

7. SALES AND USE TAX GENERAL PROVISIONS

1. STATE SALES AND USE TAX RATES

South Carolina Code §§12-36-910(A) and 12-36-1110 impose a 6% sales tax on the gross proceeds of sales of every person engaged in the business of selling tangible personal property at retail. The retailer is liable for the tax. The sales tax is also imposed on the fair market value of items originally purchased at wholesale that are withdrawn for use by the business or by any person withdrawing the property. See South Carolina Code §12-36-110(c)(1) and South Carolina Revenue Ruling #08-11.

South Carolina Code §§12-36-1310(A) and 12-36-1110 impose a 6% use tax on the sales price of tangible personal property purchased at retail for storage, use, or other consumption in South Carolina, regardless of whether the retailer is engaged in business in South Carolina. The use tax is the liability of the purchaser under South Carolina Code §12-36-1330. If the purchaser; however, has a receipt from a seller required or authorized to collect the state use tax showing the seller has collected the tax from the purchaser, the purchaser is relieved of the liability for the tax. South Carolina allows a credit against the use tax due in South Carolina for the state and local sales or use tax due and paid in another state on purchases of tangible personal property. See South Carolina Revenue Ruling #08-6.

In addition to applying to tangible personal property (*e.g.*, furniture, clothing, computers, etc.), the sales and use taxes also apply to specific services and intangibles, such as laundry and dry cleaning services, electricity, and certain communication services. It also applies to the fair market value of tangible personal property manufactured within South Carolina or brought into South Carolina by its manufacturer for storage, use, or consumption in South Carolina by the manufacturer.

South Carolina Code §12-36-920(A) imposes a 7% sales tax on charges for any rooms, lodgings, or sleeping accommodations for less than 90 days to the same person.

South Carolina Code §§12-36-920(B) and 12-36-1110 impose a 6% sales tax on “additional guest charges” added to the guest’s room charge for (1) room service, (2) laundering and dry cleaning services, (3) in-room movies, (4) telephone service, and (5) rentals of meeting rooms. For more information, see South Carolina Revenue Ruling #13-2, South Carolina Revenue Ruling #14-5, South Carolina Revenue Ruling #14-7, and South Carolina Revenue Ruling #15-4.

2. LOCAL SALES AND USE TAXES

Local governments have limited authority to levy local taxes and fees. A local governing body may not impose a new tax unless specifically authorized by the General Assembly. As explained below, local sales and use taxes may be imposed for various purposes. The majority of these taxes are administered and collected by the Department in the same manner as the state sales and use taxes.¹ Below is a brief description of the local taxes.

a. Local Taxes Administered by the Department

- ◆ General Property Tax Relief. Counties have the option of increasing the sales, use, and accommodations tax rate by 1% to provide additional revenue for local governments and a property tax rollback.² The tax must be approved by voter referendum and is typically referred to as the “local option sales tax.”
- ◆ Local Sales and Use Tax for Transportation Facilities. A governing body of a county may raise revenue for a transportation project by either imposing a sales and use tax up to 1% or by authorizing a transportation authority created by the county governing body to impose tolls.³ The increase is imposed by enacting an ordinance, subject to approval by voter referendum, and must be for a specific period of time to collect a limited amount of money. At no time may any portion of the county area be subject to both the local sales and use tax for transportation facilities and the capital project sales tax (discussed below).
- ◆ Capital Project Sales Tax. A governing body of a county may impose a 1% sales and use tax to defray the debt service on bonds issued to pay for authorized capital projects.⁴ The increase is imposed by enacting an ordinance, subject to approval by voter referendum. At no time may any portion of the county area be subject to both the capital project sales tax and the local sales and use tax for transportation facilities (discussed above). It may not be imposed for more than 8 years for newly imposed taxes or 7 years for reimposed taxes.

¹ Note: Sales of unprepared food are only exempt from a local sales and use tax if the local sales and use tax law specifically exempts such sales. For information, on the exemption for sales of unprepared food from local sales and use taxes, see the discussion below entitled “Exemption for Certain Food Sales” and South Carolina IL #15-12 effective October 1, 2015.

² South Carolina Code §4-10-20.

³ South Carolina Code §4-37-30.

⁴ South Carolina Code §4-10-300.

- ◆ Personal Property Tax Relief. The county council may impose, by referendum, a local sales and use tax in lieu of the personal property tax imposed on private passenger motor vehicles, motorcycles, general aviation aircraft, boats, and boat motors.⁵ The tax may not exceed the lesser of 2% or the amount necessary to replace the property tax on these items in the most recently completed fiscal year. Currently, this tax is not being imposed.

- ◆ School District Taxes. The General Assembly has authorized certain school districts to impose a sales and use tax within the county. These taxes are generally imposed to pay debt service on general obligation bonds and/or the cost of capital improvements for school districts. Most of these taxes are imposed at a rate of 1%. Currently, only 8 of the 20 school district taxes that have been authorized by the General Assembly are being imposed.

- ◆ Catawba Tribal Sales and Use Tax. The Catawba Indian Reservation is located in Lancaster and York counties. South Carolina Code §27-16-130(H) contains the specific sales and use tax provisions relating to the Catawba Tribal Sales and Use Tax. The tribal sales tax is administered and collected by the Department and the tribal use tax is administered and collected by the tribe.⁶ For more information concerning the Catawba Tribal Sales and Use Tax, see Chapter 18 of the Sales and Use Tax Manual.

- ◆ Local Option Sales and Use Tax for Local Property Tax Credit. The governing body of the county, by a county council ordinance or by an initiated ordinance submitted to the governing body of the county by a petition signed by at least 7% of the qualified electors of the county, may impose a sales and use tax in increments of one-tenth of 1%, not to exceed 1%, subject to referendum approval.⁷ The tax provides a credit against property tax imposed by a political subdivision. Currently, this tax is not being imposed.

- ◆ Education Capital Improvements Sales and Use Tax. The General Assembly has authorized a school district or school districts within a county to impose a 1% sales and use tax within the county for specific education capital improvements for the school district for not more than 15 years.⁸ The tax must be approved by a referendum open to all qualified electors residing in the county. Pursuant to a memorandum of agreement, a portion of the revenue may be shared with the area commission (governing body of a technical college) or higher education board of trustees (governing body of a public

⁵ South Carolina Code §4-10-540.

⁶ See South Carolina Revenue Ruling #98-18 and South Carolina Information Letter #15-12, Note 13 for additional information.

⁷ South Carolina Code §§4-10-720 through 4-10-810.

⁸ South Carolina Code §§4-10-410 through 4-10-470 (Act No. 316 of 2008).

institution of higher learning) or both, for specific education capital improvements on the campus of the recipient located in the county listed in the referendum. The General Assembly has established several criteria that, if met, will allow a county or school district to impose this tax. The county or school district must meet only one of these criteria in order in to impose the tax.⁹ This tax may not be imposed in a county that is imposing or is scheduled to impose a local sales and use tax for public school capital improvements.

- ◆ **Tourism Development Tax**: The governing body of a municipality, by an ordinance adopted by a two-thirds majority of the municipal council or by approval by a majority of qualified electors voting in a referendum authorized by a majority of the municipal council, may impose a general sales and use tax within the municipality.¹⁰ The tax is imposed specifically for tourism advertisement and promotion directed at non-South Carolina residents; however, in the second and subsequent years of this tax a portion of the tax may be used for certain property tax rollbacks and other purposes. It may only be imposed by a municipality located in a county where revenue from the state accommodations tax is at least fourteen million dollars in a fiscal year. As of this date, only Horry County meets this criterion; therefore, only municipalities in Horry County may impose this tax. Currently, only the City of Myrtle Beach imposes this tax.

See South Carolina Information Letter #15-12, for a complete listing of local taxes administered by the Department as of October 1, 2015.

b. Local Taxes Administered by Local Governments

- ◆ **Local Accommodations Tax**. The governing body of a county or municipality may impose, by ordinance, a local accommodations tax, on the gross proceeds derived from the rental or charges for accommodations furnished to transients as provided in South Carolina Code §12-36-920(A), not to exceed 3%.¹¹ The revenue generated by this additional tax must be used exclusively for certain tourism purposes.
- ◆ **Local Hospitality Tax**. The governing body of a county or municipality may impose, by ordinance, a tax on the sales of prepared meals and beverages sold in establishments, or sales of prepared meals and beverages sold in establishments licensed for on-premises consumption of alcoholic beverages, beer, or wine.¹² The tax may not exceed 2% of the charges for food and beverages.

⁹ South Carolina Code §4-10-470.

¹⁰ South Carolina Code §§4-10-910 through 4-10-970 (Act No. 3 of 2009 and Act No. 130 of 2010).

¹¹ South Carolina Code §6-1-500.

¹² South Carolina Code §6-1-700.

3. NEXUS

Nexus is a sufficient connection between a person and a state, and a sufficient connection between an activity, property, or transaction and a state, that allows the state to subject the person, and the activity, property, or transaction to its taxing jurisdiction. The Due Process and Commerce Clauses of the United States Constitution and other federal statutes provide limitations on a state's powers to tax out of state corporations. Retailers that have nexus with South Carolina must remit the sales tax or use tax with respect to all sales at retail (not otherwise exempt) of tangible personal property in South Carolina.

Over the years, the courts have provided limitations and guidelines in determining whether certain activities create nexus in a taxing state. For example, see *Quill Corp. v. North Dakota*, 502 U.S. 808 (1992), *Complete Auto Transit, Inc. v. Brady*, 430 U.S. 274 (1977), *Miller Brothers v. Maryland*, 347 U.S. 340 (1954), *Scripto, Inc. v. Carson*, 362 U.S. 207 (1960), *National Bellas Hess, Inc. v. Department of Revenue*, 386 U.S. 753 (1967), *Helicopteros Nacionales de Columbia, S.A. v. Hall*, 104 S. Ct.1868 (1984), and *National Geographic Society v. California Bd. of Equal*, 430 U.S. 551 (1977).

South Carolina Revenue Ruling #14-4 provides guidance concerning sales and use tax nexus creating activities. It addresses types of business activities or relationships that, by themselves, may or may not create sales and use tax nexus. Activities that create nexus for sales and use tax purposes differ somewhat from those that create nexus for other tax purposes. The following categories of nexus creating activities are discussed:

1. General Activities
2. Property in South Carolina
3. Activities of an Employee or Third Party (e.g., Sales Representative, Independent Contractor or Affiliated Company)
4. Delivery
5. Transactions with South Carolina Printers
6. Advertising
7. Other Issues

See Appendix II for a summary of the Department's responses to sales and use tax nexus creating questions contained in South Carolina Revenue Ruling #14-4.

NOTE: Since developments in this area are constantly taking place, any response is subject to change due to a future statute, regulation, court decision, or advisory opinion.

4. 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. The following briefly describes South Carolina’s sales and use tax exclusions.

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 exclusions statute and applicable regulations, the exclusion does not apply.

Code Section	Description
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 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)(h)	Sales of property that are actually charged off as bad debts or uncollectible accounts for state income tax purposes
12-36-90(2)(i)	Interest, fees, or charges imposed on a customer for late payment of a bill for electricity or natural gas
12-36-110(2)	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
12-36-120(1)	Sales of property to a licensed retailer or another wholesaler for resale. This does not include sales to users or consumers not for resale.

Code Section	Description
12-36-120(2)	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
12-36-120(3)	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.
12-36-120(4)	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
12-36-120(5)	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
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. (Applies to use tax)
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. (Applies to use tax)
12-36-140(C)(3)	Purchases of tangible personal property for the purpose of being distributed as (1) cooperative direct mail promotional advertising materials, or (2) promotional maps, brochures, pamphlets, or discount coupons by nonprofit chambers of commerce or convention and visitor bureaus who are exempt from income taxation pursuant to Internal Revenue Code § 501(c) by means of interstate carrier, a mailing house, or a United State Post Office to residents of this State from locations both inside and outside the state. (Applies to use tax)

Code Section	Description
12-36-910(C)	Charges for or use of certain data processing

5. PARTIAL EXEMPTIONS

There are two types of exemptions provided under South Carolina’s sales and use tax law: (1) partial exemptions, and (2) full exemptions.

Partial exemptions limit or “cap” the amount of tax.¹³ The local sales and use taxes collected by the Department do not apply to sales that are subject to a cap.

A maximum tax of \$300 is imposed on sales of the following:¹⁴

- Aircraft – including unassembled aircraft assembled by the purchaser
- Motor vehicles – including equipment supplied or installed on a firefighting vehicle at the time of purchase¹⁵
- Motorcycles
- Boats, including personal watercrafts such as jet skis
- Trailers and semi-trailers that can be pulled only by a truck tractor. This does not include house trailers and campers as defined in South Carolina Code §56-3-710.¹⁶
- Horse trailers. This does not include house trailers and campers as defined in South Carolina Code §56-3-710.
- Recreational vehicles, including tent campers, travel trailers, park trailers, motor homes and fifth wheels
- Self-propelled light construction equipment with compatible attachments. The equipment’s net engine horse power must not exceed 160.
- Fire safety education trailers

¹³ South Carolina Code §12-36-2110.

¹⁴ South Carolina Code §12-36-2110(A).

¹⁵ South Carolina Code §12-36-2110(E).

¹⁶ Sales of utility trailers that are capable of being pulled by an automobile, minivan, or pick-up truck, and that are not recreational vehicles, fire safety education trailers or horse trailers, are not eligible for the \$300 maximum tax. See SC Revenue Ruling #14-2.

The cap also applies to leases of the above items provided the lease is in writing and the lease has a stated term and remains in force for a period in excess of 90 continuous days. The taxpayer may pay the total tax due at the time the lease is executed or by installments with each lease payment until the \$300 is paid.

Also, a maximum tax of \$300 is imposed on sales of musical instruments or office equipment sold to religious organizations.¹⁷

Further, the sale of a manufactured home is subject to a maximum tax of \$300 if the home meets or exceeds certain energy efficient requirements specifically outlined in the law.¹⁸ If the home does not meet these energy efficient requirements, the sale of the home is subject to a maximum tax of \$300 plus 2% of the taxable basis or measure that exceeds \$6,000.¹⁹ Finally, the sale of a manufactured homes from July 1, 2009 through July 1, 2019, will be exempt from the entire tax if the manufactured home has been designated by the United States Environmental Protection Agency and the United States Department of Energy as meeting or exceeding each agency's energy saving efficiency requirements or has been designated as meeting or exceeding such requirements under each agency's ENERGY STAR program.²⁰

6. FULL EXEMPTIONS

Although it may be determined that a transaction is subject to sales and use tax, a particular exemption in the statute may exempt it from sales and use tax in South Carolina. South Carolina Code §§12-36-2120 and 12-36-2130 contain numerous full exemptions. The local sales and use taxes collected by the Department do not apply to sales which are exempt from the state sales and use tax.²¹

The following briefly describes South Carolina's sales and use tax exemptions. For purposes of this discussion, South Carolina's full exemptions are divided into the following categories:

- Government Related Exemptions

¹⁷ South Carolina Code §12-36-2110(C).

¹⁸ South Carolina Code §§12-36-2110(B) and 12-36-2120(34).

¹⁹ South Carolina Code §§12-36-2110(B) and 12-36-2120(34).

²⁰ South Carolina Code §§12-36-2110(B) and 12-36-2120(34). See Act No. 354 of 2008.

²¹ All sales and purchases exempt from the state sales and use tax under South Carolina Code §§12-36-2120 and 12-36-2130 are exempt from local sales and use tax administered and collected by the Department on behalf of local jurisdictions, except for sales of unprepared food under South Carolina Code §12-36-2120(75). South Carolina Code §12-36-2120(75) specifically states that the exemption for unprepared food only applies to the state sales and use tax. Therefore, such sales are subject to local sales and use taxes unless the local sales and use tax specifically exempt's sales of unprepared food. See SC Regulation 117-337 and South Carolina Information Letter #14-5.

- Business Related Exemptions
- Agricultural Exemptions
- Educational Exemptions
- General Public Good Exemptions
- Alternative Energy Exemptions

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

Government Related Exemptions

Code Section	Description
12-36-2120(1)	Transactions that are prohibited from being taxed by United States or State Constitutional provisions or federal or state law
12-36-2120(2)	Sales to the federal government
12-36-2120(22)	Material necessary to assemble missiles
12-36-2120(25)	Sales of cars and motorcycles to nonresident military personnel
12-36-2120(29)	Federal government contracts – property that passes to the government
12-36-2120(30)	Supplies purchased by the State General Services Division for resale to State agencies
12-36-2120(46)	War memorials and monuments
12-36-2120(48)	Solid waste disposal collection bags required under a solid waste disposal plan of a county or other political subdivision
12-36-2120(60)	Lottery tickets sold pursuant to Chapter 150 of Title 59 (South Carolina Education Lottery Act)

Code Section	Description
12-36-2120(61)	Copies of, or access to, legislation or other informational documents provided to the general public or any other person by a legislative agency when a charge for these copies is made reflecting the agency's cost of the copies
12-36-2120(68)	Any property sold to the public through a sheriff's sale as provided by law

Business Related Exemptions

12-36-2120(9)	Coal, coke, or other fuel for manufacturers, transportation companies, electric power companies, and processors Fuel used by an aircraft manufacturer for test flights or for transportation of an aircraft prior to completion from one facility to another facility if the aircraft manufacturer invests at least \$750 million and creates at least 3,800 full-time jobs over a seven year period. This exemption became effective November 1, 2009 and required that a notice be filed with the Department prior to October 31, 2015 in order for the taxpayer to qualify for the exemption. This exemption continues to be available to eligible taxpayers who notified the Department prior to October 31, 2015.
12-36-2120(11)	Toll charges between telephone exchanges, certain access charges, charges for telegraph messages and automatic teller machine transactions
12-36-2120(13)	Fuel and other supplies for consumption on ships on the high seas
12-36-2120(14)	Wrapping paper, containers, etc., used incident to the sale and delivery of tangible personal property
12-36-2120(15)	Motor fuel taxed under the motor fuel user fee law
12-36-2120(17)	Machines used in manufacturing, processing, recycling, compounding, mining or quarrying tangible personal property for sale. This includes certain machines used to prevent or abate air, water or noise pollution caused by machines used in manufacturing, processing, recycling, compounding, mining or quarrying tangible personal property for sale.

Code Section	Description
12-36-2120(19)	Electricity used to manufacture, process, mine, or quarry tangible personal property for sale or used by cotton gins to manufacture tangible personal property for sale
12-36-2120(20)	Railcars and locomotives
12-36-2120(21)	Certain vessels and barges (more than 50 tons burden)
12-36-2120(24)	Laundry supplies and machinery. This exemption does not apply to coin operated laundromats. ²²
12-36-2120(31)	Vacation time sharing plans and exchange of accommodations in which the accommodation to be exchanged is the primary consideration
12-36-2120(34)	50% of the gross proceeds of a modular home regulated under Chapter 43 of Title 23
12-36-2120(35)	Movies sold or rented to movie theatres
12-36-2120(36)	Tangible personal property delivered out of state by South Carolina retailers
12-36-2120(37)	Petroleum asphalt products transported and used outside South Carolina
12-36-2120(40)	Shipping containers used by international shipping lines under contract with the State Ports Authority
12-36-2120(42)	Depreciable assets sold as part of the sale of an entire business
12-36-2120(43)	Supplies, equipment, machinery and electricity for use in filming/producing motion pictures
12-36-2120(49)	Postage purchased by a person engaged in the business of selling advertising services for clients consisting of mailing advertising material through the United States mail

²² A coin-operated laundromat machine includes any laundromat machine operated by a slot in which is deposited or placed a coin, token, debit card, or other thing of value so as to begin operation of the machine for the purposes of laundering, cleaning, or drying clothing and other textiles.

Code Section	Description
12-36-2120(50)	The following items when used by a qualified recycling facility: recycling property, electricity, natural gas, fuels, gasses, fluids and lubricants, ingredients or component parts of manufactured products, property used for the handling or transfer of postconsumer waste or manufactured products or in or for the manufacturing process, and machinery and equipment foundations ²³
12-36-2120(51)	Material handling systems and material handling equipment used in the operation of a distribution facility or a manufacturing facility of a taxpayer that invests at least \$35 million in South Carolina
12-36-2120(52)	Parts and supplies used by persons engaged in the business of repairing or reconditioning aircraft. This exemption does not extend to tools and other equipment not attached to or that do not become a part of the aircraft (Effective January 1, 2016).
12-36-2120(53)	Motor vehicle extended service and warranty contracts
12-36-2120(54)	Clothing and other attire required for working in a class 100 or better clean room environment (as defined in Federal Standard 209E)
12-36-2120(55)	Audiovisual masters made or used by a production company
12-36-2120(56)	Machines used in research and development
12-36-2120(58)	Cooperative direct mail promotional advertising materials and promotional maps, brochures, pamphlets, or discount coupons for use by nonprofit chambers of commerce or nonprofit convention and visitor bureaus
12-36-2120(59)	Facilities transmitting electricity that are transferred, sold or exchanged by an electrical utility, municipality, electric cooperative, or political subdivision to a limited liability company subject to regulation under the Federal Power Act and formed to operate or to take functional control of electric transmission assets

²³ See South Carolina Code §12-6-3460 for the definitions of “qualified recycling facility,” “recycling property,” and “post-consumer waste material.”

Code Section	Description
12-36-2120(62)	70% of the gross proceeds of the rental or lease of portable toilets
12-36-2120(64)	Sweetgrass baskets made by artists of South Carolina using locally grown sweetgrass
12-36-2120(65) and 12-36-2120(66)	<p>Computer equipment used in connection with, and electricity and certain fuel used by, a technology intensive facility (defined in South Carolina Code §12-6-3360(M)(14)(b)) that invests \$300 million over 5 years, creates at least 100 new jobs during the 5 years with an average cash compensation of 150% of the per capita income of the State, and spends at least 60% of the \$300 million investment on computer equipment</p> <p>Computer equipment used in connection with a manufacturing facility that invests at least \$750 million and creates at least 3,800 full-time new jobs at the facility over a 7 year period. This exemption became effective November 1, 2009 and required that a notice be filed with the Department prior to October 31, 2015 in order for the taxpayer to qualify for the exemption. This exemption continues to be available to eligible taxpayers who notified the Department prior to October 31, 2015.</p>
12-36-2120(67)	<p>Construction material used in the construction of a single manufacturing or distribution facility, or one that is both, that invests at least \$100 million at a single site in South Carolina over an 18 month period.</p> <p>Construction material used in the construction of a new or expanded single manufacturing facility that invests at least \$750 million and creates at least 3,800 full-time new jobs at the facility over a 7 year period. This exemption became effective November 1, 2009 and required that a notice be filed with the Department prior to October 31, 2015 in order for the taxpayer to qualify for the exemption. This exemption continues to be available to eligible taxpayers who notified the Department prior to October 31, 2015.</p>

Code Section	Description
12-36-2120(70)	Gold, silver or platinum bullion or any combination; coins that are or have been legal tender; and currency
12-36-2120(73)	Amusement park rides; parts, machinery and equipment used to assemble, operate and make up amusement park rides; and performance venue facilities and any related or required machinery, equipment and fixtures. A \$250 million investment and creation of 250 full-time jobs and 500 part-time or seasonal jobs over a 5 year period is required.
12-36-2120(78)	Machinery and equipment, building and other raw materials, and electricity used in the operation of a facility owned by an organization which qualifies as a tax exempt organization pursuant to the Internal Revenue Code Section 501(c)(3) when the facility is principally used for researching and testing the impact of such natural hazards as wind, fire, water, earthquake, and hail on building materials used in residential, commercial, and agricultural buildings. A \$20 million in real or personal property at a single site in this State over a 3 year period is required.
12-36-2120(79)	Computers, computer equipment, and computer software used within a datacenter, and electricity used by a datacenter or used by eligible business property located and used at a datacenter where the taxpayer: (1) invests at least \$50 million in real or personal property or both over a 5 year period; or, if more than one taxpayer, invests a minimum aggregate capital investment of at least \$75 million in real or personal property or both over a 5 year period; (2) creates and maintains at least 25 full-time jobs at the facility with an average cash compensation level of 150% of the per capita income of South Carolina or of the county in which the facility is located; and (3) maintains the jobs requirement for 3 consecutive years after certification by the Department of Commerce. This exemption only applies to a datacenter that is certified by the Department of Commerce prior to January 1, 2032 as meeting the investment and job requirements. However, for datacenters certified by December 31, 2031, this exemption will remain in effect for an additional ten year period.

Code Section	Description
12-62-30	Tangible personal property purchased by a certified motion picture production company for use in connection with the filming or production of motion pictures in South Carolina for a company planning to spend at least \$250,000 in connection with the filming or production of one or more motion pictures in South Carolina within a consecutive 12 month period. This provision does not apply to: (a) local sales tax levied and collected directly by a local governmental subdivision or (b) the production of television coverage of news and athletic events.

Agricultural Exemptions

Code Section	Description
12-36-2120(4)	Livestock
12-36-2120(5)	Feed used to produce and maintain livestock
12-36-2120(6)	Insecticides, chemicals, fertilizers, soil conditioners, seeds, seedlings or nursery stock used in the production of farm products
12-36-2120(7)	Containers and labels used in preparing agriculture products for sale or preparing turpentine gum, gum resin and gum spirits of turpentine for sale
12-36-2120(16)	Farm machinery
12-36-2120(18)	Fuel used to cure agriculture products
12-36-2120(23)	Farm products sold in their original state of production when sold by the producer
12-36-2120(32)	Electricity and gas used in the production of livestock and milk
12-36-2120(44)	Electricity used to irrigate crops
12-36-2120(45)	Building materials, supplies, fixtures and equipment used to construct commercial housing for poultry or livestock

Educational Exemptions

Code Section	Description
12-36-2120(3)	Textbooks, books, magazines, periodicals, newspapers and access to online information used in a course of study or for use in a school or public library. These items may be in printed form or in alternative forms such as microfilm or CD ROM. Certain communication services and equipment subject to tax under South Carolina Code §§12-36-910(B)(3) and 12-36-1310(B)(3) are not exempt.
12-36-2120(8)	Newspapers, newsprint paper and South Carolina Department of Agriculture Market Bulletin ²⁴
12-36-2120(10)(a)	Meals or food used in furnishing meals to students in schools (not for profit)
12-36-2120(26)	Television, radio and cable TV supplies, equipment, machinery, and electricity
12-36-2120(27)	Zoo plants and animals
12-36-2130(2)	Exhibition rentals for museums (charitable, eleemosynary or governmental museums) (use tax only) ²⁵
Temporary Proviso 117.37, (Act 91 of 2015)	Purchases of tangible personal property during the state fiscal year 2015-2016 for use in private primary and secondary schools, including kindergarten and early childhood education programs, are exempt from the <u>use tax</u> if the school is exempt from income taxes under Internal Revenue Code §501(c)(3) ²⁶

²⁴ This exemption also states that sales of religious publications (e.g., The Bible, hymnals) are exempt; however, the South Carolina Supreme Court held in *Thayer v. South Carolina Tax Commission*, 307 S.C. 6, 413 S.E.2d 810 (1992), that the exemption for religious publications was unconstitutional. Therefore, sales of religious publications are subject to the sales and use tax, unless otherwise exempt under the law. For more information, see South Carolina Information Letter #92-8.

²⁵ This exemption only applies to the use tax. If the transaction in question is a sales tax transaction, this exemption does not apply. See SC Regulation 117-334 for information on when a transaction is a sales tax transaction and when it is a use tax transaction.

General Public Good Exemptions

Code Section	Description
12-36-2120(10)(b)	Meals provided to elderly or disabled persons at home by nonprofit organizations
12-36-2120(10)(c)	Food sold to nonprofit organizations or food sold or donated by the nonprofit organization to another nonprofit organization
12-36-2120(10)(d)	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.
12-36-2120(12)	Water sold by public utilities and certain non-profit corporations
12-36-2120(28)	Medicine and prosthetic devices sold by prescription; certain diabetic supplies sold to diabetics under the written authorization and direction of a physician; certain free samples of medicine and certain medicine donated to hospitals; prescription medicine and radiopharmaceuticals used in treating cancer or rheumatoid arthritis, including prescription medicines to relieve the effects of treatment; prescription medicines used to prevent respiratory syncytial virus; disposable medical supplies, such as bags, tubing, needles, and syringes, dispensed by a pharmacist by prescription of a licensed health care provider for the intravenous administration of a prescription drug (only for treatment outside of a hospital, skilled nursing facility, or ambulatory surgical treatment center); and prescription medicine dispensed to Medicare Part A patients in a nursing home.

²⁶ This exemption only applies to the use tax. If the transaction in question is a sales tax transaction, this exemption does not apply. See SC Regulation 117-334 for information on when a transaction is a sales tax transaction and when it is a use tax transaction.

Code Section	Description
12-36-2120(33)	Residential electricity and fuel
12-36-2120(38)	Hearing aids
12-36-2120(39)	Concession sales by nonprofit organizations at festivals
12-36-2120(41)	Sales by nonprofit organizations
12-36-2120(47)	Goods sold to nonprofit hospitals that primarily treat children at no cost to the patient
12-36-2120(57)	Annual sales tax holiday on the first Friday, Saturday, and Sunday in August for personal use clothing, clothing accessories, footwear, computers, printers, printer supplies, computer software, bath wash cloths, blankets, bed spreads, bed linens, sheet sets, comforter sets, bath towels, shower curtains, bath rugs, pillows, pillow cases, and school supplies
12-36-2120(63)	Medicine and medical supplies, including diabetic supplies and diabetic diagnostic and testing equipment, sold to a health care clinic providing free medical and dental care to all patients
12-36-2120(74)	Durable medical equipment and related supplies as defined under federal and state Medicare and Medicaid laws if (a) paid directly by funds of South Carolina or the United States under the Medicare and Medicaid programs, (b) state and federal law prohibits the payment of the sales and use tax, and (c) the sale is by a provider with a South Carolina retail license whose principal place of business is in South Carolina. This exemption was phased in over several years and became fully implemented effective January 1, 2013.
12-36-2120(75)	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.

Code Section	Description
12-36-2120(76)	This exemption for a sales tax holiday for handguns, rifles, and shotguns was ruled unconstitutional by the Supreme Court of South Carolina ²⁷
12-36-2120(77)	This exemption for certain energy efficient products was ruled unconstitutional by the Supreme Court of South Carolina ²⁸
12-36-2120(80)	Injectable medications and injectable biologics, so long as the medication or biologic is 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. 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. ²⁹
12-36-2120(81)	Construction material used by an entity organized under IRS Section 501(c)(3) as a nonprofit corporation to build, rehabilitate, or repair a home for the benefit of an individual or family in need. An “individual or family in need” means an individual or family, as applicable, whose income is less than or equal to 80% of the county median income (Effective January 1, 2016).

²⁷ On May 4, 2009, the Supreme Court of South Carolina ruled that South Carolina Code §12-36-2120((76), which established an annual sales tax holiday on the Friday and Saturday after Thanksgiving for handguns (as defined in South Carolina Code §16-23-10(1)), rifles and shotguns, was unconstitutional. *The American Petroleum Institute and BP Products North America Inc. v. South Carolina Department of Revenue, et al.* S.C., 677 S.E.2d 16 (2009). However, the General Assembly enacted a temporary proviso that established a sales tax holiday on November 26th and 27th of 2010 for handguns (as defined in South Carolina Code §16-23-10(1)), rifles and shotguns.

²⁸ On May 4, 2009, the Supreme Court of South Carolina ruled that South Carolina Code §12-36-2120(77), which established an annual sales tax holiday during the month of October (beginning in 2009 and ending 2018) for certain energy efficient products (provided certain revenue growth forecasts were met), was unconstitutional. *The American Petroleum Institute and BP Products North America Inc. v. South Carolina Department of Revenue, et al.* S.C., 677 S.E.2d 16 (2009).

²⁹ When completing the Sales and Use Tax Return (ST-3), a taxpayer will reflect sales or purchases qualifying for this exemption on “the worksheet” under the “Allowable Deductions” section. The taxable gross proceeds after all deductions will be subject to both the State and applicable local sales and use taxes.

Code Section	Description
12-36-2120(82)	<p>Children’s clothing sold to a private charitable organization exempt from federal and state income tax, except for private schools, for the purpose of distribution by that organization to needy children. “Clothing” means those items exempt from sales and use tax pursuant to Code Section 12-36-2120(57)(a)(i)and (ii). “Needy children” means children eligible for free meals under the</p> <p>National School Lunch Program of the US Department of Agriculture. (Effective January 1, 2016).</p>
Temporary Proviso 117.61 (Act No. 91 of 2015)	<p>Viscosupplementation therapies (for state fiscal year 2015–2016)</p>

Alternative Energy Exemptions

12-36-2120(71)	<p>Any device, equipment or machinery that is (a) operated by hydrogen or fuel cells, (b) used to generate, produce or distribute hydrogen and designated specifically for hydrogen applications or for fuel cell applications and (c) used predominantly for the manufacturing of, or research and development involving hydrogen or fuel cell technologies. This exemption is effective October 1, 2007.</p>
12-36-2120(72)	<p>Building material used to construct a new or renovated building in a research district and machinery or equipment located in a research district. The sales tax that would have been assessed must be invested by the taxpayer in hydrogen or fuel cell machinery or equipment located in the same research district within 24 months of the exempt purchase. This exemption is effective October 1, 2007.</p>

7. APPENDIX

- ◆ Sales and Use Tax Nexus Creating Activities

Appendix

Sales and Use Tax Nexus Creating Activities

Below is a summary of the Department’s guidance concerning sales and use tax nexus creating activities. (A complete copy of South Carolina Revenue Ruling #14-4 which addresses this issue is available on the Department’s website at www.dor.sc.gov.) It addresses types of business activities or relationships that, by themselves, may or may not create sales and use tax nexus.

The following categories of nexus creating activities are discussed:

1. General Activities
2. Property in South Carolina
3. Activities of an Employee or Third Party (e.g., Sales Representative, Independent Contractor or Affiliated Company)
4. Delivery
5. Transactions with South Carolina Printers
6. Advertising
7. Other Issues

Each response is based upon the specific facts described in the survey question and the following assumptions: (1) The business is selling tangible personal property³⁰ at retail to residents or others in South Carolina; (2) Each specific survey question by itself was the only possible nexus creating activity or relationship a business has in South Carolina³¹; and, (3) The activities described are not “de minimis” unless the question or answer specifically states otherwise.

³⁰ See South Carolina Code §12-36-60 for the definition of “tangible personal property” and the various imposition provisions of Chapter 36 of Title 12 (Sales and Use Tax Code of Laws) for information as to services and intangibles that are “tangible personal property” by definition.

³¹ Even though some survey questions specifically state that the activity represents the corporation’s “sole activity” in South Carolina, all other survey questions represent the corporation’s sole activity in South Carolina whether or not such is specifically stated. The difference in wording only represents how each national publication worded its questions.

A “yes” response indicates the activity or relationship will, by itself, create nexus with South Carolina. A “no” response indicates the activity or relationship will, by itself, not create nexus with South Carolina. However, it is important to note that a combination of several different activities or relationships, even if each by itself does not create nexus, may create nexus with South Carolina. In addition, any variance from the facts stated in a survey question, or any additional facts not stated in a survey question, may change the answer set forth in this document. Each response refers only to sales and use tax nexus.

Each response refers only to sales and use tax nexus. Activities that create nexus for sales and use tax purposes differ somewhat from those that create nexus for other tax purposes.

Survey Answers

A. General Activities

- | | YES | NO |
|--|--------------------------|-------------------------------------|
| 1. The business holds a certificate of authority to conduct business in South Carolina, or is otherwise registered with the Secretary of State or any other regulatory agency in South Carolina. | <input type="checkbox"/> | <input checked="" type="checkbox"/> |
| 2. The business maintains a bank account in South Carolina. | <input type="checkbox"/> | <input checked="" type="checkbox"/> |
| 3. The business is listed in the local telephone books of cities in South Carolina | <input type="checkbox"/> | <input checked="" type="checkbox"/> |
| 4. The business uses local phone numbers in South Carolina, which are forwarded to its headquarters in another state. | <input type="checkbox"/> | <input checked="" type="checkbox"/> |

B. Property in South Carolina

- | | YES | NO |
|--|-------------------------------------|--------------------------|
| 1. The business’ sole activity in South Carolina is maintaining or using a place of business for selling tangible personal property. | <input checked="" type="checkbox"/> | <input type="checkbox"/> |
| 2. The business’ sole activity in South Carolina is maintaining or using a place of business for storing ³² tangible personal property. | <input checked="" type="checkbox"/> | <input type="checkbox"/> |

³² See Question B.4.

- | | YES | NO |
|---|-------------------------------------|--------------------------|
| 3. The business' sole activity in South Carolina is maintaining inventory in South Carolina. | <input checked="" type="checkbox"/> | <input type="checkbox"/> |
| 4. The business' sole activity in South Carolina is maintaining or using a distribution facility. | <input checked="" type="checkbox"/> | <input type="checkbox"/> |

Note: South Carolina enacted a limited “safe harbor” nexus statute for persons who placed a distribution facility in service in South Carolina after December 31, 2010, but before January 1, 2013. This answer does not apply to a person who has met the investment and job requirements of Code Section 12-36-2691 before January 1, 2013. For persons who met these investment and job requirements, this “safe harbor” is applicable until the earlier of (a) January 1, 2016; (b) when the person no longer meets the requirements of the statute; or (c) the effective date of a law enacted by Congress that allows states to require sales tax collection for taxpayers that do not have substantial nexus. For all other person, this “safe harbor” is no longer available and the above answer is applicable.

- | | | |
|---|-------------------------------------|-------------------------------------|
| 5. The business' sole activity in South Carolina is maintaining tangible personal property for lease through a representative. | <input checked="" type="checkbox"/> | <input type="checkbox"/> |
| 6. The business' sole activity in South Carolina is the existence of unrelated in-state office (e.g. advertising). | <input checked="" type="checkbox"/> | <input type="checkbox"/> |
| 7. The business' sole activity in South Carolina is licensing software for use in South Carolina and | | |
| (a) the business sold and delivered the licensed software into South Carolina via a tape, disk, flash drive, or some other form of tangible personal property as defined in the South Carolina sales and use tax law; or, | <input checked="" type="checkbox"/> | <input type="checkbox"/> |
| (b) the business sold and delivered the licensed software into South Carolina as an attachment to an e-mail or a download from a website. | <input type="checkbox"/> | <input checked="" type="checkbox"/> |

Note: See SC Revenue Rulings #12-1, 11-2, 03-5 and 96-3.

- | | | |
|--|-------------------------------------|--------------------------|
| 8. The business' sole activity in South Carolina is that of a mail-order catalog seller with property or solicitors in South Carolina. | <input checked="" type="checkbox"/> | <input type="checkbox"/> |
|--|-------------------------------------|--------------------------|

- | | YES | NO |
|--|-------------------------------------|--------------------------|
| 9. The business' sole activity in South Carolina is the drop shipment of catalogs in South Carolina, for mailing to residents within South Carolina. | <input checked="" type="checkbox"/> | <input type="checkbox"/> |

Note: See Question D.4 for the application of nexus to a business that uses a company in South Carolina to drop-ship merchandise to customers.

- | | | |
|--|-------------------------------------|--------------------------|
| 10. The business sells tangible personal property to residents in South Carolina from outside of South Carolina (e.g., telephone, over the Internet, via catalog/direct mail, or otherwise) and delivers merchandise to customers in South Carolina in returnable containers. | <input checked="" type="checkbox"/> | <input type="checkbox"/> |
| 11. The business sells tangible personal property at retail to businesses in South Carolina from outside of South Carolina (e.g., telephone, over the Internet, or otherwise) and delivers the merchandise to customers by the business' tractor-trailers or railcars and leaves the trailer or railcar with the customer for a specified number of days or until the next delivery is made during which the customer will remove the merchandise from the trailer or railcar. | <input checked="" type="checkbox"/> | <input type="checkbox"/> |
| 12. The business sells tangible personal property to residents in South Carolina from outside of South Carolina (e.g., telephone, over the Internet, via catalog/direct mail, or otherwise) and provides in-state telephone and kiosks that allow customers to access inventories and purchase merchandise from remote subsidiaries. | <input checked="" type="checkbox"/> | <input type="checkbox"/> |

C. Activities of an Employee or Third Party (e.g., Sales Representative, Independent Contractor or Affiliated Company)

- | | YES | NO |
|--|-------------------------------------|--------------------------|
| 1. The business' sole activity in South Carolina is the presence of a representative selling in South Carolina. | <input checked="" type="checkbox"/> | <input type="checkbox"/> |
| 2. The business authorizes an employee or third party (e.g., independent contractor, affiliated company or other representative) to install, deliver, service, or repair merchandise in South Carolina or hires independent contractor to perform warranty or repair services on tangible personal property in South Carolina. (The repairs may be under warranty for which there is no separate charge or may be under warranty for which there was a separate charge.) | <input checked="" type="checkbox"/> | <input type="checkbox"/> |

- | | YES | NO |
|--|-------------------------------------|-------------------------------------|
| 3. The business uses an employee or third party in South Carolina (e.g., independent contractor, affiliated company, or other representative) to investigate, handle or resolve customer issues, provide training or technical assistance, or otherwise provide customer service to customers in South Carolina. | <input checked="" type="checkbox"/> | <input type="checkbox"/> |
| 4. The business' sole activity in South Carolina is an employee/representative providing training to South Carolina customers. | <input checked="" type="checkbox"/> | <input type="checkbox"/> |
| 5. The business' sole activity in South Carolina is an employee/representative providing trouble-shooting to South Carolina customers. | <input checked="" type="checkbox"/> | <input type="checkbox"/> |
| 6. The business sells tangible personal property to residents in South Carolina from outside the state (e.g., by telephone, over the Internet, via catalog/direct mail, or otherwise) and has an employee visit South Carolina four or more times during the year. | <input checked="" type="checkbox"/> | <input type="checkbox"/> |
| 7. The business' sole activity in South Carolina is telemarketing activity into South Carolina (telemarketer not located in South Carolina). | <input type="checkbox"/> | <input checked="" type="checkbox"/> |
| 8. The business' sole activity in South Carolina is the use of a telemarketing firm with a South Carolina office. | <input checked="" type="checkbox"/> | <input type="checkbox"/> |
| 9. The business hires an unrelated call center or fulfillment center located in South Carolina to process telephone or electronic orders that primarily derive from out-of-state customers. | <input checked="" type="checkbox"/> | <input type="checkbox"/> |
| 10. The business' sole activity in South Carolina is using an in-state photographer, if the vendor's products are shipped to South Carolina during the photographic sessions. | <input checked="" type="checkbox"/> | <input type="checkbox"/> |
| 11. The business collects delinquent accounts using a collection agency in South Carolina or hires attorneys or other third parties to file collection suits in South Carolina. | <input checked="" type="checkbox"/> | <input type="checkbox"/> |
| 12. The business is affiliated with an entity that sells tangible personal property or services to customers in South Carolina, and | | |
| (a) the South Carolina affiliate sells similar merchandise and uses common trade names, trademarks or logos; or, | <input checked="" type="checkbox"/> | <input type="checkbox"/> |

- | | YES | NO |
|--|-------------------------------------|--------------------------|
| (b) uses the South Carolina affiliate to accept returns, take orders, perform customer service or distribute advertising materials on its behalf. | <input checked="" type="checkbox"/> | <input type="checkbox"/> |
| 13. The business sells tangible personal property to residents in South Carolina from outside the state and authorizes an employee or third party (e.g., sales representative, independent contractor, or affiliated company) to solicit sales in South Carolina. | <input checked="" type="checkbox"/> | <input type="checkbox"/> |
| 14. The business' sole activity in South Carolina is soliciting through independent agents. | <input checked="" type="checkbox"/> | <input type="checkbox"/> |
| 15. The business' sole activity in South Carolina is using a broker to arrange rentals of customer mailing lists, that constitute tangible personal property under the South Carolina sales and use tax law, to vendors in South Carolina and other states. | <input checked="" type="checkbox"/> | <input type="checkbox"/> |
| 16. The business' in-state representative maintains an in-home office. | <input checked="" type="checkbox"/> | <input type="checkbox"/> |
| <p>Note: This answer applies whether or not the business reimburses the in-state representative for the costs of maintaining the in-home office. In addition, as noted elsewhere in this advisory opinion, it is not necessary that a representative maintain an in-state office in order for nexus to exist.</p> | | |
| 17. The business sells tangible personal property to residents in South Carolina from outside of South Carolina (e.g., telephone, over the Internet, via catalog/direct mail, or otherwise) and ships its product for distribution to a third-party distributor located in South Carolina that performs the functions such as labeling, packaging, and shipping. | <input checked="" type="checkbox"/> | <input type="checkbox"/> |
| <p>Note: This answer assumes that the third-party distributor did not purchase the merchandise, but is providing a service on behalf of a retailer selling tangible personal property to South Carolina residents.</p> | | |
| 18. The business sells tangible personal property to residents in South Carolina from outside of South Carolina (e.g., telephone, over the Internet, via catalog/direct mail, or otherwise) and makes remote sales of tangible personal property to South Carolina residents and holds two or more one-day seminars in South Carolina. | <input checked="" type="checkbox"/> | <input type="checkbox"/> |

- | | YES | NO |
|---|-------------------------------------|--------------------------|
| 19. The business sells tangible personal property to residents in South Carolina from outside of South Carolina (e.g., telephone, over the Internet, via catalog/direct mail, or otherwise) and makes remote sales of tangible personal property to South Carolina residents and holds two or more one-day seminars in South Carolina, and has its employees visit South Carolina five times during the year. | <input checked="" type="checkbox"/> | <input type="checkbox"/> |
| 20. The business sells gifts cards in affiliated South Carolina stores. | <input checked="" type="checkbox"/> | <input type="checkbox"/> |
| 21. The business makes remote sales of “canned software,” that constitutes tangible personal property under the South Carolina sales and use tax law, to residents of South Carolina and then sends a representative to customize it to meet the customer’s specific needs or to provide other Information Technology services. | <input checked="" type="checkbox"/> | <input type="checkbox"/> |
| 22. The business sells tangible personal property while temporarily located in South Carolina for up to three days. | <input type="checkbox"/> | <input type="checkbox"/> |

Note: The answer depends on whether or not the business’ presence or sales are de minimis, the business’ intent with respect to returning to the state, the value of the sales, and other facts and circumstances. However, even if nexus is not established, the seller must be licensed and remit the tax on all sales made by the employee during the employee’s time in the state

- | | | |
|--|--------------------------|--------------------------|
| 23. The business sells tangible personal property to residents in South Carolina from outside of South Carolina (e.g., telephone, over the Internet via catalog/direct mail, or otherwise) and produces an “info-commercial” that runs on an in-state television channel and pays commissions to the local TV station based on a percentage of sales to South Carolina customers who made purchases using the phone number or website address displayed on the infomercial.” | <input type="checkbox"/> | <input type="checkbox"/> |
|--|--------------------------|--------------------------|

Note: The answer depends on the facts and circumstances (e.g., nexus may exist if the advertising consists of a personal endorsement by a local personality)

D. Delivery

- | | YES | NO |
|---|-------------------------------------|--------------------------|
| 1. The business’ sole activity in South Carolina is in-state delivery via company-owned vehicles. | <input checked="" type="checkbox"/> | <input type="checkbox"/> |

- | | YES | NO |
|---|-------------------------------------|-------------------------------------|
| 2. The business' sole activity in South Carolina is the presence of a representative to deliver merchandise in South Carolina ³³ . | <input checked="" type="checkbox"/> | <input type="checkbox"/> |
| 3. The business delivers merchandise in South Carolina by means other than common carrier or the U.S. Postal Service. | <input checked="" type="checkbox"/> | <input type="checkbox"/> |
| 4. The business uses a company in South Carolina to drop-ship merchandise to customers. | <input type="checkbox"/> | <input checked="" type="checkbox"/> |

Note: See SC Revenue Ruling #98-8. In addition, see Question B.9 for the application of nexus to a business whose sole activity in South Carolina is the drop shipment of catalogs in South Carolina for mailing to residents within South Carolina.

E. Transactions with South Carolina Printers³⁴

- | | YES | NO |
|---|--------------------------|-------------------------------------|
| 1. The business' sole activity in South Carolina is using a South Carolina printing company to print catalogs or advertisements, if the vendor's personnel enter the state occasionally (1-3 times per year) during the printing process. | <input type="checkbox"/> | <input checked="" type="checkbox"/> |
| Note: See South Carolina Code §12-36-75 | | |
| 2. The business' sole activity in South Carolina is using a South Carolina printing company to print catalogs or advertisements, if the vendor's personnel do not enter South Carolina during the printing process. | <input type="checkbox"/> | <input checked="" type="checkbox"/> |
| Note: See South Carolina Code §12-36-75. | | |
| 3. The business' sole activity in South Carolina is using a South Carolina printing company where the taxpayer's printing materials or printed goods are stored. | <input type="checkbox"/> | <input checked="" type="checkbox"/> |

Note: See South Carolina Code §12-36-75.

³³ See Question B.4.

³⁴ See Exhibit A.

F. Advertising

- | | YES | NO |
|--|--------------------------|-------------------------------------|
| 1. The business' sole activity in South Carolina is spillover advertising from neighboring states. | <input type="checkbox"/> | <input checked="" type="checkbox"/> |

Note: This answer assumes that the advertiser and retailer have no physical presence in South Carolina.

- | | | |
|--|--------------------------|-------------------------------------|
| 2. The business' sole activity in South Carolina is that of a mail-order catalog seller with only mail communication in the state. | <input type="checkbox"/> | <input checked="" type="checkbox"/> |
|--|--------------------------|-------------------------------------|

Note: This answer assumes that the retailer has no physical presence in South Carolina and that the catalogs are not mailed from within South Carolina.

- | | | |
|---|--------------------------|-------------------------------------|
| 3. The business' sole activity in South Carolina is mailing catalogs to South Carolina consumers. | <input type="checkbox"/> | <input checked="" type="checkbox"/> |
|---|--------------------------|-------------------------------------|

Note: This answer assumes that the retailer has no physical presence in South Carolina and that the catalogs are not mailed from within South Carolina.

- | | | |
|--|--------------------------|-------------------------------------|
| 4. The business is an Internet-based retailer with an out-of-state home office and enters into an agreement with a South Carolina operator of a website. The website operator hosts advertisements directing consumers to the website of the out-of-state retailer, and is paid each time an ad is displayed (per impression). | <input type="checkbox"/> | <input checked="" type="checkbox"/> |
|--|--------------------------|-------------------------------------|

- | | | |
|---|--------------------------|--------------------------|
| 5. The business' sole activity in South Carolina is advertising on local media (e.g., newspapers, radio, TV). | <input type="checkbox"/> | <input type="checkbox"/> |
|---|--------------------------|--------------------------|

Note: The answer depends on the facts and circumstances (e.g., nexus may exist if the advertising consists of a personal endorsement by a local personality)

- | | | |
|--|--------------------------|--------------------------|
| 6. The business' sole activity in South Carolina is advertising on national media, which may be circulated in South Carolina (e.g., national magazines or TV). | <input type="checkbox"/> | <input type="checkbox"/> |
|--|--------------------------|--------------------------|

Note: The answer depends on the facts and circumstances (e.g., nexus may exist if the advertising consists of a personal endorsement by a local personality)

- | | YES | NO |
|--|--------------------------|--------------------------|
| 7. The business' sole activity in South Carolina is advertising on satellite TV. | <input type="checkbox"/> | <input type="checkbox"/> |

Note: The answer depends on the facts and circumstances (e.g., nexus may exist if the advertising consists of a personal endorsement by a local personality)

G. Other Issues

- | | YES | NO |
|--|-------------------------------------|-------------------------------------|
| 1. The business sells tangible personal property over the Internet and operates a website which is maintained on a server that is owned by the business and located in South Carolina. | <input checked="" type="checkbox"/> | <input type="checkbox"/> |
| 2. The business makes remote sales of digital content such as music and video that is downloaded by residents of South Carolina. | <input type="checkbox"/> | <input checked="" type="checkbox"/> |

Sales of digital content that is downloaded is not subject to the tax.

- | | | |
|---|-------------------------------------|--------------------------|
| 3. The business sells tangible personal property to residents in South Carolina from outside of South Carolina (e.g., telephone, over the Internet, via catalog/direct mail, or otherwise) and is the single member in a single member LLC that is a disregarded entity and is operating in South Carolina. | <input checked="" type="checkbox"/> | <input type="checkbox"/> |
|---|-------------------------------------|--------------------------|

Note: As stated in the "Introduction," the above answers are based on the assumption that the business is selling tangible personal property at retail to residents or others in South Carolina and that each specific question by itself was the only possible nexus creating activity or relationship a business has in South Carolina. However, it is important to note that a combination of several different activities or relationships, even if each by itself does not create nexus, may create nexus with South Carolina. In addition, any variance from the facts stated in a question, or any additional facts not stated in a question, may change the answer set forth in this document.

EXHIBIT A

PERSONS CONTRACTING WITH STATE COMMERCIAL PRINTER

NEXUS SAFE HARBOR STATUTE

CODE SECTION 12-36-75

(A) Notwithstanding any other provision of this chapter, tangible or intangible property that is:

- (1) owned or leased by a person that has contracted with a commercial printer for printing and used in connection with a printing contract; and
- (2) located at the premises of the commercial printer;

shall not be considered to be, or to create, an office, a place of distribution, a sales location, a sample location, a warehouse, a storage place, or other place of business maintained, occupied, or used in any way by the person. A commercial printer with which a person has contracted for printing by reason of any printing contract which may include storing and shipping the items printed shall not be considered to be in any way a representative, an agent, a salesman, a canvasser, or a solicitor for the person.

(B) Notwithstanding any other provision of this chapter, the following shall not cause a person that has contracted with a commercial printer for printing to have a duty to register as a retailer or to collect or remit the sales or use tax imposed by this chapter:

- (1) the ownership or leasing by that person of tangible or intangible property located at the South Carolina premises of the commercial printer and used in connection with printing contracts;
- (2) the sale by that person of property printed or imprinted at and shipped or distributed from the South Carolina premises of the commercial printer by the commercial printer;
- (3) the activities performed pursuant or incident to a printing contract by or on behalf of that person at the South Carolina premises of the commercial printer by the commercial printer; or
- (4) the activities performed pursuant or incident to a printing contract by the commercial printer in South Carolina for or on behalf of that person