

Chapter 8

Exclusions

If a transaction is excluded from the tax, it is not subject to sales and use tax in South Carolina. The exclusions are found in several sections of the sales and use tax statute and apply to a variety of transactions. While a transaction must squarely fall within the requirements of an exclusion in order for the tax not to apply, exclusions are liberally construed. In other words, if there is doubt as to whether a transaction falls within the requirements of an exclusion, the tax will not be imposed.

The following provides a list of the exclusions and a list of relevant court cases, regulations, and advisory opinions for each exclusion (if any). The list of court cases, regulations, and advisory opinions is not all-inclusive. The regulations and advisory opinions can be found via the Department's website (dor.sc.gov).

Caution: The exclusions below are briefly described. See the statute cited for the specific exclusion details. If a transaction does not squarely fall within the requirements of an exclusion statute and applicable regulations, the exclusion does not apply.

| <u>Code Section</u> | <u>Description</u> |
|---------------------|--|
| 12-36-60 | Transmission of computer database information by a cooperative service when assembled by and for the exclusive use of the members of the cooperative service. |
| 12-36-90(1)(c)(iii) | The withdrawal from inventory of tangible personal property for use in replacing a defective part under a written warranty contract if the warranty contract is given without charge at the time of original purchase of the defective property; 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 the warrantee is not charged for any labor or materials. |
| 12-36-90(2)(a) | A cash discount allowed and taken on sales. |
| 12-36-90(2)(b) | The sales price of property returned by customers when the full sales price is refunded in cash or by credit. <i>SC Regulation 117-318.8</i> |
| 12-36-90(2)(c) | The value allowed for secondhand property transferred to the vendor as a trade-in. |

| <u>Code Section</u> | <u>Description</u> |
|---------------------|--|
| 12-36-90(2)(d) | 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. <i>SC Revenue Ruling #20-4</i> |
| 12-36-90(2)(e) | A motor vehicle operated with a dealer, transporter, or manufacturer, or education license plate and used in accordance with the provisions of Section 56-3-2320 or 56-3-2330. |
| 12-36-90(2)(f) | That portion of a charge taxed under 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. |
| 12-36-90(2)(g) | 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. |
| 12-36-90(2)(h) | Sales of property that are actually charged off as bad debts or uncollectible accounts for state income tax purposes. <i>SC Revenue Ruling #13-4</i> |
| 12-36-90(2)(i) | Interest, fees, or charges imposed on a customer for late payment of a bill for electricity or natural gas. <i>SC Revenue Ruling #09-6¹</i> |
| 12-36-90(2)(j) | The environmental surcharge imposed pursuant to Section 44-56-430. |
| 12-36-90(2)(k) | The alcoholic liquor by the drink excise tax imposed by Section 12-33-245. |
| 12-36-90(2)(l) | Amounts received from a buydown. For purposes of this subitem, “buydown” means an agreement between a retailer and a manufacturer or wholesaler in which the retailer receives a payment from the manufacturer or wholesaler that requires the retailer to reduce the sales price of the manufacturer’s or wholesaler’s product to the retail purchaser. This subitem does not apply to amounts received by a retailer from a retail sales transaction in which a retail purchaser uses a manufacturer’s or wholesaler’s coupon. |

¹ This exclusion does not apply to charges imposed for a late payment of a bill for other items, such as cable television or telephone service.

| <u>Code Section</u> | <u>Description</u> |
|---------------------|--|
| 12-36-110(2) | <p>Sales of tangible personal property to a manufacturer or construction contractor when the property is partially or completely fabricated or manufactured in South Carolina by the manufacturer or construction contractor and transported out of state and assembled, installed, or erected at the out-of-state job site.</p> <p><i>SC Revenue Ruling #94-2</i></p> |
| 12-36-120(1) | <p>Sales of property to a licensed retailer or another wholesaler for resale. This does not include sales to users or consumers not for resale.</p> <p><i>SC Revenue Procedure #08-2</i></p> |
| 12-36-120(2) | <p>Sales of property to a manufacturer or compounder as an ingredient or component part of the tangible personal property or product manufactured or compounded for sale.</p> <p><i>SC Regulation 117-302.1</i></p> |
| 12-36-120(3) | <p>Sales of property “used directly” in manufacturing, compounding, or processing tangible personal property into products for sale. SC Regulation 117-302.1 provides property is “used directly” if it comes into direct contact with the product being manufactured and contributes to bring about a chemical or physical change in the product.</p> <p><i>SC Regulation 117-302.1; SC Revenue Ruling #21-9; SC Revenue Ruling #04-7; SC Revenue Ruling #91-19</i></p> |
| 12-36-120(4) | <p>Sales of materials, containers, cores, labels, sacks, or bags used incident to the sale and delivery of tangible personal property, or used by manufacturers, processors, and compounders in shipping tangible personal property.</p> <p><i>SC Regulation 117-302.2</i></p> |
| 12-36-120(5) | <p>Sales of food or drink products to licensed retail merchants for use as ingredients in preparing ready to eat food or drink sold at retail.</p> <p><i>SC Revenue Ruling #95-6</i></p> |

| <u>Code Section</u> | <u>Description</u> |
|---------------------|--|
| 12-36-140(C)(1) | Purchases of tangible personal property from outside the state and transported to South Carolina for storage and for the exclusive purpose of subsequently transporting it outside of South Carolina for first use outside of South Carolina. ² <i>SC Revenue Ruling #09-17</i> |
| 12-36-140(C)(2) | Purchases of tangible personal property from outside the state and transported to South Carolina for the purpose of first being manufactured, processed, or compounded into other tangible personal property that will be transported and used solely outside of South Carolina. ³ <i>SC Revenue Ruling #09-17</i> |
| 12-36-140(C)(3) | Purchases of tangible personal property for the purpose of being distributed as cooperative direct mail promotional advertising materials by means of interstate carrier, a mailing house, or a United States Post Office to residents of this State from locations both inside and outside the state. ⁴ |
| 12-36-910(C) | Charges for, or use of, certain data processing ⁵ <i>SC Regulation 117-329; South Carolina Revenue Ruling #17-2; South Carolina Private Letter Ruling #13-1; South Carolina Private Letter Ruling #12-2; South Carolina Private Letter Ruling #04-1</i> |

² This exclusion only applies to the use tax. If the transaction in question is a sales tax transaction, this exclusion does not apply. See SC Regulation 117-334 for information on the shipment of goods into South Carolina and when the transaction is a use tax transaction and when it is a sales tax transaction.

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⁵ South Carolina Code §12-36-910(C) defines “data processing” as “the manipulation of information furnished by a customer through all or part of a series of operations involving an interaction of procedures, processes, methods, personnel, and computers. It also means the electronic transfer of or access to that information. Examples of the processing include, without limitation, summarizing, computing, extracting, storing, retrieving, sorting, sequencing, and the use of computers.”