the tax, or both; and (c) the seller did not solicit a purchaser to participate in an unlawful claim that a sale was for resale.

14. If I am a retailer and I don’t have the money to pay the sales tax due, what should I do?

First of all, it is important that you file your return on time and remit the tax due with the return. However, if you are unable to remit the tax due with the return, it is important that you file your return on time. Separate penalties are imposed for failure to file a return on time and failure to remit taxes on time. By filing your return on time, you can avoid the failure to file penalties. The Department will then assess you for the tax due, plus penalties and interest. However, the sooner you remit the tax due the less penalties and interest you will owe.

15. If a retailer sells a computer and it is returned the next month, is the retailer entitled to a refund for the taxes paid?

If the retailer refunds the buyer the full sales price, no tax is due on the original sale so the retailer is entitled to a refund.

If the retailer does not refund the buyer the full sales price (keeping any portion as a restocking fee, handling fee, or for any other reason), the original sale is still valid and the retailer is not entitled to a refund.

16. Are “additional guest charges” at hotels and other places that furnish accommodations subject to the tax?

Yes. The sales tax is imposed upon charges and rentals for accommodations and “additional guest charges.” The term “additional guest charge” means an amount which is added to the guest’s room charge for room service, laundering and dry cleaning services, in-room movies, telephone service, and rentals of meeting rooms.

Charges for rooms, lodgings and accommodations are taxed at 7%, while other charges for room service, laundering and dry cleaning services, in-room movies, telephone service, and rentals of meeting rooms provided at the hotel, when over and above the services customarily provided with the room, are taxed at 6% as an “additional guest charge.”

It should therefore be noted that the determination as to what services, if any, are over and above the services customarily provided with the room must be based on all of the facts and circumstances.

For more detailed information on “additional guest charges,” see SC Revenue Ruling #14-5 and South Carolina Revenue Ruling #14-7.

17. Can the Department identify retailers that will only make sales in their county and streamline the sales tax returns for such retailers? In other words, can the Department eliminate the several pages of the local tax form (ST-389) that would not apply to such retailers?

Since the Department does not know when a retailer will deliver items into other counties, the Department cannot specifically identify such retailers and issue them a streamlined sales tax form that eliminates or reduces the local tax form.

18. How do you fill out the sales tax return?

Since there are several different sales tax returns, depending on the retailer’s business, and local sales and use taxes, it is not possible to provide a step-by-step discussion on how to complete a sales and use tax return. However, two sources provided by the Department should assist retailers in completing a return.

First, the instructions for the sales and use tax returns provide detailed information concerning the completion of a return.

Second, the Department conducts free workshops throughout the year that explain how to complete a sales and use tax return. These workshops provide retailers the opportunity to ask questions they may have concerning the return. The information as to these free workshops can be found on the Department’s website.

However, retailers should remember the following when completing a sales and use tax return:

- (1) Report all sales (taxable and non-taxable) on the worksheet on page 2 of the return, report and deduct the applicable exclusions and exemptions on the worksheet, calculate the “net taxable sales” (all sales + all withdrawals for use + all out-of-state purchases subject to the use tax - applicable deductions) and remit the tax based upon your net taxable sales.
- (2) Always make sure you are using the correct pre-printed return for the tax period. For example, make sure you use the May pre-printed return for May sales.
- (3) Do not calculate the discount for timely filing and pay based on your total sales. The discount is calculated based on the total taxes (state and local) due.
- (4) If you are a new retailer and plan to seek help from one of our employees in completing your sales and use tax, always bring the pre-printed forms to the meeting.
- (5) Keep complete and accurate records. This is always helpful in completing your return.
- (6) Always make sure you place enough postage on the envelope when mailing your return.

19. When do I have to collect local sales and use taxes?

Retailers who have nexus with South Carolina (either physical or economic nexus) have nexus with all local jurisdictions in South Carolina for local sales and use tax purposes and must collect and remit to the Department local sales and use tax for each jurisdiction where their products are delivered. See SC Revenue Ruling #18-15 for more information on local sales and use tax collection and remittance requirements.

20. What form do you use to amend a return for sales tax?

A retailer can use the tax return forms (e.g., ST-3, ST-389) the retailer normally uses to file and remit sales and use taxes and check the “Amended Return” checkbox on the top of the form.

21. Can you take a credit for overpayment of tax on the next month's return?

No. In order to recover the overpayment, the retailer will need to file a refund claim.

22. How does a retailer apply for a refund if the retailer overpaid tax on a previous sales tax return (e.g., ST-3)?

For sales tax, the taxpayer is the retailer and only the retailer may apply for and receive the refund. However, a purchaser who has paid sales tax to a retailer for a specific transaction may claim a refund if the retailer who paid the sales tax to the Department has assigned, in writing, the right to a refund of that sales tax to the purchaser. For use tax, the taxpayer is the purchaser and only the purchaser may apply for and receive the refund. However, a retailer who collects the use tax from the purchaser and remits the use tax to the Department may claim a refund of the use tax collected, but only if the retailer establishes that he has paid the use tax in question to the Department and either (1) repaid the use tax to the purchaser from whom he collected it or (2) obtained the written consent of the purchaser from whom he collected the use tax to the allowance of the refund.

A taxpayer who is legally liable for the tax may seek a refund of a state tax by filing a written claim for refund with the department. A claim for refund is timely filed if filed within three years.

The refund claim must specify:

- (1) the name, address, and telephone number of the taxpayer;
- (2) the appropriate taxpayer identification number or numbers;
- (3) the tax period or date for which the tax was paid;
- (4) the nature and kind of tax paid;
- (5) the amount which the taxpayer claims was erroneously paid;
- (6) a statement of facts supporting the taxpayer's position;
- (7) a statement outlining the reasons for the claim, including law or other authority upon which the taxpayer relies; and
- (8) other relevant information that the department may reasonably require.

C. Sales and Use Tax Rates

1. What is the state sales and use tax rate?

South Carolina imposes the following state tax rates under the sales and use tax law:

General Sales and Use Tax Rate:	6%
Accommodations Tax Rate:	7%
900 and 976 Tax Rate:	11%
Manufactured Home	5% + 2% for amounts over \$6,000 ¹
Maximum Tax Items	5% (Maximum Tax: \$500 or \$300) ²
Sales to Persons 85 and Older	5%

In addition, the sales tax due on the sale in South Carolina to a nonresident of a motor vehicle, trailer, semitrailer, or pole trailer that is to be registered and licensed in the nonresident purchaser's state of residence is the lesser of (a) the sales tax which would be imposed on the sale in the purchaser's state of residence or (b) the tax that would be imposed under South Carolina law. No sales tax is due in South Carolina if a nonresident purchaser cannot receive a credit in his resident state for sales tax paid to South Carolina.

2. What are the local sales and use tax rates?

South Carolina allows the imposition of various types of local sales and use taxes. A county may impose one or several local sales and use taxes. For a list of counties imposing these local sales and use taxes, visit the Department's website (dor.sc.gov).

¹ If the manufactured home meets certain energy efficiency standards, the 5% tax is capped at \$300 under the maximum tax provisions of South Carolina Code §12-36-2110 and the 2% tax on amounts over \$6,000 does not apply. However, if a manufactured home that is sold anytime from July 1, 2009 through June 30, 2024, meets or exceeds certain other energy saving efficiency requirements, or ENERGY STAR requirements, of the United States Environmental Protection Agency and the United States Department of Energy, then the sale of the manufactured home is exempt.

² Unless otherwise exempt (see, e.g., South Carolina Code §12-36-2120(83)), a \$500 maximum tax applies to sales of aircraft (including unassembled aircraft which is to be assembled by the purchaser), motor vehicles, motorcycles, boats, trailers and semitrailers that can only be pulled by a truck tractor, horse trailers, fire safety education trailers, recreational vehicles (including tent campers, travel trailers, park models, park trailers, motor homes, and fifth wheels), and self-propelled light construction equipment limited to a maximum 160 net engine horsepower. A \$300 maximum tax applies to sales of certain musical instruments and office equipment to religious organizations exempt under IRC Section 501(c)(3).

D. What is Subject to the Sales and Use Tax?

1. What sales or transactions are subject to the sales and use tax?

The sales tax is imposed on the sales at retail of tangible personal property and certain services. The use tax is imposed on the storage, use or consumption of tangible personal property and certain services when purchased at retail from outside the state for storage, use or consumption in South Carolina. There are also special imposition sections that tax the fair market value of tangible personal property when used, stored or consumed by its manufacturer and a special imposition section that taxes transient construction property brought into South Carolina.

2. Are any services or intangibles subject to the sales and use tax?

The services and intangibles subject to the sales and use tax are:

- Furnishing of Accommodations (the state rate for this service is 7%)
- Dry Cleaning and Laundering Services
- Electricity
- Communication Services including, but not limited to:
 - * Telephone services (not specifically exempted under South Carolina Code §12-36-2120(11)), including telephone services provided via the traditional circuit-committed protocols of the public switched telephone network (PSTN), a wireless transmission system, a voice over Internet protocol ("VoIP"), or any of other method
 - * Teleconferencing Services
 - * Paging Services
 - * Automated Answering Services
 - * Cable Television Services
 - * Satellite Programming Services and Other Programming Transmission Services (includes, but is not limited to, emergency communication services and television, radio, music or other programming services)
 - * Fax Transmission Services

- * Voice Mail Messaging Services
- * E-Mail Services
- * Electronic Filing of Tax Returns when the return is electronically filed by a person who did not prepare the tax return
- * Database Access Transmission Services (On-Line Information Services), such as legal research services, credit reporting/research services, charges to access an individual website (including Application Service Providers), etc. (not including computer database information services provided by a cooperative service when the database information has been assembled by and for the exclusive use of the members of the cooperative service)
- * Streaming services for television programs, movies, music, and other similar content
- * Cloud-Based Services for Processing and Routing Telephone Calls within a Customer's Telephone System
- * Prepaid Wireless Calling Arrangements (sale or recharge at retail) as defined in South Carolina Code §12-36-910(B)(5) (For information on prepaid telephone calling cards that do not come within the definition of prepaid wireless calling arrangements, see Revenue Ruling #04-4.)
- * 900/976 Telephone Service (the state tax rate on this type of communication service is 11%, not 6%)

3. Are rentals or leases subject to the sales and use tax?

Yes. Any rental or lease of tangible personal property, or a taxable service, at retail is subject to the tax.

The sales and use tax law defines the term “sale” to includes rentals, leases, licenses to use, or any other agreement.

4. Are consignment sales subject to the tax and who is responsible for consignment sales taxes?

Consignment sales, including sales by marketplace facilitators, are subject to the sales and use tax. The retailer selling the items on consignment is the person responsible for remitting the tax on the consignment sale. For example, Individual X makes handmade jewelry and has an agreement with Z Store to place the jewelry in the store for sale by the store. Z Store is the retailer and is responsible for

remitting the tax on these sales, even though Z does not own the jewelry in the store for sale by the store. Z Store is the retailer and is responsible for remitting the tax on these sales, even though Z does not own the jewelry.

5. Are delivery charges by whatever name (e.g., freight, shipping, transportation, etc.) subject to the sales and use tax? Who is responsible for delivery charges?

When a retailer sells tangible personal property at retail and charges the customer a delivery charge for delivery via the retailers own trucks, then the delivery charge is considered part of the tax base upon which the tax is calculated and subject to the sales and use tax.

When a retailer sells tangible personal property at retail and charges the customer a delivery charge for delivery via a common carrier and the delivery terms are FOB Destination, then the delivery charge is considered part of the tax base upon which the tax is calculated and subject to the sales and use tax.

When a retailer sells tangible personal property at retail and charges the customer a delivery charge for delivery via a common carrier and the delivery terms are FOB Shipping Point, then the delivery charge is not considered part of the tax base upon which the tax is calculated and is not subject to the sales and use tax.

When a retailer sells tangible personal property at retail and charges the customer a delivery charge for delivery via a common carrier and the delivery terms are not specified, then the delivery charge is considered part of the tax base upon which the tax is calculated and subject to the sales and use tax.

However, in no event may a seller deduct costs of bringing property to his place of business or costs of delivering property from factory to his customer when such factory-to-customer transportation is paid by the seller either to a transportation company, the manufacturer, or by way of credit to his customer for transportation costs paid by the customer and deducted from seller's invoice.

Note: If the retailer sells tangible personal property at retail and the sale qualifies for an exemption, then the entire tax base upon which the tax is calculated (including any delivery charges associated with the exempt sale) is exempt. See SC Regulation 117-310 and SC Revenue Ruling #19-9.

6. Are late fees subject to the sales and use tax?

When a retailer sells tangible personal property or a taxable service at retail and the customer is charged a late fee associated with the sale, then the charge is considered part of the tax base upon which the tax is calculated and subject to the sales and use tax, unless the late fee is one charged a customer with respect to a late payment of a bill for electricity or natural gas, or both.

In the case of a late fee charged a customer with respect to a late payment of a bill for electricity or natural gas, or both, the charge for the electricity or natural gas, or both is subject to the tax but the late fee is not subject to the tax.

Note: If the retailer sells tangible personal property or a taxable service at retail and the sale qualifies for an exemption, then the entire tax base upon which the tax is calculated (including any late fee charges associated with the exempt sale) is exempt.

7. Are installation charges subject to the sales and use tax?

When a retailer sells tangible personal property at retail and the customer is charged an installation fee associated with the sale, the installation charge is not subject to the sales and use tax provided it is separately stated on the bill to the customer and the installation charge is reasonable based on the books and records of the retailer.

If the installation charge is not separately stated on the bill to the customer or the installation charge is not reasonable based on the books and records of the retailer, then the installation charge is considered part of the tax base upon which the tax is calculated and subject to the sales and use tax.

Note: If the retailer sells tangible personal property at retail and the sale qualifies for an exemption, then the entire tax base upon which the tax is calculated (including any installation charge associated with the exempt sale) is exempt.

8. Are set up charges (e.g., screen printers, personalized items, etc.) subject to the sales and use tax?

When the “true object” of a transaction is the retail sale of tangible personal property or a taxable service and the customer is charged a set-up fee (e.g., screen printers, personalized items, etc.) associated with the sale, then the charge is considered part of the tax base upon which the tax is calculated and subject to the sales and use tax.

Note: If the retailer sells tangible personal property or a taxable service at retail and the sale qualifies for an exemption, then the entire tax base upon which the tax is calculated (including any set-up fee associated with the exempt sale) is exempt.

9. Is the sale of food subject to the sales and use tax?

Yes. The sale of food is subject to the sales and use tax; however, the sales and use tax law provides exemptions for the sale of certain foods, including but not limited to:

- (a) meals provided to elderly or disabled persons at home by nonprofit organizations.
- (b) food sold to nonprofit organizations or food sold or donated by the nonprofit organization to another nonprofit organization.
- (c) meals or foodstuffs prepared or packaged that are sold to public or nonprofit organizations for congregate or in-home service to the homeless or needy or disabled adults over 18 or individuals over 60. This exemption only applies to meals and foodstuffs eligible for purchase under the USDA food stamp program.
- (d) unprepared food that lawfully may be purchased with United States Department of Agriculture food coupons. This exemption does not apply to local taxes unless the local tax specifically exempts the sale of such food. Important: See SC Regulation 117-337 for details about what sales do or do not qualify for this exemption.

10. Are charges for warranty contracts subject to the sales and use tax?

Warranty Contracts sold in conjunction with the sale of the tangible personal property are subject to the sales and use tax unless the sale of the tangible personal property is exempt from the tax.

Note: With limited exceptions, effective September 1, 2011, the sales and use tax will no longer apply to a warranty contract purchased after the tangible personal property is purchased.

11. Is canned software subject to the sales and use tax?

Canned software sold and delivered by tangible means (e.g., tape, disk) is subject to the sales and use tax.

Canned software sold and delivered by electronic means via a modem and telephone from a remote location is not subject to the sales and use tax, provided no part of the software, including back-up diskettes and tapes, is delivered by tangible means.

12. Is custom software subject to the sales and use tax?

Custom software sold and delivered by tangible means (e.g., tape, disk) is subject to the sales and use tax.

Custom software sold and delivered by electronic means via a modem and telephone from a remote location is not subject to the sales and use tax, provided no part of the software, including back-up diskettes and tapes, is delivered by tangible means.

13. Is software sold via an Application Service Provider (ASP) model subject to sales and use tax?

Software delivered via an Application Service Provider, whereby the seller maintains the software on a website and the purchaser pays to access the software on that website, is subject to the sales and use tax.

For more information, see S.C. Revenue Ruling #03-5 as well as Section D, Question #2, of this Chapter.

14. I'm located in Ohio and purchase products from a manufacturer not located in South Carolina. The manufacturer is registered with South Carolina to collect sales tax and is charging me South Carolina sales tax. Do I have to pay South Carolina sales tax to the manufacturer?

If the manufacturer is delivering the product to you in Ohio, then the South Carolina sales and use tax would not apply. If the product is being delivered to a location in South Carolina, then the South Carolina sales and use tax would apply.

15. Are valet laundry services at a hotel subject to the sales and use tax?

Sales of laundry and drycleaning valet services by a hotel to its guest are subject to the sales tax and are taxed at the rate of 6%, plus any applicable local sales and use taxes.

16. If a customer comes to my store, purchases an item and has me ship the item by mail, common carrier or by a company truck to another person out-of-state, is that sale subject to the sales tax?

No.

17. If a customer purchases an item at my store and the customer intends to personally ship the item to another person out-of-state by mail or common carrier, is that sale subject to the sales tax?

Yes.

E. Government

1. Are sales to the government subject to the sales and use tax?

Sales to the federal government of tangible personal property or taxable services are not subject to the sales and use tax.

Sales to the State, counties, municipalities, and other local political subdivisions (e.g., schools, sheriff offices, municipal housing authorities, welfare agencies) of tangible personal property or taxable services are subject to the sales and use tax, unless such sales are otherwise exempt.

2. Are sales by the government subject to the sales and use tax?

Sales by the federal government of tangible personal property or taxable services are not subject to the sales and use tax.

Sales by the State, counties, municipalities and other political subdivisions of the State (e.g., schools, sheriff offices, municipal housing authorities, and welfare agencies) of tangible personal property or taxable services are subject to the sales tax, unless such sales are otherwise exempt.

3. Are sales by a state agency to another state agency, a county, a municipality or another political subdivision subject to the sales and use tax?

Sales by a state agency to another state agency, a county, a municipality or another political subdivision are subject to the sales and use tax, unless (1) the consideration for the transfer only reimburses the transferring agency for its cost and expenses in conveying the property and the transferring agency has paid tax on the initial purchase of the tangible personal property or (2) the sale is exempt under the sales and use tax law (e.g., textbooks).

4. I have a contract with the federal government to supply and install equipment. I know sales to the federal government are exempt. What must I do to prevent charging them South Carolina sales tax or my paying South Carolina tax?

To exempt the sales to the federal government, report all sales (including the exempt sales to the federal government) on the worksheet on your return, report and deduct the applicable exclusions and exemptions on the worksheet (including the sales to the federal government), calculate the “net taxable sales” (all sales + all withdrawals for use + all out-of-state purchases subject to the use tax - applicable deductions which will include the exempt sales) and remit the tax based upon your net taxable sales.

Note: Your records should document that the sale was to the federal government. In addition, while not required, you may want to ask the federal government to complete and provide you a Form ST-8 Exemption Certificate, which can be found on the Department's website (dor.sc.gov).

F. Churches and Other Nonprofit Organizations

- 1. Are sales of tangible personal property (e.g., computers, office equipment, tables, chairs, religious publications) and taxable services (e.g., electricity, drycleaning) to a church or other nonprofit organization for their own use or consumption subject to the sales and use tax?**

Yes. Sales to churches and other nonprofit organizations are subject to the sales and use tax unless specifically exempt under the sales and use tax law.

- 2. Are sales of tangible personal property (e.g., clothing) to a church or other nonprofit organization for the purpose of providing the tangible personal property free of charge to individuals in need subject to the sales and use tax?**

Yes. Sales of tangible personal property (e.g., clothing) to a church or other nonprofit organization for the purpose of providing the tangible personal property free of charge to individuals in need are subject to the sales and use tax, unless otherwise exempted.

Note: Children's clothing which is sold to a private charitable organization exempt from federal and state income tax, except for private schools, for the sole purpose of distribution by that organization to needy children is exempt from the sales and use tax. Clothing in this context means clothing and footwear which are exempt from sales and use tax pursuant to the annual sales tax holiday under Code Section 12-36-2120(57)(a)(i) and (iii). Needy children means children eligible for free meals under the National School Lunch Program of the United States Department of Agriculture.

- 3. May churches and other nonprofit organizations purchase building materials and furnishings tax free?**

Sales to churches and other nonprofit organizations of building materials and furnishings are subject to the sales and use tax unless specifically exempt under the sales and use tax law. For example, if a church or a nonprofit organization purchases new tables and chairs for use in its assembly or fellowship hall, or purchases a new door for its main entrance, these purchases are subject to the sales and use tax.

Purchases of construction materials are exempt if (a) the church or nonprofit is organized under Section 501(c)(3) as a nonprofit corporation, and (b) the construction materials are used to build, rehabilitate, or repair a home for an individual or family in need (i.e., an individual or family whose income is less than or equal to 80% of the county median income). See Code Section 12-36-2120(81).

4. Our church has a 501(c)(3) exemption from the Internal Revenue Service. Doesn't this exempt our church from the sales and use tax?

No. The 501(c)(3) exemption from the Internal Revenue Service relates to income taxes only. In order for a sale to or a sale by a church to be exempt, the exemption must be specifically provided for in the sales and use tax law.

5. Are sales of accommodations to a church or other nonprofit organization subject to the sales and use tax?

Yes, unless the purchase of accommodations by the nonprofit organization falls within one of the exemptions in the sales and use tax law.

6. If a church operates a camp facility and rents cabins to individuals and groups when the camp facility is not used for summer camps or retreats, is the charge for renting the accommodations subject to the sales tax on accommodations?

No.

7. If a nonprofit organization other than a church operates a camp facility and rents cabins to individuals and groups when the camp facility is not used for summer camps or retreats, is the charge for renting the accommodations subject to the sales tax on accommodations?

Yes, if the nonprofit organization does not qualify for the exemption for sales by certain nonprofit organizations and the rentals are for less than 90 consecutive days.

No, if the nonprofit organization does qualify for the exemption for sales by certain nonprofit organizations or the rentals are for 90 or more consecutive days.

8. Are sales of tangible personal property (including accommodations) by a church or other nonprofit organization subject to the sales and use tax?

Sales of tangible personal property by a church are exempt from the sales and use tax. The church may purchase tax free any tangible personal property it intends to resell and may sell tax free any such tangible personal property.

Sales of tangible personal property by certain other nonprofit organizations that are exempt from property taxes are exempt from the sales and use tax. The following nonprofit organizations exempt from property taxes (the property tax exemption is listed next to the type of nonprofit organization) come within the sales and use tax exemption for “sales by” the nonprofit organization:

- (1) public libraries and churches (South Carolina Code §12-37-220(A)(3));
- (2) charitable trusts and foundations used exclusively for charitable and public purposes (South Carolina Code §12-37-220(A)(4));
- (3) The American Legion, the Veterans of Foreign Wars, the Disabled American Veterans, Fleet Reserve Association, the Marine Corps League or any similar Veterans Organization chartered by the Congress of the United States (South Carolina Code §12-37-220(B)(5));
- (4) The Young Women’s Christian Association, Young Men’s Christian Association and the Salvation Army (South Carolina Code §12-37-220(B)(6));
- (5) The Boy Scouts of America and the Girl Scouts of America (South Carolina Code §12-37-220(B)(7));
- (6) The South Carolina Association of Future Farmers of America (South Carolina Code §12-37-220(B)(8));
- (7) Any fraternal society, corporation or association (South Carolina Code §12-37-220(B)(12));
- (8) Any religious, charitable, eleemosynary, educational, or literary society, corporation, or other association (South Carolina Code §12-37-220(B)(16));
- (9) Volunteer Fire Departments and Rescue Squads (South Carolina Code §12-37-220(B)(19));
- (10) All community owned recreation facilities opened to the general public and operated on a nonprofit basis (South Carolina Code §12-37-220(B)(22)); and,
- (11) nonprofit or eleemosynary community theatre companies, symphony orchestras, county and community arts councils and commissions and other such companies, which is used exclusively for the promotion of the arts (South Carolina Code §12-37-220(B)(24)).

An organization whose sales or purchases are exempt as a result of this exemption is also exempt from the retail license tax.

This exemption only applies to sales by organizations which meet three requirements:

- (1) The organization must be eligible for exemption from the property tax under one of the enumerated property tax code sections.
- (2) The net proceeds from the organization's sales must be used for exempt purposes.
- (3) No benefit from the sales may inure to any individual.

9. How can a nonprofit organization determine if the “sales by” the nonprofit organization are exempt from the sales and use tax?

To simplify the administration of the sales tax exemption for “sales by” certain nonprofit organizations and to assist nonprofit organizations in determining if they qualify for the sales tax exemption for “sales by” the nonprofit organizations, the nonprofit organization should complete and file Form ST-387– Application for Sales Tax Exemption under South Carolina Code §12-36-2120(41), “Exempt Organizations.”

The law does not require an organization to obtain an exemption certificate in order to purchase items exempt under this exemption. However, the Department recommends that organizations apply for the exemption certificate. If an organization is issued a certificate, this will simplify for the organization the purchase from suppliers of items tax-free for resale. Otherwise, suppliers may be reluctant to sell items tax-free (for resale) to an organization that does not have a retail license or does not have some other documentation showing that it qualifies for the exemption. The exemption certificate assures the supplier that the Department has reviewed the matter and determined that the organization qualifies for the exemption and that the supplier may sell items tax-free for resale to the organization.

- I. An organization is considered to be “*automatically*” qualified for an exemption certificate if it is:
 - A. Selling tangible personal property;
 - B. Exempt from property tax under one of the property tax code sections listed in South Carolina Code §12-36-2120(41); and,

- C. Exempt from Federal income tax under Internal Revenue Code Section 501(c)(3) or (19). The statute does not require that an organization be exempt from Federal income tax under Internal Revenue Code Section 501(c)(3) or (19); however, the purpose of this provision is to meet the requirement that the organization’s net proceeds must be used for an exempt purpose and to insure that no benefit inures to any individual.

NOTE: To be considered as “automatically” qualified, an organization must meet all of the above requirements and file Form ST-387. **However, it should be noted that this “automatic” qualification has been established to simplify the issuance of a certificate. If it is determined that an organization does not meet the requirements of the statute or is not otherwise operating in an exempt manner, then the certificate will not be issued or will be revoked if previously issued.**

II. An organization is not qualified for an exemption certificate if it is:

- A. Only purchasing tangible personal property for its own use or consumption, and not for resale; or,
- B. Exempt from property tax, but under a code section not listed in South Carolina Code §12-36-2120(41).

Note: South Carolina Code §12-37-220 provides specific property tax exemptions for the State of South Carolina, its counties, municipalities, school districts, and other political authorities or subdivisions; private schools, colleges and other institutions of learning; nonprofit hospitals and nonprofit institutions which care for the infirmed, the handicapped, the aged, children or indigent persons; and nonprofit museums. The property tax exemptions for these organizations are not specifically listed in South Carolina Code §12-36-2120(41).

However, some of these organizations may also qualify for a property tax exemption listed in South Carolina Code §12-36-2120(41). For example, a private school may qualify for the property tax exemption under South Carolina Code §12-37-220(B)(16)(a) established for certain religious, charitable, eleemosynary or educational organizations.³

³ Note: See, however, *Greenville Hospital System v. South Carolina Department of Revenue*, 13-ALJ-17-0523-CC (June 20, 2017), *appeal filed*, No. 2017-001548 (S.C. Ct. App. July 17, 2017), where the court concluded that “GHS as either a political subdivision or charitable hospital may not be exempt from sales and use tax pursuant to § 2120(41).” The Administrative Law Court upheld the imposition of sales and use tax on sales of meals in the taxpayer’s on-site hospital dining facilities. However, the taxpayer filed an appeal of this order on July 17, 2017. As of the date of this publication, this case is still pending before the South Carolina Court of Appeals.

III. Organizations, other than those in categories I and II (above), may qualify for an exemption certificate, if the following criteria are met:

- A. The organization must be selling, or will sell, tangible personal property;
- B. The organization must be a type referred to in South Carolina Code §12-36-2120(41) [i.e., a church, veterans' organization, YMCA, Scouts, etc.]; and,
- C. Documents provided by the organization must conclusively demonstrate that the net proceeds of the organization are used, or will be used, exclusively for exempt purposes; and, that no benefit inures, or will inure, to any individual.

G. Internet Sales and Purchases

1. Are sales by or purchases from, a retailer via the Internet subject to the sales and use tax?

Sales by, and purchases from, a retailer via the Internet of tangible personal property or a taxable service are subject to the sales and use tax.

2. Are charges by an Internet Service Provider to access the Internet subject to the sales and use tax?

No. As a result of federal legislation, charges to access the Internet are not subject to the sales and use tax.

3. Are charges by the operator of a website of the Internet to access that individual website subject to the sales and use tax?

Yes. For example, if a sports website charges a South Carolina resident \$10 per month to access the sports website or to access a "premium" section of the sports website, then the \$10 per month is subject to the sales and use tax.

4. Is a marketplace facilitator responsible for remitting state and local sales and use tax for products sold via its marketplace?

Yes. A marketplace facilitator is the retailer and is responsible for remitting state and local sales and use tax for all products sold via its marketplace (i.e., products owned by the marketplace facilitator, products owned by third parties, and any other products sold via its marketplace) unless otherwise exempt or excluded from the tax. The responsibility for remitting the sales and use tax applies regardless of whether the marketplace facilitator or a third party delivers the products.

5. Is a third party whose products are sold only through a marketplace operated by a marketplace facilitator required to obtain a retail license and remit the sales and use tax?

No. Since the third party's products are sold only through a marketplace operated by a marketplace facilitator, the third party is not a retailer and, therefore, is not required to obtain a retail license or remit sales and use tax on such sales.

6. If I am located in South Carolina and sell products from my home through my own website, do I need a retail license? I don't have a store front and customers do not come to my home to purchase the products. I receive the orders via the Internet (customer makes order, calculates tax based upon the state the product is shipped to) and I forward my orders to my suppliers and request that they deliver the products to my customers. My suppliers will bill me for the products after they are delivered.

Yes. You are engaged in the business of selling tangible personal property at retail in South Carolina and must obtain a retail license and remit the sales tax on all orders shipped to a South Carolina address.

H. Use Tax – Out-of-State Purchases

1. What is the use tax?

The use tax is a tax that applies to purchases of tangible personal property from out-of-state retailers for use, storage or consumption in South Carolina, and includes purchases from retailers made via the Internet (retailers' websites and retailers' sales on auction sites), through out-of-state catalog companies, or when visiting another state.

2. What is the rate for the use tax?

The tax rate for the use tax is the same as the sales tax. This rate is determined by where the tangible personal property will be used, stored or consumed, regardless of where the sale actually takes place. Therefore, the tax rate for the use tax will be the 6% state rate plus the applicable local use tax rate for the location where the tangible personal property will be used, stored or consumed.

Note: Information concerning local sales and use tax rates can be found on the Department's website (dor.sc.gov).

3. What is the difference between the sales tax and the use tax?

The sales tax is imposed on all retailers within South Carolina and applies to all retail sales of tangible personal property within the state. Retailers making sales of tangible personal property in South Carolina are required to remit the sales tax to the Department.

The use tax is imposed upon the consumer of tangible personal property that is purchased at retail for use, storage, or consumption in South Carolina. The use tax applies to purchases from out-of-state retailers. The use tax has been around since 1951 – the same year the sales tax law was adopted in South Carolina.

Both the sales tax and the use tax also apply to leases or rentals at retail of tangible personal property (e.g., tuxedos, office equipment, etc.).

It is important to note that either the South Carolina sales tax or the South Carolina use tax applies to a single transaction, but not both.

4. Why would an out-of-state retailer charge a purchaser the South Carolina sales tax or use tax?

An out-of-state retailer must obtain a retail license and remit either the South Carolina sales tax or use tax on retail sales shipped into South Carolina if the out-of-state retailer has nexus with South Carolina.⁴

An out-of-state retailer that is not required to obtain a retail license and remit the South Carolina sales or use tax may, however, voluntarily obtain the retail license and collect and remit the tax to South Carolina.

5. If an out-of-state retailer who has obtained a retail license charges the purchaser for the South Carolina sales or use tax on tangible personal property delivered into South Carolina, is the purchaser still liable for the use tax?

If the purchaser has a receipt showing the proper South Carolina (state and local) sales tax or use tax has been paid to a licensed out-of-state retailer, then the purchaser is no longer liable for the South Carolina use tax.

⁴ See SC Revenue Rulings #18-14 and #14-4, and Chapter 13 of this manual for a discussion of nexus.

6. **If a South Carolina purchaser buys merchandise via an Internet or mail-order catalog retailer that has not obtained a South Carolina retail license and therefore does not charge the purchaser for the South Carolina sales or use tax on tangible personal property delivered into South Carolina, is the purchaser liable for the use tax?**

Yes.

7. **If a South Carolina purchaser travels to another state and purchases tangible personal property from a retailer in the other state for use, storage or consumption in South Carolina, does the South Carolina purchaser still owe the South Carolina use tax on the purchase if the other state's sales tax was paid to the retailer at the time of purchase?**

The South Carolina purchaser would only owe the use tax on the difference between the sales tax paid in the other state and the use tax due in South Carolina. In other words, if the state and local sales or use tax due and paid in another state is equal to or greater than the state and local use tax due in South Carolina, then no use tax is due in South Carolina.

Example #1: If a South Carolina purchaser paid \$15.00 sales tax in the other state and the total state and local use tax due in South Carolina was \$18.00, then the South Carolina purchaser would be allowed a credit for the \$15.00 and would only owe a South Carolina use tax of \$3.00.

Example #2: If a South Carolina purchaser paid \$21.00 sales tax in the other state and the total state and local use tax due in South Carolina was \$18.00, then the South Carolina purchaser would be allowed a credit for the \$21.00 and no use tax would be due in South Carolina since the \$21.00 paid exceeds the \$18.00 due in South Carolina. However, the purchaser is not entitled to a refund of the difference between the \$21.00 paid in the other state and the \$18.00 due in South Carolina.

Note: Each transaction must stand on its own. In other words, an "excess" paid to another state on one purchase transaction, as shown in Example #2, cannot be used to offset any South Carolina use tax that may be due on another purchase transaction.

8. **If a sale by a South Carolina retailer is exempt from the South Carolina sales tax, is the purchase of the same product from an out-of-state retailer exempt from the South Carolina use tax?**

Yes. For example, prescription medicine purchased from a South Carolina pharmacy upon presentation of the prescription written by the physician is exempt

from the South Carolina sales tax. The same purchase from an out-of-state mail-order pharmacy is exempt from the South Carolina use tax.

9. How can a person report and pay the use tax to the Department?

See SC Revenue Ruling #18-9 for guidance on reporting and paying the use tax.

10. Do other states charge a use tax?

Yes. Every state that imposes a sales tax also imposes a use tax.

11. Why did the out-of-state seller tell me if I picked up the merchandise, rather than have it delivered, that I wouldn't have to pay the tax?

Most likely, the out-of-state seller was indicating that if you picked up the merchandise in the other state that you would pay the other state's tax at that time. If so, you would not owe the South Carolina use tax as long as the state and local tax paid in the other state was equal to or greater than the use tax that would be due in South Carolina.

12. Why am I just now getting a notice from the Department when I purchased the items 3-5 years ago?

The Department receives information from various sources (other state tax departments, US Customs, etc.) concerning purchases by South Carolina residents.

This information is not relayed to the Department at the time of purchase but usually several years later as a result of audits conducted of the seller by the other state or information forwarded to the Department by others. The Department does not control when it receives this information; however, the Department does make an effort to issue these notices as soon as possible after the information is received by the Department.

13. Who provides the Department with information about residents making purchases out-of-state?

This information is provided to the Department by other state tax departments, US Customs, regional and national tax associations, and other sources.

14. My friend buys merchandise all the time from out-of-state sellers and doesn't pay the tax, why doesn't he get a bill for tax?

Assuming your friend does not pay the tax to the out-of-state seller, your friend is liable for the use tax and should remit that tax to the Department. While the

Department receives information from sources that allows it to assess residents the use tax with respect to out-of-state purchases, this information does not include information on all out-of-state purchases.

15. My accountant never told me about the use tax, so why should I have to pay a penalty?

If your accountant also assists you with your individual income tax return, he should ask you about out-of-state purchases upon which the use tax may be due since the individual income tax return contains a line for remitting any use tax due.

However, if you fail to remit the use tax for any reason, the law imposes penalties and interest for failure to pay the use tax as well as all other taxes administered and collected by the Department.

16. Why am I charged a penalty when no one told me I had to pay the use tax when I purchased the merchandise? I thought the seller had to collect the use tax? Why do I have to pay a penalty & interest when I didn't know I owed the tax?

If you fail to remit the use tax for any reason, the law imposes penalties and interest for failure to pay the use tax as well as all other taxes administered and collected by the Department. While some sellers are required to remit the use tax on behalf of their customers, the purchaser is ultimately responsible for remitting the use tax if the seller does not remit the use tax.

17. If a South Carolina retailer purchases items from out of state that the retailer does not intend to resell, does the South Carolina retailer owe the use tax on these purchases?

Yes. Since these items are being purchased for use by the retailer and not for resale, then these purchases are subject to the use tax. The South Carolina retailer should remit the use tax on the line provided on the sales and use tax return filed by the retailer for the month these items were purchased. However, the retailer would not owe the South Carolina use tax as long as the state and local tax paid in the other state was equal to or greater than the use tax that would be due in South Carolina.

I. Construction

1. What determines if I am a contractor or a retailer?

The determination is essentially based on whether a person is in the business of “making improvements to real property” or is in the business of “selling tangible personal property at retail.”

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.

If you have questions as to whether you are a contractor or a retailer for purposes of the sales and use tax, it may be best to contact one of the Department’s Taxpayer Service Centers for assistance in making this determination. In addition, see Chapter 16, Section B. for a discussion about a retailer who made retail sales and installations.

2. As a contractor, do I owe sales or use tax on materials for job sites.

If a person is deemed to be a contractor, then the sales and use tax is due at the time all materials are purchased.

3. Are construction contractors allowed to have a retail license for items purchased to use in their construction business?

No. A person whose only business is that of a construction contractor may not obtain a retail license. Only a person engaged in the business of selling tangible personal property at retail is entitled to a retail license.

4. Are landscaping businesses contractors or retail businesses?

The determination is essentially based on whether a person is in the business of “making improvements to real property” or is in the business of “selling tangible personal property at retail.”

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 making this determination 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.

If you have questions as to whether you are a contractor or a retailer for purposes of the sales and use tax, it may be best to contact one of the Department’s Taxpayer Service Centers for assistance in making this determination.

J. Medicine and Other Medical Supplies

1. Why are some drugs purchased by a doctor tax-exempt and others are not? Why should doctors pay use tax on drugs?

For sales and use tax purposes, a doctor is the user or consumer of prescription medicines and non-prescription medicines the doctor will administer to patients or the doctor will furnish (give) to patients as part of the services rendered. Therefore, the sale to, or purchases by, the doctor of prescription medicines and non-prescription medicines the doctor will administer to patients or the doctor will furnish (give) to patients as part of the services rendered are subject to the sales and use tax.

However, if the medicine is:

- a) a prescription medicine used to prevent respiratory syncytial virus or used in the treatment of rheumatoid arthritis, cancer, lymphoma, leukemia, or related diseases;
- b) a prescription medicine used to relieve the effects of the treatment of rheumatoid arthritis, cancer, lymphoma, leukemia, or related diseases; or
- c) an injectable medication or injectable biologic administered by or pursuant to the supervision of a physician in an office which is under the supervision of a physician, or in a Center for Medicare or Medicaid Services certified kidney dialysis facility;

and the doctor extends a properly executed single sale exemption certificate (Form ST-8) to the manufacturer, wholesaler or other supplier indicating the doctor will use the prescription medicine in the manner prescribed under the exemption statute, then such sales are exempt from the sales and use tax.

Note: Code Section 12-36-2120(80) was added in 2012 to phase-in an exemption for injectable medications and injectable biologics (Item c above). The injectable medication or injectable biologic must be administered by or pursuant to the

supervision of a physician in an office which is under the supervision of a physician, or in a Center for Medicare or Medicaid Services certified kidney dialysis facility. For purposes of this exemption, “biologics” means the products that are applicable to the prevention, treatment, or cure of a disease or condition of human beings and that are produced using living organisms, materials derived from living organisms, or cellular, subcellular, or molecular components of living organisms. On February 19, 2014, the Board of Economic Advisors notified the Department that the requirements have been met to implement this exemption. Accordingly, for July 1, 2014 - June 30, 2015, 50% of the gross proceeds of sales of qualifying sales or purchases are exempt from the State and local sales and use taxes. On or after July 1, 2015, qualifying sales or purchases are fully exempt from the State and local sales and use taxes.

2. What durable medical equipment sales are taxable and at what rate? I sell durable medical equipment and I want to know what qualifies?

Durable medical equipment and related supplies as defined under federal and state Medicaid and Medicare laws are not subject to sales and use tax. Such sales are also not subject to applicable local sales and use tax. In order for the purchase of the durable medical equipment and related supplies to qualify for this exemption, the following conditions must be met:

1. The purchase must be paid directly by funds of South Carolina or the United States under the Medicaid or Medicare programs.
2. State or federal law or regulation authorizing the payment must prohibit the payment of the sales or use tax.
3. The durable medical equipment and related supplies must be sold by a provider who holds a South Carolina retail sales license and whose principal place of business is located in South Carolina.

Sales of durable medical equipment meeting the requirements of this exemption that are made on or after January 1, 2013 are fully exempt.

Note: For more detailed information as to what qualifies as durable medical equipment and related supplies, retailers should review the definitions of durable medical equipment and related supplies as defined under federal and state Medicaid and Medicare laws.

3. If I’m selling medical products (diapers, diabetic shoes & undergarments) and getting paid by Medicare or another source why do I have to pay sales tax?

When a retailer sells any tangible personal property, including medical products, the sale is subject to the tax regardless of how the payment is made (Medicare,

Medicaid, private insurance, or directly by the customer or another person on behalf of the customer), unless the sale is specifically exempted under the sales and use tax law.

Note: Sales paid for via Medicare or Medicaid are not sales to the federal government and are subject to the sales and use tax, unless the sale is specifically exempted under the sales and use tax law.

K. Farmers

1. Why do farmers have to pay sales tax?

Sales of tangible personal property or taxable services at retail to all persons, including farmers, are subject to the sales and use tax unless the sale is specifically exempted under the sales and use tax law.

2. Are sales of farm machinery to a farmer subject to the sales and use tax?

Sales of farm machinery meeting the requirements of the exemption in the sales and use tax law for farm machinery are exempt from the sales and use tax. If the sale of farm machinery does not meet the requirements of the exemption, the sale is taxable.

3. What farm equipment qualifies for exemption from the sales and use tax?

The sale of farm machinery that is used in planting, cultivating or harvesting farm crops for sale is exempt from the tax. The exemption also applies to replacement parts and attachments.

- Planting includes all necessary steps in the preparation of the soil prior to, and including, the planting and sowing of the seed.
- Cultivation includes the loosening of the soil around growing plants, control of moisture content in the soil, and weed and pest control.
- Harvesting begins with the gathering of the crop and ends when the crop is placed in a temporary or permanent storage area. However, it also includes the additional preparation for storage or sale of certain crops such as the curing of tobacco, grains and peanuts and the grading and packaging of peaches, cucumbers, tomatoes, etc.

The machinery exemption also applies to:

- machinery used in constructing terraces, drainage and irrigation ditches; dikes used to control the water level in cultivated fields; and land clearing prior to cultivation of the soil;
- machinery specially designed for irrigation purposes, including pumps, pipes, spigots, etc. when sold for use in the cultivation of farm crops;
- farm dairy tanks used in the production and preservation of milk on dairy farms;
- farm wagons used in planting, cultivating or harvesting farm crops; and
- pasteurizing machines, cooling machines, mechanical separators, homogenizing machines and bottling machines used by dairies in the production of milk for sale. Milking machines do not come within the exemption for farm machinery.

Various machines used in the production of poultry and poultry products are exempt from the tax. See SC Regulation 117-301.5 for more details.

The machinery exemption does not apply to:

- automobiles and trucks;
- machinery used in constructing fences and buildings and repairing machinery and equipment; and
- farm implements such as hoes, pitchforks and shovels.

4. Does the sale of a lawn mower to a farmer qualify for the exemption for farm machinery?

No, unless the lawn mower is used by a farmer in planting, cultivating or harvesting a farm crop for sale (*e.g.*, a farmer in the business of growing grass sod for sale and the mower is used for that purpose). A lawn mower used for the farmer's residential lawn would not qualify for the exemption.

5. Does this exemption apply to equipment for my personal garden where I grow vegetables for my family?

No.

6. As a retailer of various items, including farm supplies and machinery, I am being asked by some farmers not to charge sales tax on an item they are purchasing. What should I do?

Sales to farmers are subject to the sales and use tax unless the sale falls within one of the exemptions established by the General Assembly for farmers.

The General Assembly has authorized the Department to create an exemption certificate specifically for farmers to use in purchasing items the General Assembly has exempted from the sales and use tax. The exemption certificate, Form ST-8F, can be found in the forms section of the Department's website (dor.sc.gov).

A farmer can provide you this form to purchase one of the items listed on the form tax free. This shifts the liability for the tax to the farmer so that if the farmer uses an item for a non-exempt purpose, the farmer is liable for the tax plus any applicable penalties and interest.

L. Maximum Tax

1. Do golf carts qualify for the maximum tax?

No.

2. Do mopeds qualify for the maximum tax?

Mopeds which must be registered with the SC Department of Motor Vehicles under Title 56, Chapter 3, are subject to an infrastructure maintenance fee and are exempt from sales and use tax under Code Section 12-36-2120(83). For information on mopeds purchased by nonresidents to be registered or used outside of South Carolina, see SC Information Letter #17-10.

M. Administrative

1. What is the mailing address for the Department of Revenue?

Charleston Service Center: 2070 Northbrook Blvd., Suite B7
North Charleston, SC 29406

Columbia Main Office: 300A Outlet Pointe Boulevard
Columbia, SC 29210
P.O. Box 125
Columbia, SC 29214

Florence Service Center: 181 East Evans Street, Suite 5
Florence, SC 29506

Greenville Service Center: 33 Villa Road, Suite 401
Greenville, SC 29615

Myrtle Beach Service Center: 1350 Farrow Parkway
Suite 200
Myrtle Beach, SC 29577

Rock Hill Service Center: 775 Addison Avenue, Suite 201
Rock Hill, SC 29730

2. What kind of records do I need to keep if I have a retail license and for how long?

Since every business keeps records in its own manner, the Department does not issue a list of the types of records that must be maintained. However, the law requires all taxpayers to maintain “proper records” and imposes penalties for failure to maintain “proper records.” Records must be retained for at least 4 years after the return was filed or due to be filed, whichever is later.

SC Regulation 117-200 provides additional information concerning recordkeeping.

3. What is the purpose of a resale certificate?

Items that a retailer will resell may be purchased tax free by the retailer. For example, a retailer may purchase computers tax free if the computers are being purchased for resale to customers.

Items that a retailer purchases for use by the retailer are subject to the tax, unless otherwise exempt under the sales and use tax law. For example, computers purchased by a retailer for use in maintaining the records of the retailer are subject to the tax.

A resale certificate is used by a retailer to purchase items tax free that the retailer will resell. The presentation of a resale certificate by a purchaser will relieve the seller of liability for the sales tax and switch the liability to the purchaser, provided all of the following conditions are met:

1. The resale certificate presented to the seller by the purchaser contains all the information required by the Department and has been fully and properly completed.
2. The seller did not fraudulently fail to collect or remit the tax, or both.

3. The seller did not solicit a purchaser to participate in an unlawful claim that a sale was for resale.

A copy of Form ST-8A, Resale Certificate, can be found at the Department's website (dor.sc.gov). It is not required that Form ST-8A be used, but the information requested on the form is required on any resale certificate accepted by the seller. Therefore, a letter from the purchaser to the seller or a resale certificate from another state is acceptable provided the letter or certificate contains the same information requested on Form ST-8A. In addition, the "Uniform Sales & Use Tax Certificate" published by the MultiState Tax Commission ("MTC") may be used by a purchaser (since it contains the same information requested on Form ST-8A) for the purpose of purchasing tangible personal property that will be resold, leased or rented in the normal course of the purchaser's retail business. The MTC certificate may also be used by a purchaser of services that are subject to the sales and use tax, such as communications, accommodations, laundry services, and electricity, that will be resold, leased or rented in the normal course of the purchaser's retail business.

If a purchaser uses a resale certificate to purchase tangible personal property tax free which the purchaser knows is not excluded or exempt from the tax, then the purchaser is liable for a penalty of 5% of the amount of the tax for each month, or fraction of a month, during which the failure to pay the tax continues, not exceeding 50% in the aggregate. This penalty is in addition to all other applicable penalties authorized under the law.

Note: It is not necessary that a resale certificate be obtained for each purchase. Only one resale certificate must be maintained on file per customer.

4. **My address has changed & I never received the bill (assessment) from the Department. How can I now get the lien off my business?**

To discuss a lien, please contact your local Taxpayer Service Center and ask to speak to the Collections Supervisor.

5. **A retailer is charging too much sales tax on my purchases. What can the Department do about it?**

The best course of action is usually to discuss the matter with the manager at the store. If that does not work, you may contact the Department (by letter or telephone). The Department will investigate the matter. However, please understand that as a result of privacy laws the Department will not be able to provide you any information about the investigation or its results.

6. I am a licensed retailer. If I do not charge my customers the sales tax, do I have to pay the sales tax to the Department?

Yes. The sales and use tax is due whether or not the retailer collects the tax from the customer.

7. I operate a motel and I received an exemption certificate from a church located in Florida. They provided me with a Florida tax exemption certificate. Should I accept this exemption certificate?

No. An exemption certificate from another state is not valid in South Carolina. Each state has its own exemptions from the sales and use tax that are only valid with respect to that state's sales and use tax.

N. Refunds

1. What information is required when filing a claim for refund? How far back can we file a claim? What is the statute?

A taxpayer who is legally liable for the tax may seek a refund of a state tax by filing a written claim for refund with the department. A claim for refund is timely filed if filed within three years.

The refund claim must specify:

- (1) the name, address, and telephone number of the taxpayer;
- (2) the appropriate taxpayer identification number or numbers;
- (3) the tax period or date for which the tax was paid;
- (4) the nature and kind of tax paid;
- (5) the amount which the taxpayer claims was erroneously paid;
- (6) a statement of facts supporting the taxpayer's position;
- (7) a statement outlining the reasons for the claim, including law or other authority upon which the taxpayer relies; and
- (8) other relevant information that the department may reasonably require.

The statutory provisions concerning a refund claim are South Carolina Code §12-54-85 and Chapter 60, Article 5, Subarticle 1 of Title 12.

2. Who is the taxpayer that can apply for and receive a refund with respect to sales tax and use tax?

For sales tax, the taxpayer is the retailer and only the retailer may apply for and receive the refund. However, a purchaser who has paid sales tax to a retailer for a specific transaction may claim a refund if the retailer who paid the sales tax to the Department has assigned, in writing, the right to a refund of that sales tax to the purchaser.

For use tax, the taxpayer is the purchaser and only the purchaser may apply for and receive the refund. However, a retailer who collects the use tax from the purchaser and remits the use tax to the Department may claim a refund of the use tax collected, but only if the retailer establishes that he has paid the use tax in question to the Department and either (1) repaid the use tax to the purchaser from whom he collected it or (2) obtained the written consent of the purchaser from whom he collected the use tax to the allowance of the refund.

3. Does the Department issue a credit memo for refunds?

No.

4. Can a retailer apply an overpayment to a return?

No. The retailer must request a refund and if the Department approves the refund a check will be issued to the retailer.

O. Penalties and Interest

1. What is your interest rate?

The interest rate is subject to change on a quarterly basis. It is based on the interest charged by the Internal Revenue Service. The rate is compounded daily except simple interest applies to the underpayment of declaration of estimated tax. Under two provisos reenacted by the General Assembly, the interest rate for refunds is presently 3% lower than the interest rate for assessments.

The Department issues an Information Letter each quarter to announce the quarterly interest rate.

2. How is penalty and interest calculated?

To calculate basic failure to file penalties, failure to pay penalties and interest, go to the Department's website.

P. Local Taxes

- 1. What counties have local option sales and use taxes, transportation sales and use taxes and other local sales and use taxes administered and collected by the Department? When did it start?**

The first local sales and use taxes were imposed in 1991. For a list of the local sales and use taxes that are presently being imposed, visit the Department's website at dor.sc.gov.

- 2. Which local sales and use tax applies when I deliver into another county? Is there a difference if I ship the product or personally deliver it?**

Retailers who have nexus with South Carolina have nexus with all local jurisdictions in South Carolina for local sales and use tax purposes and must collect and remit to the Department local sales and use tax for each jurisdiction where their products are delivered.

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 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.

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

NOTE: Retailers reporting sales for purposes of the local option tax must report their sales by county and municipality where delivery occurs.

Retailers cannot rely on mailing addresses in reporting the local option tax. A mailing address is not an accurate indication as to whether or not a location is within a particular municipality or county.

3. Is a retailer required to remit a local sales and use tax for every county in which the retailer does business or may the retailer remit only the local sales and use tax for the county in which my retail store is located?

The retailer must remit the local sales and use tax based on the county in which the retailer delivered the product or service. For example, if a retailer with a store in Richland County delivers a product on his own truck to a customer in Lexington County, the retailer must remit the local sales and use tax imposed in Lexington County.

4. Why doesn't the Department implement any new local sales and use tax at the beginning of a calendar quarter (i.e., April 1st, July 1st, October 1st, or January 1st)? This would greatly reduce the impact on quarterly sales and use tax filers.

The date a new local sales and use tax is implemented is not controlled by the Department. These implementation dates are established in the law by the General Assembly and, in accordance with the law, the date the local authorities notify the Department that the referendum approving the tax has been certified. In order to establish a uniform implementation date, such as the first day of a calendar quarter, the General Assembly would need to amend the various local sales and use tax laws.

Q. Food

1. What qualifies a sale for the unprepared food exemption?

Foods eligible for the unprepared food exemption (South Carolina Code §12-36-2120(75)) include:

- (1) Any food intended to be eaten at home by people, including snacks, beverages and seasonings;
- (2) Seeds and plants intended to grow food (not birdseed or seeds to grow flowers); and,
- (3) Cold items, which may include salads or sandwiches, intended to be eaten at home by people and that are not considered “prepared meals or food” as discussed below.

Food and other items which are not eligible for the unprepared food exemption (South Carolina Code §12-36-2120(75)) and are, therefore, subject to the full state sales and use tax rate (unless otherwise exempt) include:

- (1) Alcoholic beverages, such as beer, wine, or liquor;
- (2) Hot beverages ready-to-drink such as coffee;
- (3) Tobacco;
- (4) Hot foods ready to eat;
- (5) Foods designed to be heated in the store;
- (6) Hot and cold food to be eaten at a lunch counter, in a dining area or anywhere else in the store or in a nearby area such as a mall food court;
- (7) Vitamins and medicines;
- (8) Pet food;
- (9) Any non-food items such as tissue, soap or other household goods;
- (10) Meals or food shipped or delivered to businesses or institutions (hospitals, prisons, jails, nursing homes, etc.); and,

(11) Prepared meals or food (See definition in SC Regulation 117-337.2.)

For more information concerning this exemption, see Chapter 22 of this publication or SC Regulation 117-337.

2. What food items are exempt when sold by a convenience store?

Sales of foods eligible for the unprepared food exemption by a convenience store engaged in the retail sale of all sorts of canned foods and dry goods (e.g., tea, coffee, spices, sugar, and flour), and that may also be engaged in the retail sale of fresh fruits and vegetables and fresh and prepared meats, fish, and poultry, shall be deemed to be for home consumption and exempt from the state sales and use tax under the unprepared food exemption in South Carolina Code §12-36-2120(75).

However, if the store has an identifiable location which advertises, holds itself out to the public (e.g., offers hot food or the ability to heat food, provides seating, or provides utensils with the meal or food), or is perceived by the public as being engaged in the sale of ready-to-eat food or beverages to customers for their immediate consumption on or off the premises, then all sales of food from that identifiable location shall be deemed to be for immediate consumption and subject to the sales tax at the full state rate unless the sale falls within the exception noted in SC Regulation 117-337.2. For example, if a convenience store has an area where a customer can get a hot dog or sandwiches that are intended for immediate consumption (including ones intended to be heated in a microwave), then the sale of the hot dogs and sandwiches are for immediate consumption and subject to the full state rate. Any chips or drinks (whether fountain drinks or bottled drinks) sold with that hot dog or sandwich at the lunch counter are also for immediate consumption and subject to the full state rate.

For more information concerning this exemption, see Chapter 22 of this publication or SC Regulation 117-337.

3. Why am I paying more sales tax for milk and bread at convenience stores in Richland County than I do at convenience stores in Lexington County?

The sale of milk and bread at a convenience store qualifies for the state exemption for unprepared food. This exemption does not apply to local sales and use taxes, unless the sale occurs in one of the counties with a local sales and use tax law that exempts sales of unprepared food.

Since the local sales and use taxes in Richland County do not exempt sales of unprepared foods and the one in Lexington County does, you should be paying a 2% sales tax (0% state and 2% local) in Richland County, and you should not be paying any sales tax on unprepared food in Lexington County.

4. Why do some retailers charge a sales tax on sodas?

The determination as to whether a sale of unprepared food is exempt from the state sales and use tax is based on whether the food is of a type that is eligible to be purchased with USDA food stamps, the type of location selling the food, and whether the food is being sold for immediate consumption, business or institutional consumption, or home consumption.

In other words, a food must be of a type eligible to be purchased with USDA food stamps and must also be sold for home consumption (based on the type of food and the type of location selling the food) to qualify for the exemption from the state sales and use tax under South Carolina Code §12-36-2120(75). For example, bottled soft drinks are eligible to be purchased with USDA food stamps, but if bottled soft drinks are sold at a concession stand at a festival, then the bottled soft drinks are sold for immediate consumption and not home consumption and the sale at the festival would be subject to the full state sales tax rate.

For a more detailed explanation of the exemption for unprepared foods, see SC Regulation 117-337.

R. Resale and Exemption Certificates

1. What items may be purchased tax free by a retailer?

Items that a retailer will resell may be purchased tax free by the retailer. For example, a retailer may purchase computers tax free if the computers are being purchased for resale to customers.

Items that a retailer purchases for use by the retailer are subject to the tax, unless otherwise exempt under the sales and use tax law. For example, computers purchased by a retailer for use in maintaining the records of the retailer are subject to the tax.

As stated above, items that a retailer purchases for use by the retailer are subject to the tax, unless otherwise exempt under the sales and use tax law. An example of an exemption available for a retailer is the purchase of containers used incident to the sale and delivery of tangible personal property. For example, the plastic and paper bags purchased by a grocery store into which the store places the food purchased by the customer are exempt as a container used incident to the sale and delivery of the food.

2. What does a retailer need to do when accepting a resale certificate?

The presentation of a resale certificate by a purchaser will relieve the seller of liability for the sales tax and switch the liability to the purchaser, provided all of the following conditions are met:

1. The resale certificate presented to the seller by the purchaser contains all the information required by the Department and has been fully and properly completed.
2. The seller did not fraudulently fail to collect or remit the tax, or both.
3. The seller did not solicit a purchaser to participate in an unlawful claim that a sale was for resale.

3. Does the retailer have to have a copy of a customer's resale certificate or can the retailer just write down their retail license number on the invoice and not charge them tax?

In order for the retailer to be relieved of liability for the sales tax and switch the liability to the purchaser, the retailer must have a properly completed resale certificate on file.

4. As a retailer what is my responsibility when issued an exemption certificate?

If a customer provides a retailer an exemption certificate issued by the Department (Form ST-9 – Exemption Certificate), or a properly executed exemption certificate authorized by the Department (Form ST-8 – Single Sale Exemption Certificate), the retailer should sell the items to the customer tax free provided the transaction is of a type exempted by the certificate. The retailer should maintain a copy of the certificate in order to document that the sale qualified for the exemption and to document that the liability for the tax has been shifted to the purchaser.

S. Other

1. How does the sales tax apply to sales from vending machines?

By law, the operator of a vending machine is considered the user or consumer of all items the operator sells from the vending machine, except cigarettes and soft drinks in closed containers.

Therefore, when the vending machine operator purchases anything the operator will sell from the vending machine (other than cigarettes and soft drinks in closed containers), the purchase by the operator is subject to the tax. When the vending

machine operator purchases cigarettes and soft drinks in closed containers, the vending machine operator may purchase cigarettes and soft drinks in closed containers tax-free, but is subject to the sales tax on the sale of cigarettes and soft drinks in closed containers from the operator's vending machines.

2. What is exempt during the sales tax holiday?

The General Assembly has authorized one sales tax holiday each calendar year. This three day sales tax holiday exempts sales taking place during a period beginning 12:01 a.m. on the first Friday in August and ending at twelve midnight the following Sunday of (i) clothing; (ii) clothing accessories including, but not limited to, hats, scarves, hosiery, and handbags; (iii) footwear; (iv) school supplies including, but not limited to, pens, pencils, paper, binders, notebooks, books, bookbags, lunchboxes, and calculators; (v) computers, printers and printer supplies, and computer software; (vi) bath wash clothes, blankets, bed spreads, bed linens, sheet sets, comforter sets, bath towels, shower curtains, bath rugs and mats, pillows, and pillow cases.

The exemption allowed by this item does not apply to (i) sales of jewelry, cosmetics, eyewear, wallets, watches; (ii) sales of furniture; (iii) a sale of an item placed on layaway or similar deferred payment and delivery plan however described; (iv) rental of clothing or footwear; (v) a sale or lease of an item for use in a trade or business.

3. Does the gross proceeds that a retailer must report on a sales tax return include the sales tax?

No. For example, if a retailer sells an item for \$100 and collects from the customer a 6% state sales tax of \$6 (no local tax due in this example), then the gross proceeds to be reported on the return is \$100, not \$106.

4. If a retailer does not charge a customer the correct tax percentage, is the customer liable for the difference?

If the tax is a sales tax, the customer is not liable for the difference.

If the tax is a use tax, the customer is liable for the difference.

5. If I must pay a property tax each year on my vessel, is use tax still due?

The property tax and the use tax are two separate taxes. The use tax is due at the time of purchase of the vessel when a vessel is purchased outside of South Carolina for use in South Carolina. The property tax is an annual tax on property situated in South Carolina.

6. How do you register a business name in South Carolina?

The registration of a business name is handled by the South Carolina Secretary of State.

7. If a business sells one of its assets, is the sale of that asset (e.g., furniture) subject to the sales and use tax?

It depends –

- (a) If the business selling the asset is selling it for resale by the buyer, then the sale is a wholesale sale and is not subject to the sales and use tax.
- (b) If the business selling the asset is selling it for use by the buyer and the business selling the asset is not engaged in the business of selling tangible personal property at retail (e.g., a law firm, an accounting firm), then the sale is a casual and isolated sale and it is not subject to the sales and use tax.
- (c) If the business selling the asset is selling it for use by the buyer and the business selling the asset is engaged in the business of selling tangible personal property at retail (a retailer, such as a grocery store, an equipment rental store, a department store), then the sale is a retail sale subject to the sales and use tax. In South Carolina, all sales of tangible personal property at retail by a retailer, whether it is inventory or a business asset, are subject to the sales and use tax unless the sale qualifies for one of the exemptions found in the sales and use tax law. See Code Section 12-36-2120 for a list of the exemptions, including one for the sale of depreciable assets when the entire business is sold and the purchaser continues the operation of the business (Code Section 12-36-2120(42)).

T. Accommodations

1. If a person charges for renting a room or for otherwise furnishing sleeping accommodations, would the charge be subject to the state sales tax and what is the tax rate?

Yes. The charge for providing accommodations is subject to the statewide sales tax rate of 7% (5% state and 2% local accommodations) plus any applicable local sales and use tax rate administered and collected by the Department on the behalf of counties. For information relating to the local sales and use taxes administered by the Department, visit our website at dor.sc.gov.

2. Are there any charges for accommodations that are not subject to sales tax?

Sales tax on accommodations does not apply (1) to the lease or rental of accommodations supplied to the same person for a period of 90 continuous days; or (2) where the home consists of less than six sleeping rooms contained on the same premises and the owner resides in the home while renting the rooms to others on a daily or weekly basis; the home must serve as the owner's "place of abode" at the time the other rooms are rented; or (3) where the rental income is wholly excluded from the gross income of the taxpayer under Internal Revenue Code Section 280A(g). (Internal Revenue Code Section 280A(g) allows a taxpayer to exclude from gross income the rental income derived from a dwelling unit used during the tax year by the taxpayer as a residence, provided that the dwelling unit is rented for less than 15 days during the tax year.)

3. How do you report and pay tax electronically?

The Department's MyDORWAY system will allow a retailer to make payment by EFW (Electronic Funds Withdrawal/Bank Draft) or credit card (MasterCard, Visa).

4. What form or forms do you use to report and pay sales tax on accommodations?

A. ST-388 (State Sales, Use, and Accommodations Tax Return). This form is used by taxpayers who are liable for the state sales tax imposed on accommodations furnished to transients. The form is used to report the state sales tax imposed on accommodations, sales of tangible personal property and any use tax imposed on purchases. The Form ST-388 must be submitted to the Department along with the Forms ST-3T and ST-389 at the same time. If you are licensed with the Department for the purposes of remitting sales tax on accommodations, you must file the ST-388 return even if there is no tax due for the period.

The ST-388 is used for reporting the total charges for rooms, lodging and accommodations subject to sales tax at 7%. This form is designed with three columns (A, B, and C) across the front. Sales and purchases subject to tax in Column A at the 6% rate include sales such as meals, gift items, additional guest charges, and purchases of hotel or motel supplies. However, charges for accommodations are excluded from Column A and the worksheet for Column A. The 7% sales tax imposed on sales of accommodations is reported under Columns B (at 5%) and C (at 2%). Columns B and C are used to report the 7% sales tax on the gross proceeds derived from the rental or charges for any room or any place in which rooms, lodgings, or sleeping accommodations are furnished to transients for a consideration.

You must report all sales on the worksheet, report and deduct the applicable exclusions and exemptions from sales tax on the worksheet to calculate the “net taxable sales” (all sales + all withdrawals for use + all out-of-state purchases subject to the use tax – applicable deductions) and remit the tax based upon your net taxable sales.

- B. ST-3T (State Accommodations Report by County or Municipality). This form must be filed with the Form ST-388 at the time of filing even if you have only one rental unit in the county or municipality where your business is located. You must use this form to separately report the 2% portion of the total gross proceeds from business done in each county or municipality. This tax is reported under Column C of the ST-388 form.
- C. ST-389 (Schedule of Local Sales and Use Taxes Administered by the Department). ST-389 is used to report the various local sales and use taxes administered and collected by the Department on taxable sales and purchases. This form is not required to be filed with the state form ST-388 if the retailer is located in a county that does not impose local sales and use tax and does not make deliveries into other counties that do impose local sales and use tax.

5. When is the accommodations tax return due?

The accommodations tax return is due on or before the twentieth (20th) day of the month following the close of the period ended. To be considered timely filed, the return must be received or postmarked by the 20th of the month. If the 20th falls on a weekend or legal holiday, the return is due on the next business day.