

Chapter 22

Administrative Requirements

Before engaging in any retail business in South Carolina, a retail license must be purchased from the Department.

A. Retail Licenses

The law provides for the following types of retail licenses:

Permanent locations. A \$50 license must be purchased for each permanent retail location.¹

Fairs, Carnivals, and Athletic Events: The single retail license covers sales of tangible personal property made from all stands under the immediate management or control of each operator. A separate license will not be required for each change of location provided the operator furnishes the Department an itinerary giving a schedule of locations and dates.²

Vending Machines: For persons engaged in the business of operating vending or coin-operated machines dispensing cigarettes or soft drinks in closed containers in South Carolina, each point from which the service for such machines or other tangible personal property originates, is considered to be a retail outlet and a retail license must be obtained for each such point of service.³

Also, an out-of-state retailer must purchase a retail license and collect the South Carolina use tax if the retailer has retail locations in South Carolina; maintains an office, warehouse or other place of business in South Carolina; has a salesperson in South Carolina soliciting orders on a regular basis; has an agent located in South Carolina; delivers his/her goods on his/her own trucks; or has made greater than \$100,000 of gross sales into South Carolina in the current or prior calendar year.⁴

¹ South Carolina Code §12-36-510(A)(1) and SC Regulation 117-300.

² SC Regulation 117-300.5.

³ SC Regulation 117-300.2.

⁴ This is based on the concept of *nexus* - 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. What actually constitutes *nexus* is determined by the courts and may change from time to time, and you are advised to be aware of changes. See SC Revenue Ruling #18-14 regarding nexus for remote sellers and Chapter 13 of this manual for a more detailed discussion of nexus.

Artists and craftsmen. Every artist and craftsman making retail sales at arts and crafts shows and festivals of items they have created or assembled may purchase a \$20 license. This license may only be used at one location at a time.⁵

Transient or temporary businesses. A \$50 license must be purchased by persons operating a transient or temporary business in South Carolina. A retail license for a transient business may only be used for one location at a time. A retail license for a temporary business may only be used in one location.⁶

A transient business is a business, other than artists and craftsmen, not having a permanent retail location in South Carolina. *A temporary business* is a business that makes retail sales in South Carolina for no more than 30 consecutive days at any one location.

A licensed retailer may, upon written application and approval by the Department, have his retail dealer's license transferred from one location to another without incurring additional license tax liability, but only in cases where there is an abandonment of the licensed business location and a simultaneous moving to a new location. The licensed retailer making application for transfer must surrender his license of original issue and indicate on the license the address of his new location.⁷ To notify the Department of a change in business location, the retailer should complete Form SC 8822.⁸

The Department may determine which retail license or licenses a retailer must obtain.⁹

A retail license is not required of:

- (a) persons selling at flea markets or conducting a yard sale no more than once a quarter;¹⁰
- (b) organizations devoted exclusively to public or charitable purposes conducting concession sales at festivals,¹¹ if all the net proceeds are used for those public or charitable purposes and if in advance of the festival its organizers provide the Department information necessary to ensure compliance with the law;¹²

⁵ South Carolina Code §12-36-510(A)(2).

⁶ South Carolina Code §12-36-510(A)(3).

⁷ SC Regulation 117-300.4.

⁸ Form SC 8822 can also be used for business name changes and other address changes.

⁹ South Carolina Code §12-36-510(D).

¹⁰ South Carolina Code §12-36-510(B)(1).

¹¹ For purposes of this provision, a festival does not include a recognized state or county fair.

¹² South Carolina Code §12-36-510(B)(2) and South Carolina Code §12-36-2120(39).

- (c) persons furnishing accommodations to transients for one week or less in any calendar quarter;¹³
- (d) persons furnishing accommodations to transients where the rental income from such accommodations is wholly excluded from the gross income of the taxpayer pursuant to Internal Revenue Code Section 280A(g);¹⁴
- (e) certain nonprofit organizations exempt from the sales and use tax under South Carolina Code §12-36-2120(41);¹⁵ and,
- (f) persons engaged in the business of operating vending or coin-operated machines dispensing any tangible personal property other than cigarettes or soft drinks in closed containers. If the person either (1) sells cigarettes or soft drinks in closed containers through vending machines or (2) sells any tangible personal property at retail through any means other than vending machines, they must obtain a retail license.

B. Obtaining a Retail License

A retail license may be obtained on-line by visiting the Department's website at dor.sc.gov and clicking on "MyDORWay."

A retail license may also be obtained by filing an application (Form SCDOR-111) at one of the Department's five Taxpayer Service Centers (located in Greenville,¹⁶ Charleston,¹⁷ Florence,¹⁸ Myrtle Beach¹⁹ and Rock Hill²⁰) or at the main Columbia office.²¹

A completed application with the appropriate license tax amount may also be mailed to: South Carolina Department of Revenue, P.O. Box 125, Columbia, South Carolina 29214.

¹³ South Carolina Code §12-36-510(B)(3). Persons who rent accommodations for one week or less in any calendar quarter must still remit the sales tax on the accommodations annually by April 15th of the following year unless otherwise exempt under South Carolina Code §12-36-920(A).

¹⁴ For this exemption to apply, the taxpayer must rent the dwelling unit for less than 15 days during the taxable year and must use the dwelling unit as a residence (for personal purposes) 14 days or more during the taxable year.

¹⁵ South Carolina Code §12-36-510(B)(4) and South Carolina Code §12-36-2120(41). See also South Carolina Revenue Procedure #03-6 and South Carolina Revenue Ruling #10-1 for a list of the type of nonprofit organizations eligible for this exemption and for other information related to this exemption.

¹⁶ 777 Lowndes Hill Road, Building Two, Suite 300, Greenville, SC 29607.

¹⁷ 2070 Northbrook Blvd., Suite B7, North Charleston, SC 29406.

¹⁸ 181 East Evans Street, Suite 5, Florence, SC 29502.

¹⁹ 1350 Farrow Parkway, Suite 200, Myrtle Beach, SC 29577.

²⁰ 775 Addison Avenue, Suite 201, Rock Hill, SC 29730.

²¹ 300A Outlet Pointe Boulevard, Columbia, SC 29210; (803) 898-5000; toll free (844) 898-8542.

C. Operating Without a Retail License – Penalty

A person required to obtain a retail license that engages in business as a retailer in this State without a retail license or after the license has been suspended is guilty of a misdemeanor and, upon conviction, must be punished by a fine of not more than two hundred dollars or imprisonment not exceeding thirty days, or both. This offense is triable in magistrate's court. This provision also applies to each officer of a corporation which engages in business without a retail license or after the license is suspended.²² In addition, this provision²³ may be enforced by local law enforcement authorities as well as the Department.²⁴

Also, a person required to obtain a retail license who fails to pay the \$50 license tax or obtain the license within the time provided is liable for a penalty not to exceed five hundred dollars.²⁵

D. Returning a License²⁶

When a business is closed, sold or otherwise transferred to another person, the retail license, as well as all other licenses issued by the Department, must be returned to the department for cancellation and the taxpayer must remit unpaid or accrued taxes.²⁷

The Department may refuse to issue a license to a person, and may revoke one or more licenses held by a person, who has failed to return a license and remit taxes.

E. Purchaser's Certificate of Registration

A Purchaser's Certificate of Registration is required for those businesses and nonprofit organizations **not** making retail sales who purchase tangible personal property from outside South Carolina and store, use or consume the property in South Carolina.²⁸ Those licensed as retailers do not need a Purchaser's Certificate of Registration.

²² South Carolina Code §12-36-560.

²³ South Carolina Code §12-36-560.

²⁴ Attorney General Opinion dated 1/29/1996.

²⁵ South Carolina Code §12-36-570.

²⁶ South Carolina Code §12-54-126. See also SC Regulation 117-300.6 for special rules regarding partnerships.

²⁷ Form C-278 is used to closeout an account with the Department for a business that has been sold or closed permanently.

²⁸ For more detailed information on use tax reporting requirements for business and nonprofit organizations, as well as individuals, see South Carolina Revenue Ruling #18-9.

An application for a Purchaser's Certificate of Registration (Form SCDOR-111) may be obtained at one of the Department's five Taxpayer Service Centers (located in Greenville,²⁹ Charleston,³⁰ Florence,³¹ Myrtle Beach³² and Rock Hill³³) or at the main Columbia office.³⁴

A completed application may also be mailed to: South Carolina Department of Revenue, P.O. Box 125, Columbia, South Carolina 29214. There is no charge for a Purchaser's Certificate of Registration.

F. Special Events Returns³⁵

In lieu of purchasing a retail license, certain retailers may report their sales on a special events return. A special event is any promotional show, trade show, fair or carnival for which an admissions fee is required. Also, the event must operate for less than 12 consecutive days.

A special events return may be used by a retailer who is **not** required to be licensed as an artist or craftsman, or who is **not** already licensed as a transient or temporary retailer.

The Department does not have a separate form called a *special events return*. A retailer should file Form ST-3 (and Form ST-389 if applicable) and write "**Special Events Return,**" or similar notation, on the face of each form. The discount for prompt payment is not allowed on such returns.

Special events returns are due within five days of the completion of the special event. However, the Department may require earlier filing and payment, if deemed necessary.

G. Types of Paper Returns

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

²⁹ 777 Lowndes Hill Road, Building Two, Suite 300, Greenville, SC 29607.

³⁰ 2070 Northbrook Blvd., Suite B7, North Charleston, SC 29406.

³¹ 181 East Evans Street, Suite 5, Florence, SC 29502.

³² 1350 Farrow Parkway, Suite 200, Myrtle Beach, SC 29577.

³³ 775 Addison Avenue, Suite 201, Rock Hill, SC 29730.

³⁴ 300A Outlet Pointe Boulevard, Columbia, SC 29210; (803) 898-5000; toll free (844) 898-8542.

³⁵ South Carolina Code §12-36-510(C).

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

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

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

H. Reporting Requirements

Any tax due must be paid with the return and reported to the Department under one of the following methods:

Monthly Returns. Generally, every taxpayer required to file their sales and/or use tax return must file the tax return on a monthly basis, unless permission is granted by the Department to use one of the other methods listed below. The return is due by the 20th day of the month following the month in which liability for the tax arises.³⁶ For example, sales made in April are reportable to the Department by May 20. Any tax due is payable with the return.

28-day returns. The Department may allow filing of returns for 28-day periods. If permission is granted, the returns are due by the 20th day following the end of each 28-day period.³⁷

Quarterly returns. The Department may allow a taxpayer to file quarterly, instead of monthly; if the taxpayer’s monthly tax liability is \$100 or less.³⁸

³⁶ South Carolina Code §12-36-2570(A) & (B).

³⁷ South Carolina Code §12-36-2570(D).

³⁸ South Carolina Code §12-36-2580.

Other Filing Periods. The Department may authorize, in addition to monthly or quarterly, other filing periods.³⁹

Note: With respect to any return due (*e.g.*, monthly, quarterly, etc.), the taxpayer must file the return even if the taxpayer did not make any sales during that tax period or had a zero tax liability for that period.

Where a store has leased departments operated by other persons, each such person operating a leased department must make a separate return, if he keeps his own books and makes his own collections on accounts.⁴⁰

Where the store leasing such department keeps the books and makes collections for the leased department the store may, as agent for the lessee, make returns for such leased department and pay the taxes due. Note, however, the lessee shall not be relieved of his liability until the amount due has been paid. This method of accounting for the tax is authorized only by special permission of the Department.⁴¹

Where the store makes returns as agent for leased departments, it shall make separate returns for each department leased or shall make a consolidated return for both its business and the leased departments using “Schedule of Locations” to show a breakdown of gross proceeds of sales and other required information relating to its business and relating to each leased department. In any case, the lessor must obtain the permission of the Department of Revenue to make returns for his lessee.⁴²

I. Reporting and Paying the Tax Electronically

MyDORWay

The Department’s Electronic Tax System (MyDORWay) is designed to give taxpayers a fast, free and secure way to file and pay their sales, use, accommodations, local option and special local taxes online. MyDORWay is effective for sales and use tax returns due on or after September 1, 2015. All sales and use tax returns used for reporting the 6% State sales and use tax return, and applicable local sales and use taxes administered and collected by the Department on behalf of local jurisdictions, may be filed via MyDORWay.

³⁹ South Carolina Code §12-36-2590.

⁴⁰ SC Regulation 117-327.

⁴¹ SC Regulation 117-327.

⁴² SC Regulation 117-327.

The Department's MyDORWay System will allow a retailer to make payment by EFW (Electronic Funds Withdrawal/Bank Draft) or credit card (MasterCard and VISA).

For more information, go to dor.sc.gov and click on e-Services. For technical questions, call toll free (844) 898-8542.

Electronic Filing Program (EFT/EDI)

The Department has designed an Electronic Filing Program (EFT/EDI) for the transmission of the payment and filing of tax return information for **sales, use, accommodations, local option and/or special local taxes.**

Businesses that have paid \$15,000 or more, during any one filing period during the past year, are required to file and pay electronically.⁴³ Taxpayers with less than \$15,000 in tax due during a filing period may participate voluntarily with the EFT/EDI Program. For further information, call 1-800-476-0311.

A retailer interested in filing and paying one tax (e.g., sales tax, use tax, local sales tax, local use tax,) through EFT/EDI must file and pay all of these taxes through EFT/EDI. For example, a retailer cannot file and pay sales tax through this program and pay local option through a conventional process. Be aware that both the return and the payment must be filed and paid electronically; a retailer cannot choose to do one part electronically and the other by a different method.

Electronic payments can be made by using the ACH (Automated Clearing House) debit or credit method.

Advantages of participating in electronic programs include:

- (1) Eliminates paperwork; no more paper returns and checks;
- (2) Reduces return error potential due to no re-keying; no manual intervention;
- (3) Accurate timing of payment from the retailer's bank account; and
- (4) Comprehensive audit trail for both the return and the payment.

To register, visit the Department's website (dor.sc.gov) and click on MyDORWay. For additional assistance, call toll free (844) 898-8542 or email MyDORWay@dor.sc.gov.

⁴³ South Carolina Code §12-54-250.

J. Discount for Timely Payment

If returns are filed and the taxes paid in full by the due date, the taxpayer is allowed a discount on taxes due. For taxes less than \$100, you may take a 3% discount of the tax. For taxes of \$100 or more, your discount is 2% of the tax.⁴⁴

The maximum discount allowed per taxpayer (*all locations included*) during the state's fiscal year (*July 1 - June 30*) is \$3,000. The statute was amended (effective July 1, 2002) to increase that discount to a maximum of \$3,100 if the retailer files his sales and use tax returns electronically.⁴⁵

Nonresident retailers not required by law to collect South Carolina sales or use tax, but who voluntarily register to do so, are allowed a maximum discount of \$10,000 each fiscal year.

In calculating the maximum discount (whether \$3,000, \$3,100 or \$10,000), begin with the June return filed in July and end with the May return filed in June.⁴⁶

K. Cash Deposit or Bond

Transient retailers who have no permanent business location from which retail sales are made may be required to make a sufficient cash deposit or bond with the Department to cover at least their annual sales tax liability. This cash deposit or bond must be made before receiving a retail license.⁴⁷

L. Recordkeeping

Every person subject to the sales and/or use taxes is required to keep "records, receipts, invoices and other pertinent papers in the form the Department requires."⁴⁸ This includes records in electronic format.⁴⁹ Purchase invoices must show the names and addresses of vendors from whom purchases are made.⁵⁰

⁴⁴ South Carolina Code §12-36-2610.

⁴⁵ South Carolina Code §12-36-2610.

⁴⁶ South Carolina Code §12-36-2610.

⁴⁷ South Carolina Code §12-36-520.

⁴⁸ South Carolina Code §12-36-2540(A); South Carolina Code §12-54-210; SC Regulation 117-200; and SC Regulation 117-200.1.

⁴⁹ SC Regulation 117-200.2.

⁵⁰ South Carolina Code §12-36-2540(C).

Separate records for wholesale sales and retail sales must be kept. If separate records are not kept, it is presumed all sales are at retail.⁵¹

Records must be kept for a period of **four years**.⁵²

The penalty for failing to keep records as required by the Department is a maximum of \$500 per return.⁵³

M. Assessments

The Department may assess unpaid taxes within three years of the date the taxpayer's return was filed, or due to be filed, whichever occurs later.⁵⁴

For example, if a taxpayer files the May 2008 sales and use tax return on the due date, June 20, 2008, the Department has until June 20, 2011, to determine if additional taxes are due and assess the taxpayer for those taxes. If the taxpayer filed the May 2008 return late on August 30, 2008, then the Department has until August 30, 2011, to determine if additional taxes are due and assess the taxpayer for those taxes.

However, there are exceptions to the three-year limitation to assess additional taxes. The Department may assess for additional taxes after the three-year period if:

- (1) The taxpayer has consented in writing to extending the time period for assessing the tax.⁵⁵ This consent form must be completed before the three-year time limit expires. This consent form is usually completed at the beginning of the audit process when the taxpayer and the auditor agree to the period of time to be audited.
- (2) The taxpayer understates 20% of total taxes. In this case, the Department has six years to assess the taxpayer for the unpaid taxes.⁵⁶
- (3) The taxpayer has failed to file the return.⁵⁷ In this case, the Department may go back to August of 1985.⁵⁸

⁵¹ South Carolina Code §12-36-2540(B).

⁵² SC Regulation 117-200.1.

⁵³ South Carolina Code §12-54-210.

⁵⁴ South Carolina Code §12-54-85(A).

⁵⁵ South Carolina Code §12-54-85(C)(4).

⁵⁶ South Carolina Code §12-54-85(C)(3).

⁵⁷ South Carolina Code §12-54-85(C)(2).

⁵⁸ South Carolina Code §12-54-85(C). At one time there was a statute that presumed that any tax due for more than 10 years had been paid. That statute was repealed effective August 1, 1995. Now there are no limitations on assessment of taxes where no return was filed and none on fraudulent returns. The Department has consistently taken the position that the former 10 year statute would continue to apply to

- (4) The taxpayer has filed a fraudulent return with the intent to evade the tax.⁵⁹ In this case, the Department may go back to August of 1985.⁶⁰
- (5) The taxpayer has failed to pay a use tax and the Department assesses the use tax as a result of information received from other state or local taxing authorities, regional or national tax administration organizations, or the federal government. The use taxes may be assessed within 12 months of receiving the information, but no later than 72 months after the last day the use tax may be paid without penalty.⁶¹

The taxpayer who collects from the purchaser a state or local sales or use tax that exceeds the amount allowed or required by state law, may be held liable for a penalty. The penalty could be up to 150% of the tax amount collected that exceeds the authorized amount.⁶²

N. Refunds

Initial Process

- A. A taxpayer may seek a refund of any state tax by filing a written claim for refund with the Department.

Only the taxpayer legally liable for the tax may claim or receive a refund.⁶³ In the case of the sales tax, this is the retailer. In the case of the use tax, this is the purchaser. However,

- (1) with respect to sales tax, a purchaser who has paid the sales tax to the retailer for a specific transaction may claim and receive a refund if the retailer who paid the sales tax to the Department has assigned in writing the right to the refund of the sales tax to the purchaser.⁶⁴

taxes due before August 1, 1995; therefore it does not seek to make assessments for periods before August 1, 1985 (10 years prior to the August 1, 1995, effective date).

⁵⁹ South Carolina Code §12-54-85(C)(1).

⁶⁰ South Carolina Code §12-54-85(C). At one time there was a statute that presumed that any tax due for more than 10 years had been paid. That statute was repealed effective August 1, 1995. Now there are no limitations on assessment of taxes where no return was filed and none on fraudulent returns. The Department has consistently taken the position that the former 10 year statute would continue to apply to taxes due before August 1, 1995; therefore it does not seek to make assessments for periods before August 1, 1985 (10 years prior to the August 1, 1995, effective date).

⁶¹ South Carolina Code §12-54-85(C)(5).

⁶² South Carolina Code §12-54-196.

⁶³ South Carolina Code §12-60-470(C)(1).

⁶⁴ South Carolina Code §12-60-470(C)(1)(b).

- (2) with respect to the use tax, the retailer who collected the use tax from the purchaser and remitted to the Department may claim and receive the refund if the retailer establishes that the use tax has been repaid to the purchaser or the retailer has obtained written consent from the purchaser to claim and receive the use tax refund.⁶⁵

Also, the taxpayer legally liable for the tax (the retailer for sales tax and the purchaser for use tax) may assign in writing the refund to another person if the taxpayer legally liable for the tax has filed the claim for refund, the Department determines the claim is allowable, the amount of the refund is decided by the Department, and the Department has approved the refund.⁶⁶

For special rules concerning foreign diplomats, see South Carolina Code §12-60-470(C)(3).

- B. The refund claim must specify:⁶⁷
- (a) the taxpayer's name, address, and telephone number;
 - (b) the appropriate taxpayer identification number or numbers;
 - (c) the tax period or date for which the tax was paid;
 - (d) the nature and kind of tax paid;
 - (e) the amount claimed as erroneously paid;
 - (f) a statement of facts supporting the taxpayer's positions; and
 - (g) a statement outlining the reasons for the claim, including any law or other authority upon which the taxpayer relies.
- C. The refund claim must be filed within three years of the time the return was filed, or two years from date of payment, whichever is later. If no return was filed, the claim must be filed within two years from date of payment.⁶⁸
- D. The appropriate division of the Department will decide what refund is due, if any, and give a written notice of its decision.

⁶⁵ South Carolina Code §12-60-470(C)(1)(a).

⁶⁶ South Carolina Code §12-60-470(C)(2).

⁶⁷ South Carolina Code §12-60-470(B).

⁶⁸ South Carolina Code §12-54-85(F).

- E. If a taxpayer's claim for refund is denied, the taxpayer can appeal by filing a written protest with the Department. The protest must be in writing, must be filed within 90 days from the date of the denial, and must contain the information provided in Code Section 12-60-450. The protest must also provide any information that was previously omitted but required for a refund claim as listed above.
- F. If a refund is due, it must be first applied against other sales or use taxes due by the claimant and then against other state taxes due by the claimant.⁶⁹

Review by the Department of Revenue

Once a protest is filed, the Department will handle the appeal using the Department's internal procedures for handling a denial of a claim for refund. If the Department ultimately determines that the appeal should be denied, a representative within the Department's General Counsel for Litigation will prepare a written department determination addressing the issues raised by the appeal. If the taxpayer has exhausted his administrative remedies, the taxpayer may appeal the department determination to the Administrative Law Court using the procedures described below.

Contested Case Hearing before the Administrative Law Court

- A. If a taxpayer has exhausted his administrative remedies, the taxpayer can request a contested case hearing before the Administrative Law Court if the taxpayer disagrees with the department determination.
- B. The request for a contested case hearing must be made in writing within 30 days after the date the department determination was sent by first class mail or hand delivered to the taxpayer.
- C. The rules of the Administrative Law Court will control the request for a contested case hearing and the hearing.
- D. A refund denial will become final if the taxpayer does not request a contested case hearing within 30 days of the date the department determination was sent by first class mail or delivered to the taxpayer.

⁶⁹ South Carolina Code §12-60-490.

O. Penalties and Interest

Taxpayers who fail to file sales and use tax returns, or fail to pay these taxes when they are due, are subject to certain penalties. Penalties are imposed as follows:

Failure to file - This penalty is imposed at the rate of 5% of the taxes due for each month, or fraction of a month, the return is late. For example, if the May 2003 return is filed on June 30, 2003, it is 10 days late and the taxpayer is subject to a penalty equal to 5% of the tax due on that return. If this same return had not been filed until July 23, 2003, the taxpayer would be subject to a penalty equal to 10% of the tax due on that return.

Failure to pay - This penalty is imposed at the rate of 0.5% of the taxes due for each month, or fraction of a month, the taxes are late. For example, if the May 2003 return is filed on June 30, 2003, it is 10 days late and the taxpayer is subject to a penalty equal to 0.5% of the tax shown as due on that return. If this same return had not been filed until July 23, 2003, then the taxpayer would be subject to a penalty equal to 1% of the taxes shown as due on that return.

If the taxpayer is audited and taxes are found to be due, then the failure to pay penalty is not due if the taxes are paid within 10 days of the Department's assessment for such taxes.

If the taxes found to be due under the audit are not paid within 10 days of the Department's assessment, then the penalty is imposed at the rate of 0.5% of the taxes due for each month, or fraction of a month, from the 11th day after the assessment is issued until the taxes are paid.

P. Other Penalties

Penalties for operating without a retail license⁷⁰ are found in Chapter 36 of Title 12 of the South Carolina Code of Laws. Other penalties, including penalties for negligence⁷¹ and fraud,⁷² are found in Chapter 54 of Title 12.

Q. Interest

The Department, by law, imposes interest if a taxpayer fails to pay any sales and use taxes due. Interest is imposed at the same rate as provided in the Internal Revenue Code.

⁷⁰ South Carolina Code §§12-36-560 and 12-36-570.

⁷¹ South Carolina Code §12-54-43(F)(1).

⁷² South Carolina Code §12-54-44.

The interest rate changes quarterly, and such rate changes may be found on the Department's website (dor.sc.gov).⁷³ These are the same interest rates used by the Department in calculating the interest due a taxpayer if that taxpayer is issued a refund; however, two temporary provisos in the current state budget direct the Department to reduce the rate of interest paid on eligible refunds by three percentage points from the above rates for refunds paid from July 1st through June 30th.

R. Waiver of Penalties

The Department has the authority to waive penalties imposed if there is reasonable cause to do so. Taxpayers who request a waiver or reduction of penalties imposed should do so in writing, and should set forth the reasons why such penalties should be waived or reduced. The Department employee reviewing the request will then determine if a waiver or reduction of penalties is warranted under the guidelines established by the Department in South Carolina Revenue Procedure #08-6.

S. Completion of an Audit

Initial Process

- A. When a division of the Department determines a taxpayer owes additional taxes, it will mail or deliver a proposed assessment.
- B. The proposed assessment is the first written notice a taxpayer will receive stating that the taxpayers owes, or requests that the taxpayer pay, additional taxes, interest, or penalties. The term "proposed assessment" does not include the auditor's work papers or draft audit reports. If the taxpayer disagrees with a proposed assessment, the taxpayer is entitled to appeal the findings using the following procedures.
- C. If the taxpayer agrees with the proposed assessment, the amount due should be paid on or before the due date of the proposed assessment to avoid additional interest and penalties, if applicable.

If the taxpayer cannot pay, the taxpayer may request to enter into an installment payment agreement. An installment payment agreement will allow the taxpayer to pay over an agreed period of time. The taxpayer may contact the district manager of the nearest Taxpayer Service Center for additional information about installment agreements.

⁷³ Interest rate information is published quarterly in an information letter issued by the Department. To obtain a copy of such an information letter, go to the Department's website at dor.sc.gov, click on "Resources," then "Law & Policy," then go to the "Alphabetical Index (By Tax Category)" and then to the "Administrative" index.

- D. A taxpayer may agree with portions of the proposed assessment and disagree with others. The portion of the assessment with which the taxpayer agrees may be paid to avoid additional interest and penalties, and the remainder may be appealed.
- E. If the taxpayer disagrees with part or all of the proposed assessment, the taxpayer may appeal by sending a written protest within 90 days from the date on the proposed assessment to the address on the proposed assessment. The written protest must contain:
 - (a) the taxpayer's name, address, and telephone number;
 - (b) the appropriate taxpayer identification number or numbers;
 - (c) the tax period or date for which the tax was proposed;
 - (d) the nature and kind of tax in dispute;
 - (e) a statement of facts supporting the taxpayer's position; and
 - (f) a statement outlining the reasons for the appeal, including any law or other authority upon which the taxpayer relies.
- F. The Department may extend the time for filing a protest at any time before the period has expired.

Review by the Department of Revenue

Once a protest is filed, the Department will handle the appeal using the Department's internal procedures for handling a denial of a proposed assessment. If the Department ultimately determines that the appeal should be denied, a representative within the Department's General Counsel for Litigation will prepare a written department determination addressing the issues raised by the appeal. If the taxpayer has exhausted his administrative remedies, the taxpayer may appeal the department determination to the Administrative Law Court using the procedures described below.

Contested Case Hearing Before the Administrative Law Court

- A. If a taxpayer has exhausted his administrative remedies, the taxpayer can request a contested case hearing before the Administrative Law Court if the taxpayer disagrees with the department determination.

- B. The request for a contested case hearing must be made in writing within 30 days after the date the department determination was sent by first class mail or hand delivered to the taxpayer.
- C. The rules of the Administrative Law Court will control the request for a contested case hearing and the hearing.
- D. A proposed assessment will become final if the taxpayer does not request a contested case hearing within 30 days of the date the department determination was sent by first class mail or delivered to the taxpayer.

License Revocation

- A. The Department may deny or revoke any license issued by the Department for failure to pay taxes or certain regulatory violations.
- B. Notice of a proposed assessment will be sent to the taxpayer if a division of the Department proposes to deny or revoke your license.
- C. A taxpayer can appeal the denial or revocation by filing a written protest with the Department within 90 days of the notice or proposed assessment. The written protest must contain:
 - (a) the taxpayer's name, address, and telephone number;
 - (b) the appropriate taxpayer identification number or numbers, if any;
 - (c) the kind of license in dispute;
 - (d) a statement of facts supporting the taxpayer's position; and
 - (e) a statement outlining the reasons for the appeal, including any law or other authority upon which the taxpayer relies.

Review by the Department of Revenue

Once a protest is filed, the Department will handle the appeal using the Department's internal procedures for handling a denial, suspension, or revocation of a license other than a regulatory license. If the Department ultimately determines that the appeal should be denied, a representative within the Department's General Counsel for Litigation will prepare a written department determination addressing the issues raised by the appeal. If the taxpayer has exhausted his administrative remedies, the taxpayer may appeal the department determination to the Administrative Law Court using the procedures described below.

Contested Case Hearing Before the Administrative Law Court

- A. If a taxpayer has exhausted his administrative remedies, the taxpayer can request a contested case hearing before the Administrative Law Court if the taxpayer disagrees with the department determination.
- B. The request for a contested case hearing must be made in writing within 30 days after the date the department determination is sent by first class mail or hand delivered to the taxpayer.
- C. The rules of the Administrative Law Court will control the request for a contested case hearing and the hearing.
- D. The denial, suspension, or revocation of the license will become final if the taxpayer does not request a contested case hearing within 30 days of the date the department determination was sent by first class mail or delivered to the taxpayer.

T. The Fairness in Lodging Act

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%. The revenue generated by this additional tax must be used exclusively for certain tourism purposes.⁷⁴

The “Fairness in Lodging Act,”⁷⁵ enacted on June 9, 2014, gives municipalities and counties the option of exercising additional enforcement authority and sharing data with the Department with respect to individuals who rent residential accommodations to tourists and fail to remit the local accommodations tax and the state sales tax on accommodations. The governing body of the municipality or county that imposes the local accommodations tax may implement the provisions of the Act through an ordinance and by providing a certified copy of the ordinance to the Director of the Department.⁷⁶ The provisions of the Act do not apply to any residential real property lawfully assessed for property tax purposes pursuant to South Carolina Code §12-43-220(c) when all rental income on the property is not included in gross income for federal income tax purposes pursuant to Internal Revenue Code §280A(g).⁷⁷

⁷⁴ South Carolina Code §6-1-520.

⁷⁵ South Carolina Code §6-1-810 through 6-1-825.

⁷⁶ South Carolina Code §6-1-815(A).

⁷⁷ South Carolina Code §6-1-815(B).

When the provisions of the Act apply in a jurisdiction, the Department and the implementing municipality or county must share helpful data in determining possible instances of noncompliance using returns and other documents filed with or available to them.⁷⁸ The municipality or county must include a notice with the annual property tax notices provided to owners of residential real property assessed at 6%.⁷⁹ The notice must include: details of local and state accommodations taxes required to be paid by persons renting residential real property to tourists; the intention of the municipality or county to vigorously enforce the requirements; and specific directions for obtaining additional information about the requirements, including names, addresses and telephone numbers of municipal or county officials able to answer questions, provide forms, and assist in compliance.⁸⁰

The implementing municipality or county may impose a one-time civil noncompliance penalty of \$500 to \$2,000 for each seven days that a property was rented. The one-time penalty is in addition to other penalties and interest imposed under the ordinance for failure to comply with local accommodations tax requirements of owners who rent residential accommodations to tourists. The county or municipality may not impose the additional penalty unless the owner received the notice as required under the Act. For purposes of enforcement and collection, the additional penalty is deemed a property tax on the rental property.⁸¹

The Act requires the Department to identify websites containing “rent by owner” vacation rental opportunities and to request that the websites post a statement that owners of South Carolina rental properties must be licensed and collect applicable local and state fees and taxes.⁸²

The Act requires the Department to provide data and assistance to municipalities and counties that have implemented the Fairness in Lodging Act.⁸³ The county or municipality⁸⁴ and the Department⁸⁵ may share information in the performance of their duties required under the Fairness in Lodging Act.

⁷⁸ South Carolina Code §6-1-820(A).

⁷⁹ South Carolina Code §12-43-220(e).

⁸⁰ South Carolina Code §6-1-820(B).

⁸¹ South Carolina Code §6-1-820(C).

⁸² South Carolina Code §6-1-825.

⁸³ South Carolina Code §12-4-310(11).

⁸⁴ South Carolina Code §6-1-120(B)(3).

⁸⁵ South Carolina Code §12-54-240(B)(13).