

## Chapter 6

### “Gross Proceeds of Sales” and “Sales Price”

“Gross proceeds of sales”<sup>1</sup> (or any similar term, such as gross proceeds) is the measure or basis for the sales tax. “Sales price” is the measure or basis for the use tax. Essentially, each term means the total amount for which tangible personal property is sold or purchased.

#### A. Gross Proceeds<sup>2</sup> and Sales Price<sup>3</sup> – What is Includable?

Gross proceeds is the basis or measure of the sales tax<sup>4</sup> and is the value proceeding or accruing from the sale, lease, or rental of tangible personal property. It includes:

- the proceeds from the sale of tangible personal property; and
- the proceeds from the sale of property sold on consignment by the taxpayer, including property sold through a marketplace by a marketplace facilitator.

Sales price is the basis or measure of the use tax and is the total amount for which tangible personal property is sold, without any deduction for the cost of the property sold, the cost of the materials used, labor or service cost, interest paid, losses, or any other expenses. It includes:

- any services or transportation costs that are a part of the sale, whether paid in money or otherwise;
- any manufacturers or importers excise tax imposed by the United States; and
- the proceeds from the sale of property sold on consignment by the taxpayer, including property sold through a marketplace by a marketplace facilitator.

In calculating gross proceeds or sales price, the retailer may not deduct the following (whether or not such costs are passed on to the customer or separately stated on the bill to the customer):

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<sup>1</sup> South Carolina Code §12-36-90.

<sup>2</sup> South Carolina Code §12-36-90(1).

<sup>3</sup> South Carolina Code §12-36-130.

<sup>4</sup> While the term “gross proceeds” is generally applicable to the sales tax and “sales price” is generally applicable to the use tax, the term “gross proceeds” is the basis or measure of the use tax for certain services that are subject to the use tax as well as the sales tax. See South Carolina Code §12-36-1310(B).

- the cost of goods sold;
- the cost of materials, labor, or service;
- interest paid;
- losses;
- transportation costs;
- manufacturers or importers excise taxes imposed by the United States; or
- any other expenses.

One of the guiding principles of what is includable in “gross proceeds” was established in *Meyers Arnold, Inc. v. South Carolina Tax Commission*, 285 S.C. 303, 328 S.E.2d 920 (1985). In that case, the Court of Appeals of South Carolina held the element of service involved in a layaway sale was subject to tax as being part of the sale of tangible personal property. The test used by the court was as follows:

But for the lay away sales, *Meyers Arnold* would not receive the lay away fees. The fees are obviously charged for the service rendered in making lay away sales. For these reasons, this court holds the lay away fees are part of the gross proceeds and subject to the sales tax.

Accordingly, the total amount charged in conjunction with the sale or purchase of tangible personal property is subject to the tax. This test used by the court would also apply this principle to the use tax in determining what is includable in “sales price.”

Finally, a rebate paid by a third party (i.e., the manufacturer) to the retail customer does not affect “gross proceeds” (the basis for the sales tax) or “sales price” (the basis for the use tax). For example, if Store A sells a product for \$1,000 and the customer pays the \$1,000 for the product, the tax is still due on the \$1,000 even though the manufacturer of the product may at a later date rebate \$100 of the sales price to the customer.<sup>5</sup>

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<sup>5</sup> Attorney General Opinion #82-30 (5/5/1982).

## **B. Examples of Charges Included in “Gross Proceeds” and “Sales Price”**

Examples of charges included in “gross proceeds” or “sales price” and therefore subject to the sales tax or use tax are:<sup>6</sup>

Fuel surcharges - an additional fee charged by retailers due to the rising costs of gasoline and diesel fuel when making a delivery via their own vehicle.<sup>7</sup>

Charges by an automobile rental company,<sup>8</sup> such as:

- Fueling Charges.
- Charges for Collision Damage Waiver.
- Personal Accident Coverage.
- Extended Protection.
- Personal Effects Coverage.
- Personal Accident and Effects Coverage.

Lease cancellation fees.<sup>9</sup>

Lease compensatory damages received as a result of litigation payments from either a third party guarantor and/or lessee.<sup>10</sup>

Late fees charged when a customer does not pay his bill on time (except for late fees charged with respect to charges for electricity, natural gas, or both).<sup>11</sup>

Late fees charged by a video rental “club.”<sup>12</sup>

Membership fees paid to a video rental “club” if the payment of such fee entitles the purchaser to “free” or discount movie rentals.<sup>13</sup> However, if such fee is in lieu of a

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<sup>6</sup> Please note that because of the nature of a transaction, an example may only apply to “gross proceeds” and the sales tax since the transaction could only occur in South Carolina. Therefore, some examples may not apply to the “sales price” and the use tax.

<sup>7</sup> South Carolina Revenue Ruling #05-1.

<sup>8</sup> South Carolina Revenue Ruling #93-1.

<sup>9</sup> South Carolina Private Letter Ruling #88-5.

<sup>10</sup> South Carolina Private Letter Ruling #12-3.

<sup>11</sup> South Carolina Revenue Ruling #09-6.

<sup>12</sup> South Carolina Revenue Ruling #90-6.

<sup>13</sup> South Carolina Revenue Ruling #90-6.

security deposit or constitutes only a nominal processing fee and does not include “free” or discount movie rentals, the fee is not subject to the tax.

Membership fees charged by a membership only warehouse offering a selection of brand name merchandise to business owners and others where one type of member receives a benefit that another type of membership does not receive. For example, one type of member pays only the posted wholesale price, while another type of temporary membership pays the posted wholesale price plus a 5% surcharge.<sup>14</sup>

Membership fees charged by a book retailer that entitle members to obtain discounts on their purchases of tangible personal property.<sup>15</sup>

Membership fees charged by an online shopping website that entitle members to stream digital content, free or discounted shipping on purchases of tangible personal property, and discounted pricing on purchases of tangible personal property.<sup>16</sup>

Local hospitality taxes authorized under South Carolina Code §6-1-700 *et seq.* and local accommodations fees imposed by ordinance prior to March 15, 1997 and authorized under Section 10 of Act No. 138 of 1997, **if the fee or tax is imposed upon the retailer.**<sup>17</sup> (See examples below of charges not includable in gross proceeds for other local taxes and fees.)

City or county franchise fees imposed upon a cable television system and calculated as a percentage of the cable television system’s gross receipts, regardless of whether it is passed on to customers as a separately stated item on the bill or is included in the overall charge for cable services.<sup>18</sup>

Delivery or transportation charges:<sup>19</sup>

- where the seller, by use of a common carrier, effects such delivery and the sale is made F.O.B. point of destination or place of business of the buyer.<sup>20</sup>
- where the seller, by use of his own means of transportation, effects such delivery.<sup>21</sup>

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<sup>14</sup> South Carolina Private Letter Ruling #92-11.

<sup>15</sup> *Books-A-Million, Inc. v South Carolina Department of Revenue*, Op. No. 5721 (S.C. Ct. App. filed April 29, 2020). Petition for Cert. filed with the South Carolina Supreme Court on August 12, 2020.

<sup>16</sup> South Carolina Private Letter Ruling #16-1.

<sup>17</sup> South Carolina Revenue Ruling #97-20.

<sup>18</sup> South Carolina Revenue Ruling #97-10.

<sup>19</sup> South Carolina Revenue Ruling #19-9.

<sup>20</sup> SC Regulation 117-310, South Carolina Revenue Ruling #19-9, South Carolina Private Letter Ruling #90-9, and Commission Decision S-D-152.

<sup>21</sup> SC Regulation 117-310, South Carolina Revenue Ruling #19-9, South Carolina Technical Advice Memorandum #89-9, Commission Decision S-D-145, and Commission Decision #92-46.

- where the seller effects delivery from the factory directly to the seller's customer when the 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 the seller's invoice.<sup>22</sup>

Fabrication labor that is a part of the manufacturing, compounding, processing, or fabrication of tangible personal property for sale or resale.<sup>23</sup>

Installation labor incident to the sale of tangible personal property when such charges are not separately stated from the sales price of the property on billing to customers or when the seller's books and records of account do not show the reasonableness of such labor in relation to the sales price of the property.<sup>24</sup>

Gratuities or an amount or percentage, regardless of its designation, added to the price of meals pursuant to a requirement of the retailer furnishing such meals, even though all or a part thereof may be paid by the retailer to his employees.<sup>25</sup>

Finance and carrying charges when the established price for the goods includes an amount to cover a finance or carrying charge.<sup>26</sup>

Lay-away Fees.<sup>27</sup>

Universal Service Fund surcharges billed by a Local Exchange Carrier, Voice over Internet Protocol provider, or Commercial Mobile Radio Service provider to its customer (part of the "gross proceeds accruing or proceeding from the charges for the ways or means for the transmission of the voice or messages").<sup>28</sup>

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<sup>22</sup> SC Regulation 117-310.1 and South Carolina Revenue Ruling #19-9.

<sup>23</sup> SC Regulation 117-313.1.

<sup>24</sup> SC Regulation 117-313.3.

<sup>25</sup> SC Regulation 117-318.6. However, when a customer voluntarily provides a tip for an employee of a retailer, such a tip is not subject to the sales tax whether given directly to the employee in cash or added by the customer to his bill and charged by the retailer to the customer's account; provided, that in the latter instance, the full amount of such tip is turned over to the employee by the retailer. See also Commission Decisions S-D-82 and S-D-178.

<sup>26</sup> SC Regulation 117-318.2. However, where the seller has an established cash price and when selling on an extended payment basis, adds a separate charge for financing, the additional charge is not to be included in gross proceeds.

<sup>27</sup> *Meyers Arnold, Inc. v. South Carolina Tax Commission*, 285 S.C. 303, 328 S.E.2d 920 (1985). See also, SC Private Letter Ruling #11-4.

<sup>28</sup> South Carolina Revenue Ruling #19-8. However, any portion of the Universal Service Fund surcharge based on charges for telecommunication services that are exempt from the sales and use tax under South Carolina Code §12-36-2120 (e.g., sales to the federal government, long distance charges, or certain access charges) or are otherwise nontaxable, are a part of the gross proceeds accruing or proceeding from the charges for an exempt service or a nontaxable charge and therefore not subject to the sales and use tax.

Early Termination Charge billed in connection with a taxable communication service (part of the “gross proceeds of sales” or “sales price” of the taxable communications service).<sup>29</sup>

Property Damage Waiver Fee billed by rental company.<sup>30</sup>

Engraving charges by a trophy shop when the charge for engraving is in conjunction with the sale of the trophy.<sup>31</sup>

Charges billed by a photographer for materials, labor, and other expenses as part of the sale of photographic transparencies and prints.<sup>32</sup>

Manufacturer’s Coupon - For example, if an item normally sells for \$5.00 and the customer pays \$4.00 and presents a manufacturer’s coupon valued at \$1.00, then the tax is based on \$5.00 (“gross proceeds” or “sales price”) since the retailer receives \$4.00 from the customer and \$1.00 from the manufacturer.<sup>33</sup>

Tobacco Buydowns – Buydown payments by tobacco companies to retailers that are based on a retailer’s retail sales.<sup>34</sup>

Sales Price of Returned Merchandise if the retailer does not refund the purchaser the full sales price in cash or by credit.<sup>35</sup> If a purchaser returns merchandise to the retailer and receives a refund or credit that is less than the price originally paid because the retailer retains a portion of the price paid as a “restocking” or “handling” fee or for any other reason, then the original price is subject to the tax.

Property Tax Payments under a Lease where the lease requires the lessee to reimburse the lessor for the property taxes on the tangible personal property being leased<sup>36</sup> or where the lease requires the lessee to pay the property taxes on behalf of the lessor on the tangible personal property being leased.

Rebates paid by a third party to or for the benefit of a purchaser, even though the purpose of the payment is to reimburse the purchaser for a part of the purchase price.<sup>37</sup>

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<sup>29</sup> South Carolina Private Letter Ruling #06-2.

<sup>30</sup> Commission Decision S-D-174 and *Rent-A-Center East, Inc. v. South Carolina Department of Revenue*, 425 S.C. 582, 824 S.E.2d 217 (Ct. App. 2019), *reh'g denied* (Mar. 21, 2019), *cert. granted* (Aug. 5, 2019), *cert. dismissed as improvidently granted*, 429 S.C. 464, 839 S.E.2d 882 (2020).

<sup>31</sup> Commission Decisions #92-28, #92-9, #92-64 and #90-38.

<sup>32</sup> Commission Decision S-D-175.

<sup>33</sup> South Carolina Revenue Ruling #99-9 and Attorney General Opinion dated 4/6/1998.

<sup>34</sup> See SC Revenue Ruling #20-3 and SC Information Letter #20-35.

<sup>35</sup> SC Regulation 117-318.8.

<sup>36</sup> See Commission Decision S-D-127 (1979).

<sup>37</sup> See South Carolina Revenue Ruling #09-11 concerning the Federal “Car Assistance Rebate System” and South Carolina Revenue Ruling #10-4 concerning the “Energy Star Appliance Rebate” program.

Warranty Contracts sold in conjunction with the sale of the tangible personal property 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 no longer applies to a warranty or maintenance contract purchased after the tangible personal property is purchased.<sup>38</sup>

Monthly Fixed Charges by a Utility Company for Natural Gas sold as part of an overall agreement between the utility and the customer for the sale of natural gas, whether or not the customer uses natural gas during a particular billing period.

Note: If the sale of natural gas to the customer is exempt under Code Section 12-36-2120, such as the sale of natural gas that is used for residential purposes (Code Section 12-36-2120(33)), then the monthly fixed charges billed by a natural gas utility to a customer are not subject to the sales tax.<sup>39</sup>

Marketplace sales, consignment sales, auction sales, and other similar sales of property owned by others – Any person engaged in business as a retailer is required to remit the sales and use tax on all retail sales of tangible personal property not otherwise excluded or exempted from the tax. This requirement applies to all retail sales of tangible personal property by the retailer, whether the tangible personal property is owned by the retailer or another person. Retailers selling tangible personal property at retail on consignment, by auction, or in any other manner must remit the sales and use tax on such retail sales.

COVID-19 surcharge or fee by a retailer as part of the sale of tangible personal property (unless the sale of the tangible personal property is otherwise exempt), such as restaurant take out charges or additional handling fees charged by the retailer.<sup>40</sup>

Charges billed by a Retailer for Consultation, Engineering, and Design as part of the retail sale of a sign<sup>41</sup> or the retail sale of a wireless communications system that enhances radio signal strength within the customer's building.<sup>42</sup>

Charges billed by a caterer as part of the retail sale of catered food for butlers, bartenders, dishwashers, overhead (e.g., alcoholic liquor liability insurance and

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<sup>38</sup> See SC Revenue Ruling #11-1.

<sup>39</sup> See SC Revenue Ruling #19-5.

<sup>40</sup> See SC Information Letter #20-23.

<sup>41</sup> SC Regulation 309.9 and SC Private Letter Ruling #07-4.

<sup>42</sup> SC Private Letter Ruling #07-3.

equipment used by the caterer), and labor charges for setting up tents, tables, dance floors, special lighting, air conditioning and heating units, and other items.<sup>43</sup>

Charges for the rental of portable toilets. The tax is based on all charges related to the rental including charges for cleaning and supplies (“gross proceeds”); however, Code Section 12-36-2120(62) provides an exemption for “seventy percent of the gross proceeds of the rental or lease of portable toilets.”<sup>44</sup>

Vehicle License Fees authorized by South Carolina Code Section 56-31-50 on rental of private passenger automobiles.

Tariffs and Tariff Surcharges charged by a retailer to its customer as part of a retail sale of tangible personal property.<sup>45</sup>

### **C. Gross Proceeds and Sales Price – What is Not Includable?<sup>46</sup>**

In calculating gross proceeds or sales price, the retailer may deduct the following:<sup>47</sup>

- a cash discount allowed and taken on sales;<sup>48</sup>
- the sales price of property returned by customers when the full sales price is refunded in cash or by credit;<sup>49</sup>
- the value allowed for secondhand property transferred to the vendor as a trade-in;<sup>50</sup>

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<sup>43</sup> See *Tronco’s Catering, Inc. v. South Carolina Department of Revenue*, 09-ALJ-17-0089-CC (April 12, 2010) and *Hamby Catering, Inc. v. South Carolina Department of Revenue*, 08-ALJ-17-0041-CC (June 12, 2009).

<sup>44</sup> See *Eugenia Boggero, d/b/a Boggero’s Portable Toilets v. South Carolina Department of Revenue*, 414 S.C. 277, 777 S.E.2d 842 (2015). See also SC Revenue Ruling #19-10, “Rental of Mobile Toilet Trailer, Hand Washing Station, or Portable Waste Holding Tank – Tax Exemption.”

<sup>45</sup> See SC Revenue Ruling #20-4. This revenue ruling also provides examples of tariffs not subject to tax because it was paid directly by the purchaser to the federal government.

<sup>46</sup> South Carolina Code §12-36-90(2).

<sup>47</sup> Please note that because of the nature of a transaction, an example may only apply to “gross proceeds” and the sales tax since the transaction could only occur in South Carolina. Therefore, some examples may not apply to the “sales price” and the use tax.

<sup>48</sup> South Carolina Code §12-36-90(2)(a).

<sup>49</sup> South Carolina Code §12-36-90(2)(b) and SC Regulation 117-318.8.

<sup>50</sup> South Carolina Code §12-36-90(2)(c).



- the amount of any tax imposed by the United States with respect to retail sales, whether imposed upon the retailer or the consumer, except for manufacturers or importers excise taxes;<sup>51</sup>
- a motor vehicle operated with a dealer, transporter, manufacturer, or education license plate and used in accordance with the provisions of Code Section 56-3-2320 or 56-3-2330;<sup>52</sup>
- that portion of a charge taxed under Code Section 12-36-910(B)(3) or 12-36-1310(B)(3) attributable to the cost set by statute for a governmental license or permit;<sup>53</sup>
- fees imposed on the sale of motor oil, new tires, lead-acid batteries, and white goods pursuant to Article 1, Chapter 96 of Title 44, including the refundable deposit when a lead-acid battery core is not returned to a retailer;<sup>54</sup>
- the sales price, not including sales tax, of property on sales which are actually charged off as bad debts or uncollectible accounts for state income tax purposes. A taxpayer who pays the tax on the unpaid balance of an account which has been found to be worthless and is actually charged off for state income tax purposes may take a deduction for the sales price charged off as a bad debt or uncollectible account on a return filed pursuant to this chapter, except that if an amount charged off is later paid in whole or in part to the taxpayer, the amount paid must be included in the first return filed after the collection and the tax paid. The deduction allowed by this provision must be taken within one year of the month the amount was determined to be a bad debt or uncollectible account;<sup>55</sup>
- interest, fees, or charges however described, imposed on a customer for late payment of a bill for electricity or natural gas, or both, whether or not sales tax is required to be paid on the underlying electricity or natural gas bill;<sup>56</sup>

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<sup>51</sup> South Carolina Code §12-36-90(2)(d).

<sup>52</sup> South Carolina Code §12-36-90(2)(e). Code Section 56-3-2320(A), which concerns the issuance and use of motor vehicle dealer license plates, was amended by Act No. 57 of 2017 to allow a dealer license plate to also be used by a person whose vehicle is being serviced or repaired by the dealership if the vehicle displaying the license plate is part of a manufacturer program and is provided by the dealer at no charge to the person. The person whose vehicle is being serviced or repaired may use a dealer license plate for no more than 30 days.

<sup>53</sup> South Carolina Code §12-36-90(2)(f).

<sup>54</sup> South Carolina Code §12-36-90(2)(g).

<sup>55</sup> South Carolina Code §12-36-90(2)(h). See also, *South Carolina Department of Revenue v. Anonymous Company A and Anonymous Company B*, 678 S.E.2d 255 (2009), and South Carolina Revenue Ruling #13-4.

<sup>56</sup> South Carolina Code §12-36-90(2)(i).

- the environmental surcharge imposed pursuant to South Carolina Code §44-56-450;<sup>57</sup>
- the alcoholic liquor by the drink excise tax imposed by South Carolina Code §12-33-245;<sup>58</sup> and
- heavy equipment rental fee imposed under South Carolina Code §56-31-60 on rental of qualified heavy equipment property to a customer by a qualified renter.<sup>59</sup>

## D. Examples of Charges not Included in “Gross Proceeds” and “Sales Price”

Examples of charges not included in “gross proceeds” or “sales price” and therefore not subject to the sales tax or use tax are:<sup>60</sup>

Late fees charged when a customer does not pay his bill on time with respect to charges for electricity, natural gas, or both;<sup>61</sup>

Membership fees paid to a video rental “club” if such fee is in lieu of a security deposit or constitutes only a nominal processing fee and does not include “free” or discount movie rentals;<sup>62</sup>

Membership fees charged by a membership-only warehouse offering a selection of brand-name merchandise to business owners and others where all membership types receive the same benefits;<sup>63</sup>

Local hospitality taxes authorized under South Carolina Code §6-1-700, et seq., and local accommodations fees imposed by ordinance prior to March 15, 1997 and authorized under Section 10 of Act No. 138 of 1997 **if the fee or tax is imposed**

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<sup>57</sup> South Carolina Code §12-36-90(2)(j).

<sup>58</sup> South Carolina Code §12-36-90(2)(k).

<sup>59</sup> South Carolina Code §56-31-60(D).

<sup>60</sup> Please note that because of the nature of a transaction, an example may only apply to “gross proceeds” and the sales tax since the transaction could only occur in South Carolina. Therefore, some examples may not apply to the “sales price” and the use tax.

<sup>61</sup> South Carolina Code §12-36-90(2)(i). See also, South Carolina Revenue Ruling #09-6.

<sup>62</sup> South Carolina Revenue Ruling #90-6.

<sup>63</sup> A membership fee would be includable in gross proceeds and subject to the tax if the membership fee is the sales price for the tangible personal property. For example, if a direct mail movie rental company charged an annual or monthly fee to receive movies for short term use and no other charges are paid by the customers to receive the movies, then the annual or monthly fee is the sales price of the tangible personal property and subject to the tax.

**upon the customer and the retailer is merely a collection agent for the city or county;**<sup>64</sup>

Local accommodations taxes authorized under South Carolina Code §6-1-500, et seq.; local option sales taxes authorized under South Carolina Code §4-10-10, et seq.; local capital projects sales taxes authorized under South Carolina Code §4-10-300, et seq.; and, local transportation projects sales taxes authorized under South Carolina Code §4-37-30, et seq.;<sup>65</sup>

Delivery or transportation charges where the seller, by use of a common carrier, effects such delivery and the sale is made F.O.B. point of origin;<sup>66</sup>

Installation labor incident to the sale of tangible personal property when such charges are separately stated from the sales price of the property on billing to customers and the seller's books and records of account show the reasonableness of such labor in relation to the sales price of the property;<sup>67</sup>

Gratuities when given directly to the employee in cash or added by the customer to his bill and charged by the retailer to the customer's account; provided that in the latter instance, the full amount of such tip is turned over to the employee by the retailer;<sup>68</sup>

Finance and Carrying Charges when the seller has an established cash price and when selling on an extended payment basis adds a separate charge for financing;<sup>69</sup>

Container Deposits required by retailers to insure the return of reusable containers;<sup>70</sup>

Self-Redeeming Coupon - For example, if an item normally sells for \$5.00 and the customer pays \$4.00 and presents the store's self-redeeming coupon valued at \$1.00, then the sales tax is based on \$4.00 ("gross proceeds") since the retailer only receives the \$4.00 from the customer;<sup>71</sup>

911 Surcharges billed by telephone companies to their customers;<sup>72</sup>

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<sup>64</sup> South Carolina Revenue Ruling #97-20.

<sup>65</sup> South Carolina Revenue Ruling #97-20.

<sup>66</sup> SC Regulation 117-310.

<sup>67</sup> SC Regulation 117-313.3.

<sup>68</sup> SC Regulation 117-318.6.

<sup>69</sup> SC Regulation 117-318.2.

<sup>70</sup> SC Regulation 117-318.7.

<sup>71</sup> South Carolina Revenue Ruling #99-9. As noted above in "Examples of Charges included in Gross Proceeds," payments received as a result of coupons from third parties, such as manufacturers, (where the retailer will receive a payment from a third party in addition to the payment from the customer) are includable in gross proceeds and subject to the tax.

<sup>72</sup> South Carolina Code §23-47-50(C), (F) & (G); South Carolina Code §§23-47-67 and 23-47-68; SC Revenue Ruling #19-8.

Dual Party Relay Charges billed by telephone companies to their customers;<sup>73</sup>

Universal Service Fund Surcharge billed by a Prepaid Wireless seller to its customer;<sup>74</sup> and

Sales Price of Returned Merchandise if the retailer refunds the purchaser the full sales price in cash or by credit.<sup>75</sup>

## **E. Gross Proceeds – Withdrawals for Use**

Gross proceeds also includes the fair market value<sup>76</sup> of tangible personal property previously purchased at wholesale which is withdrawn from the business or stock and used or consumed in connection with the business or used or consumed by any person withdrawing it.

Tangible personal property withdrawn from inventory and used or consumed in connection with the business or used or consumed by the person withdrawing it includes, but is not limited to, tangible personal property used by the business,<sup>77</sup> given to

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<sup>73</sup> South Carolina Code §58-9-2530(A); SC Revenue Ruling #19-8.

<sup>74</sup> South Carolina Code §58-9-280(E)(2)(d)(ii).

<sup>75</sup> SC Regulation 117-318.8.

<sup>76</sup> SC Regulation 117-309.17, concerning withdrawals from stock by merchants, states:

To be included in gross proceeds of sales is the money value of property purchased at wholesale for resale purposes and subsequently withdrawn from stock for use or consumption by the purchaser.

The value to be placed upon such goods is the price at which these goods are offered for sale by the person withdrawing them. All cash or other customary discounts which he would allow to his customers may be deducted; however, in no event can the amount used as gross proceeds of sales be less than the amount paid for the goods by the person making the withdrawal.

See also, *Colonial Stores, Inc. v. South Carolina Tax Commission*, 253 S.C. 14, 168 S.E.2d 774, 776 (1969), where the South Carolina Supreme Court stated:

That both parties regarded the premium merchandise as being acquired for use by Colonial rather than for resale and, hence, subject to a use tax is further evidenced by the fact that the tax was paid and collected on the basis of the cost of the premium merchandise to Colonial in accordance with Sec. [12-36-1310(A)] of the Code, rather than its reasonable market value. *A different rule of valuation applies where goods are purchased for resale but later withdrawn from stock and used by the taxpayer. In such case, the withdrawal is, in effect, treated as a sale at retail and the basis of valuation for tax purposes is "the reasonable and fair market value" of the tangible property withdrawn.* (Emphasis added)

<sup>77</sup> See South Carolina Revenue Ruling #15-1 concerning businesses that rent kayaks and paddle boards but also withdraw the same kayaks and paddle boards from inventory for use in conducting tours.

employees for their personal use, or given to employees to give away to customers or potential customers as a promotion<sup>78</sup> or for purposes of goodwill.

The imposition of the sales tax upon a withdrawal for use does not apply to:

- (i) withdrawal of tangible personal property previously withdrawn and taxed by such business or person;
- (ii) tangible personal property which becomes an ingredient or component part of tangible personal property manufactured or compounded for sale;
- (iii) tangible personal property replacing defective parts under written warranty contracts if:
  - (A) the warranty, maintenance, service, or similar contract is given without charge at the time of original purchase of the defective property,
  - (B) the tax was paid on the sale of the defective part or on the sale of the property of which the defective part was a component, and
  - (C) the warrantee is not charged for any labor or materials;
- (iv) an automobile furnished without charge to a high school for use solely in student driver training programs;
- (v) a new motor vehicle used by a dealer as a demonstrator.

Since a withdrawal, use, or consumption of tangible personal property purchased at wholesale each constitutes a “retail sale,” any one such event occurring in South Carolina constitutes a “retail sale” within South Carolina and is subject to the tax based on the fair market value of the tangible personal property that is withdrawn, used, or consumed in connection with the business or used or consumed by the person withdrawing it.

For example:<sup>79</sup>

- (1) If tangible personal property is withdrawn from inventory in South Carolina for use or consumption inside or outside of South Carolina, then the sales tax is due based on the fair market value of the tangible personal property since the withdrawal (“retail sale”) of the tangible personal property occurred within South Carolina.

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<sup>78</sup> See also, South Carolina Private Letter Ruling #11-5.

<sup>79</sup> See South Carolina Revenue Ruling #08-11.

- (2) If tangible personal property is withdrawn from inventory outside of South Carolina for use or consumption in South Carolina and then used and consumed in South Carolina, then the use tax is due based on the fair market value of the tangible personal property since the withdrawal outside of South Carolina constitutes a “purchase at retail” and the use or consumption of the tangible personal property occurred within South Carolina.

However, a credit under South Carolina Code §12-36-1310(C) will be allowed against the South Carolina use tax for any sales or use tax legally due and paid in the other state on the withdrawal occurring in that state.

- (3) If tangible personal property is transferred from inventory in South Carolina to an inventory outside of South Carolina where it will be held for sale, then no sales tax is due if any tangible personal property is subsequently withdrawn, used, or consumed outside of South Carolina since a withdrawal, use, or consumption (“retail sale”) of the tangible personal property has not occurred in South Carolina. If, however, any tangible personal property is subsequently withdrawn from the inventory outside of South Carolina for use or consumption in South Carolina, see item #2 above for guidance.
- (4) If tangible personal property is transferred from inventory outside of South Carolina to an inventory in South Carolina where it will be held for sale, then no sales tax is due until the tangible personal property is either sold at retail in South Carolina or is withdrawn, used, or consumed (“retail sale”) in South Carolina.

The following charts are intended to provide examples for most taxpayers who withdraw, use, or consume tangible personal property from inventory in connection with their business or who withdraw, use, or consume tangible personal property from inventory for their personal use.<sup>80</sup>

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<sup>80</sup> These charts are also included in South Carolina Revenue Ruling #08-11.

**Situation #1 – Employee’s Personal Use:** Tangible personal property has been purchased at wholesale by a wholesaler or retailer for resale to retailers or consumers. The tangible personal property will be stored in inventory at a distribution facility, warehouse, or retail facility. Some items in inventory will not be sold, but withdrawn from the inventory and sent to employees to personally use or consume. Examples include, but are not limited to, clothing, sporting equipment, or household items the employee will wear or use or consume.

Event in South Carolina	Event Outside of South Carolina	Taxability of Situation #1
The tangible personal property is withdrawn from inventory in South Carolina and given to or shipped to an employee in South Carolina for use or consumption either in South Carolina or outside of South Carolina.	None	The taxable event is the <u>withdrawal from inventory in South Carolina</u> and the <u>sales tax</u> is due based upon the fair market value of tangible personal property.
The tangible personal property is withdrawn from inventory in South Carolina and shipped to an employee outside of South Carolina.	The employee receives the tangible personal property outside of South Carolina and personally uses or consumes the tangible personal property either inside or outside of South Carolina.	The taxable event is the <u>withdrawal from inventory in South Carolina</u> and the <u>sales tax</u> is due based upon the fair market value of tangible personal property.
The employee receives the tangible personal property from an inventory located outside of South Carolina and personally uses or consumes the tangible personal property in South Carolina.	The tangible personal property is withdrawn from inventory outside of South Carolina and shipped to an employee in South Carolina.	The taxable event is the <u>use or consumption of the tangible personal property in South Carolina</u> and the <u>use tax</u> is due based upon the fair market value of tangible personal property. A credit under South Carolina Code §12-36-1310(C) will be allowed against the South Carolina use tax for any tax legally due and paid in the other state on the withdrawal in that state.

**Situation #2 – Sent to Employee to Give Away as Promotion: Tangible personal property has been purchased at wholesale by a wholesaler or retailer for resale to retailers or consumers. The tangible personal property will be stored in inventory at a distribution facility, warehouse, or retail facility. Some items in inventory will not be sold, but withdrawn from the inventory and sent to employees to give away free of charge to customers as a promotion. Examples include, but are not limited to, clothing, sporting equipment, or household items.**

Event in South Carolina	Event Outside of South Carolina	Taxability of Situation #2
<p>The tangible personal property is withdrawn from inventory in South Carolina and shipped to an employee in South Carolina to give away to a customer located either inside or outside of South Carolina as a promotion. The employee receives the tangible personal property and gives it away as a promotion to a customer for the customer to use or consume.</p>	<p>None</p>	<p>The taxable event is the <u>withdrawal from inventory in South Carolina</u> and the <u>sales tax</u> is due based upon the fair market value of tangible personal property.</p>
<p>The tangible personal property is withdrawn from inventory in South Carolina and shipped to an employee outside of South Carolina to give away to a customer located either inside or outside of South Carolina as a promotion.</p>	<p>The employee receives the tangible personal property outside of South Carolina and gives it away as a promotion to a customer located either inside or outside of South Carolina for the customer to use or consume inside or outside of South Carolina.</p>	<p>The taxable event is the <u>withdrawal from inventory in South Carolina</u> and the <u>sales tax</u> is due based upon the fair market value of tangible personal property.</p>
<p>The employee receives the tangible personal property from an inventory located outside of South Carolina and gives it away as a promotion to a customer in South Carolina for the customer to use or consume in South Carolina.</p>	<p>The tangible personal property is withdrawn from inventory outside of South Carolina and shipped to an employee in South Carolina to give away to a customer as a promotion.</p>	<p>The taxable event is the <u>use or consumption of the tangible personal property in South Carolina (when the employee gave it away to a customer as a promotion)</u> and the <u>use tax</u> is due based upon the fair market value of tangible personal property. A credit under South Carolina Code §12-36-1310(C) will be allowed against the South Carolina use tax for any tax legally due and paid in the other state on the withdrawal in that state.</p>



**Situation #3 – Sent to Employee to Sell, but Given Away as a Promotion: Tangible personal property has been purchased at wholesale by a wholesaler or retailer for resale to retailers or consumers. The tangible personal property will be stored in inventory at a distribution facility, warehouse, or retail facility. Some items in inventory are transferred from inventory in the store, warehouse, or distribution center to an employee outside of South Carolina. The employee maintains an inventory of tangible personal property for sale and has the authority to give away some inventory free of charge to customers as a promotion. Examples include, but are not limited to, clothing, sporting equipment, or household items.**

Event in South Carolina	Event Outside of South Carolina	Taxability of Situation #3
<p>The tangible personal property is transferred from inventory in the store or warehouse in South Carolina to an employee in South Carolina who maintains an inventory of tangible personal property for sale. The tangible personal property is withdrawn from the employee's inventory located in South Carolina and is given away as a promotion to a customer located either inside or outside of South Carolina for the customer to use or consume.</p>	<p>None</p>	<p>The taxable event is the <u>withdrawal from the employee's inventory in South Carolina</u> and the <u>sales tax</u> is due based upon the fair market value of tangible personal property.</p>
<p>The tangible personal property is transferred from inventory in the store or warehouse in South Carolina to an employee outside of South Carolina who maintains an inventory of the tangible personal property for sale.</p>	<p>The tangible personal property is withdrawn from the employee's inventory located outside of South Carolina and is given away as a promotion to an out-of-state customer for the customer to use or consume outside of South Carolina.</p>	<p>The taxable event is the <u>withdrawal from the employee's inventory outside of South Carolina</u>. Since the withdrawal, use, and consumption of the tangible personal property occurs outside of South Carolina, <u>no sales or use tax is due</u>.</p>
<p>The tangible personal property is withdrawn from the employee's inventory in South Carolina and is given away as a promotion to a customer located either inside or outside of South Carolina for the customer to use or consume inside or outside of South Carolina.</p>	<p>The tangible personal property is transferred from inventory in the store or warehouse outside of South Carolina to an employee in South Carolina who maintains an inventory of the tangible personal property for sale.</p>	<p>The taxable event is the <u>withdrawal from the employee's inventory in South Carolina</u> and the <u>sales tax</u> is due based upon the fair market value of tangible personal property.</p>

**Situation #4 – Sent to Employee to Show or Display as a Sample:** Tangible personal property has been purchased at wholesale by a wholesaler or retailer for resale to retailers or consumers. The tangible personal property will be stored in inventory at a distribution facility, warehouse, or retail facility. Some items in inventory will not be sold, but withdrawn from the inventory and sent to employees as a sample to show or display to customers; however, the sample will not be available for sale while being shown or displayed by the employee. Examples include, but are not limited to, clothing, sporting equipment, or household items.

Event in South Carolina	Event Outside of South Carolina	Taxability of Situation #4
The tangible personal property is withdrawn from inventory in South Carolina and shipped to an employee in South Carolina as a sample to show or display to customers located either inside or outside of South Carolina. The sample is not available for sale while being shown or displayed by the employee.	None	The taxable event is the <u>withdrawal from inventory in South Carolina</u> and the <u>sales tax</u> is due based upon the fair market value of tangible personal property. <sup>81</sup>
The tangible personal property is withdrawn from inventory in South Carolina and shipped to an employee outside of South Carolina as a sample to show or display to customers located either inside or outside of South Carolina.	The employee receives the tangible personal property outside of South Carolina and shows or displays the sample to customers located either inside or outside of South Carolina. The sample is not available for sale while being shown or displayed by the employee.	The taxable event is the <u>withdrawal from inventory in South Carolina</u> and the <u>sales tax</u> is due based upon the fair market value of tangible personal property. <sup>82</sup>
The employee receives the tangible personal property from an inventory located outside of South Carolina and shows or displays the sample to customers located either inside or outside of South Carolina. The sample is not available for sale while being shown or displayed by the employee.	The tangible personal property is withdrawn from inventory outside of South Carolina and shipped to an employee in South Carolina as a sample to show or display to customers located either inside or outside of South Carolina.	The taxable event is the <u>use, consumption or storage of the tangible personal property in South Carolina</u> and the <u>use tax</u> is due based upon the fair market value of tangible personal property. A credit under South Carolina Code §12-36-1310(C) will be allowed against the South Carolina use tax for any tax legally due and paid in the other state on the withdrawal, use or consumption in that state. <sup>83</sup>

<sup>81</sup> The sales tax is a transactional tax. The withdrawal from inventory is a transaction subject to the sales tax. If the sample is returned to the distribution facility, warehouse, or retail facility for sale, this sale is a second, separate and distinct transaction that is subject to the sales tax based on the discounted price provided the sale is a retail sale occurring in South Carolina.

<sup>82</sup> See SC Regulation 117-309.17.

<sup>83</sup> The sales tax and the use tax are transactional taxes. The use, storage, or consumption of the tangible personal property is a transaction subject to the use tax. If the sample is returned to the distribution facility, warehouse, or retail facility for sale, this sale is a second, separate and distinct transaction that is subject to the sales tax based on the discounted price provided the sale is a retail sale occurring in South Carolina.

**Situation #5 – Sent to Employee to Show or Display as a Sample:** Tangible personal property has been purchased at wholesale by a wholesaler or retailer for resale to retailers or consumers. The tangible personal property will be stored in inventory at a distribution facility, warehouse, or retail facility. Some items in inventory will not be sold, but withdrawn from the inventory and sent to employees as a sample to show or display to customers; however, the sample will be available for sale while being shown or displayed by the employee.<sup>84</sup> Examples include, but are not limited to, clothing, sporting equipment, or household items.

Event in South Carolina	Event Outside of South Carolina	Taxability of Situation #5
<p>The tangible personal property is shipped from the distribution facility, warehouse or retail facility in South Carolina to an employee in South Carolina as a sample to show or display to customers located either inside or outside of South Carolina. The sample is available for sale while being shown or displayed by the employee.</p>	<p>None</p>	<p>Since the sample is available for sale, it is not subject to the tax unless otherwise used or consumed by the employee or business in South Carolina or until sold at retail in South Carolina. If used or consumed in South Carolina, <u>the taxable event is the use or consumption in South Carolina</u> and the <u>sales tax</u> is due based upon the fair market value of tangible personal property. If <u>sold at retail in South Carolina</u>, the sales tax is due on the “gross proceeds” of the sale.<sup>85</sup></p>
<p>The tangible personal property is shipped from the distribution facility, warehouse or retail facility in South Carolina to an employee outside of South Carolina as a sample to show or display to customers located either inside or outside of South Carolina.</p>	<p>The employee receives the tangible personal property outside of South Carolina and shows or displays the sample to customers located either inside or outside of South Carolina. The sample is available for sale while being shown or displayed by the employee.</p>	<p>Since the sample is available for sale, it is not subject to the tax unless otherwise used or consumed by the employee or business in South Carolina or until sold at retail in South Carolina. If used or consumed in South Carolina, <u>the taxable event is the use or consumption in South Carolina</u> and the <u>sales tax</u> is due based upon the fair market value of tangible personal property. If <u>sold at retail in South Carolina</u>, the sales tax is due on the “gross proceeds” of the sale.<sup>86</sup></p>

<sup>84</sup> The determination that tangible personal property is available for sale while being shown or displayed by an employee will be based on the facts and circumstance as supported by the taxpayer’s records. Factors to consider in making this determination include but are not limited to, the taxpayer’s operational requirements or restrictions, whether the product is subsequently discounted when sold due to use, the employees’ history of selling or not selling the samples, etc. If the facts and circumstances and the taxpayer’s records do not support that the tangible personal property is available for sale, the Department will apply the tax as set forth in Scenario #4.

<sup>85</sup> See SC Regulation 117-309.17.

<sup>86</sup> See SC Regulation 117-309.17.

**Situation #5 – Sent to Employee to Show or Display as a Sample – Continued:**

Event in South Carolina	Event Outside of South Carolina	Taxability of Situation #5
<p>The employee receives the tangible personal property from outside of South Carolina and shows or displays the sample to customers located either inside or outside of South Carolina. The sample is available for sale while being shown or displayed by the employee.</p>	<p>The tangible personal property is shipped from the distribution facility, warehouse, or retail facility outside of South Carolina to an employee in South Carolina as a sample to show or display to customers located either inside or outside of South Carolina.</p>	<p>Since the sample is available for sale, it is not subject to the tax unless otherwise used or consumed by the employee or business in South Carolina or until sold at retail in South Carolina.</p> <p>If used or consumed in South Carolina, <u>the taxable event is the use or consumption in South Carolina</u> and the <u>use tax</u> is due based upon the fair market value of tangible personal property. A credit under South Carolina Code §12-36-1310(C) will be allowed against the South Carolina use tax for any tax legally due and paid in the other state on the withdrawal, use, or consumption in that state.</p> <p>If <u>sold at retail in South Carolina</u>, the <u>sales tax</u> is due on the “gross proceeds” of the sale.<sup>87</sup></p>

Note: In this Scenario #5, it states that tangible personal property sent to employees as a sample to show or display to customers is not subject to the tax if the sample is still available for sale while being shown or displayed by the employee, unless “otherwise used or consumed by the employee or business in South Carolina.” Examples of samples available for sales that are “otherwise used or consumed by the employee or business in South Carolina” include, but are not limited to: (1) an employee who shows or displays the sample but also demonstrates how the product is used such as demonstrating the effectiveness of a vacuum cleaner; (2) an employee who shows and displays the sample but gives it away to the customer as a promotion or an enticement to buy the product; and (3) an employee who shows or displays the sample but also uses a sample for his own personal use. The determination as to whether samples that are available for sale are “otherwise used or consumed by the employee or business in South Carolina” will be based on the facts and circumstances.

<sup>87</sup> See SC Regulation 117-309.17  
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## **F. Gross Proceeds – Promotional Items Provided to Customers for No Consideration, a Nominal Consideration, or an Amount Significantly Below Cost**

Where tangible personal property is purchased by a retailer for resale and is transferred from the retailer to a customer for no consideration, a nominal consideration, or an amount significantly below cost, the tangible personal property is considered a promotional item withdrawn from inventory and used or consumed by the retailer.

For example, if a retailer normally sells a cell phone for \$200, but a customer can purchase the cell phone for \$0.01 by exchanging a certain number of loyalty points, then the cell phone is considered a promotional item withdrawn from inventory and used or consumed by the retailer. Thus, the amount includable in gross proceeds is \$200, the fair market value of the cell phone.

The presumption that tangible personal property sold for an amount that is a nominal consideration, or an amount that is significantly below cost, is a promotional item withdrawn from inventory and used and consumed by the retailer may be rebuttable for clearance sales, end-of-season sales, fire sales, going-out-of-business sales, two-for-one sales, and other traditional store sales where the retailer can document that the transaction is a “true” sale and not a promotional give-away.<sup>88</sup>

## **G. Gross Proceeds – Withdrawals for Use in Rental Business**

SC Regulation 117-318.4 specifically addresses retailers that rent tangible personal property and also withdraw, use, or consume the same tangible personal property, and states:

Where a person customarily rents tangible personal property and customarily withdraws the same for his own use, storage or consumption, a tax is due by such person on each withdrawal for use, the tax to be measured by the amount he would customarily receive as rental had the property been leased or rented for a like period of time. In the alternative the tax may be paid on the full purchase price of the property and no further liability incurred on withdrawals for use. Having once elected either method of reporting on withdrawals for use, the taxpayer must so continue unless and until permission has been received from the department in writing to make a change. Regardless of the method selected for accounting for the tax on withdrawals for use, the tax is due on all amounts proceeding or accruing from the rental, lease or sale of the property.

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<sup>88</sup> See South Carolina Private Letter Ruling #11-5.

For example, if a business rents kayaks and paddle boards and also conducts tours using the same kayaks and paddle boards, then:

- a. The rentals of the kayaks and paddle boards by the business to customers are subject to the state sales and use tax, plus any applicable local sales and use tax.
- b. The use of the same kayaks and paddle boards in providing tours is a “withdrawal for use” subject to the state sales tax, plus any applicable local sales tax. The business may elect one of two methods to pay the tax on its withdrawals for use: (i) the business may purchase all its kayaks and paddle boards at retail by paying the tax to the seller at the time of purchase or remitting the use tax directly to the Department on its purchase of the kayaks and paddle boards and no further tax is due on any future withdrawal for use of the kayaks and paddle boards when used in providing a tour; or (ii) the business may purchase all its kayaks and paddle boards at wholesale (not subject to the tax) and remit the tax on the fair market rental value of a kayak or paddle board each time it is used in providing a tour.<sup>89</sup>

Therefore, if a business rents kayaks for \$20 per hour, then all such rentals are subject to the State sales and use tax, plus any applicable local sales and use tax. When the same kayak is also used in providing a tour that costs \$100 per hour, then the sales tax is due on \$20 of each \$100 as a “withdrawal for use” of the kayak for the tour. However, if the business had elected to remit the tax to the seller or directly to the Department at the time of its purchase of the kayaks and paddle boards, then no tax would be due on the subsequent “withdrawal for use” of the kayak for each tour.<sup>90</sup>

Note: As stated in the above regulation, “[h]aving once elected either method of reporting on withdrawals for use, the taxpayer must so continue unless and until permission has been received from the department in writing to make a change.”

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<sup>89</sup> As stated in SC Regulation 117-318.4, “[h]aving once elected either method of reporting on withdrawals for use, the taxpayer must so continue unless and until permission has been received from the department in writing to make a change.”

<sup>90</sup> See SC Revenue Ruling #15-1. This revenue ruling also provides guidance with respect to businesses that only rent kayaks and paddle boards and do not conduct tours and businesses that only conduct tours and do not rent kayaks and paddle boards.