

Chapter 5

Sales or Purchases at Retail

In order for the sales tax or use tax to apply to a transaction, there must be a “sale at retail” or a “purchase at retail.”

The determination of what is a sale or purchase at retail must first begin with what is a sale. A sale¹ is any transfer, exchange, or barter, conditional or otherwise, of tangible personal property for a consideration.² It includes:

- (1) a transaction in which possession of tangible personal property is transferred but the seller retains title as security for payment, including installment and credit sales;
- (2) a rental, lease, or other form of agreement;³
- (3) a license to use or consume; and
- (4) a transfer of title or possession, or both.

In addition, it should be noted that the fact that the two parties in a sale are related entities is irrelevant.⁴ For example, a sale can occur between a parent corporation and a wholly owned subsidiary corporation.

A “sale at retail” or “purchase at retail” is any sale of tangible personal property not defined as a wholesale sale.⁵

¹ South Carolina Code §12-36-100.

² The sales tax and the use tax are transaction taxes in which the transfer by a retailer of tangible personal property to the end user for a consideration is subject to the tax. Consideration includes, but is not limited to, money, realty, personal property, stocks, bonds, partnership interests, and other intangible property, the forgiveness or cancellation of a debt, the assumption of a debt, and the surrendering of a right. For example, depending on the facts and circumstances of the transaction, the sales tax or the use tax may apply to such transactions as the formation of partnerships or corporations, the reorganization of corporations, and any other similar structural change in business entities, unless the transaction is otherwise exempt under the law (e.g., South Carolina Code §12-36-2120(42)).

³ See also *Edisto Fleets, Inc. v. South Carolina Tax Commission*, 256 S.C. 350, 182 S.E.2d 713 (1971).

⁴ See *Edisto Fleets, Inc. v. South Carolina Tax Commission*, 256 S.C. 350, 182 S.E.2d 713 (1971) and South Carolina Private Letter Ruling #04-3.

⁵ South Carolina Code §12-36-110.

A “wholesale sale” is essentially a sale to a licensed retailer or a wholesaler for resale and not for use or consumption.⁶

In summary, a retail sale is a sale to the end user or consumer.

However, the statute specifically establishes certain other sales as either wholesale or retail sales.

Specific retail sales include:

(1) Manufacturers, Processors, Compounders, Quarry Operators, or Mine Operators

sales of tangible personal property to manufacturers, processors, compounders, quarry operators, or mine operators, which are used or consumed by them, and do not become an ingredient or component part of the tangible personal property manufactured, processed, or compounded for sale.⁷

(2) Construction Contractors

sales of building materials to construction contractors, builders, or landowners for resale or use in the form of real estate.⁸

sales to contractors for use in the performance of construction contracts.⁹

the use within this State of tangible personal property by its manufacturer as building materials in the performance of a construction contract. The manufacturer must pay the sales tax based on the fair market value at the time and place where used or consumed.¹⁰

(3) Vending Machine Operators

sales of tangible personal property, other than cigarettes and soft drinks in closed containers, to vendors who sell the property through vending machines.¹¹ The vendors are deemed to be the users or consumers of the property.¹²

⁶ South Carolina Code §12-36-120. See also, *Stanton Quilting Co., Inc. v. South Carolina Tax Commission*, 281 S.C. 133, 314 S.E.2d 844 (1984).

⁷ South Carolina Code §12-36-110(1)(b).

⁸ South Carolina Code §12-36-110(1)(a).

⁹ South Carolina Code §12-36-110(1)(e).

¹⁰ South Carolina Code §12-36-110(1)(d). See also South Carolina Revenue Ruling #94-2.

¹¹ An “honor box” is not a vending machine or its functional equivalent. See *Anonymous Taxpayer v. South Carolina Department of Revenue*, 00-ALJ-17-0137-CC (2001).

¹² South Carolina Code §12-36-110(1)(g).

(4) Medical Institutions, Medical Professionals and Other Medical Transactions

sales of prepared meals, or unprepared food products used to prepare meals to hospitals, infirmaries, sanitariums, nursing homes, and similar institutions, educational institutions, boarding houses, and transportation companies, if furnished as part of the service rendered. These institutions and companies are deemed to be the users or consumers of the property.¹³

sales of drugs, prosthetic devices, and other supplies to hospitals, infirmaries, sanitariums, nursing homes, and similar institutions, medical doctors, dentists, optometrists, and veterinarians, if furnished to their patients as a part of the service rendered. These institutions, companies, and professionals are deemed to be the users or consumers of the property.¹⁴

sales of tangible personal property to veterinarians. The veterinarians are deemed to be the users or consumers of the property whether used in the rendering of professional services or sold outright as part of the veterinarian practice and not furnished as a part of professional services rendered.¹⁵

sales of tangible personal property used incidental to the performance of services by licensed medical doctors, dentists, doctors of veterinary medicine, oculists, optometrists, and other licensed professionals. Note however, that these professionals may, in addition to rendering a service, also be in the business of making sales of tangible personal property. For instance, a doctor may sell medicines. In those cases where professionals are regularly engaged in the business of selling tangible personal property at retail, they must obtain a retail license and remit the taxes due on such sales.¹⁶

sales of tangible personal property, such as equipment, supplies, and medicines, to dentists for use in rendering professional services. Note: Sales of dental prosthetic devices to dentists are exempt from the tax.¹⁷

sales of tangible personal property, such as supplies, medicines, office furniture and fixtures and special tools and equipment, to doctors for use in the practice of their profession. It is only when a doctor has a stock of drugs from which the doctor makes numerous and substantial retail sales that the doctor is required to have a retail license and to remit sales tax directly to the Department.¹⁸

¹³ South Carolina Code §12-36-110(1)(h).

¹⁴ South Carolina Code §12-36-110(1)(i). See also SC Regulations 117-305.1; 117-305.2; 117-305.3; and 117-305.4.

¹⁵ South Carolina Code §12-36-110(1)(l).

¹⁶ SC Regulation 117-308.1.

¹⁷ SC Regulation 117-308.2.

¹⁸ SC Regulation 117-308.3.

sales, not otherwise exempted, when reimbursed or paid in whole or in part by Medicare or Medicaid. However, only the net amount reimbursed by Medicare and Medicaid is subject to the tax, if the vendor is prohibited by law from charging the purchaser the difference between the retail sale and the amount reimbursed.¹⁹

(5) Other Professionals

sales of tangible personal property used incidental to the performance of services by lawyers, accountants, civil engineers, and other licensed professionals. Note however, that these professionals may, in addition to rendering a service, also be in the business of making sales of tangible personal property. In those cases where professionals are regularly engaged in the business of selling tangible personal property at retail, they must obtain a retail license and remit the taxes due on such sales.²⁰

sales of tangible personal property, such as law books, supplies, and equipment, to lawyers.²¹

sales of tangible personal property to architects. Architects are not considered to be engaged in the business of selling tangible personal property when they render professional services in the forming of original plans, designs and specifications. Also considered to be proceeds from the rendition of professional services are charges for the sale of these original design concepts which have been changed as a result of elevation and/or other architectural modifications to a customer's specific requirements. Sales by architects of all reproductions of such plans, designs or specifications, unaltered or unmodified in any way, are deemed to be subject to the sales or use tax.²²

(6) Other Service Businesses

sales of tangible personal property to persons engaged in the business of binding books, magazines or other printed matter belonging to another. Sales of tangible personal property to such persons for use or consumption in the performance of these services are taxable. However if bookbinders bind their own printed matter and sell the finished products to users or consumers, or make and sell at retail loose-leaf binders or other articles, bookbinders must remit the tax on the entire receipts from such sales.²³

¹⁹ South Carolina Code §12-36-110(1)(j).

²⁰ SC Regulation 117-308.1.

²¹ SC Regulation 117-308.4.

²² SC Regulation 117-308.6.

²³ SC Regulation 117-308.10.

sales of tangible personal property to a person engaged in the business of paper-cutting, folding, gathering, padding or punching circulars, office forms or other printed matter belonging to others. Sales of tangible personal property to such persons for use or consumption in the performance of these services are taxable.²⁴

sales of tangible personal property to persons practicing the art of taxidermy for use in the performance of such services.²⁵

sales of paint, supplies, etc. to persons engaged in the business of painting automobiles.²⁶

(7) Gift Transactions

sales of tangible personal property to a person who will give that tangible personal property to another person as a gift or who will award that tangible personal property to another person as a prize.²⁷

(8) Coin-Operated Telephone Providers

sales of all local telecommunications services by local exchange companies (LECs) to customer owned coin-operated telephone (COCOT) providers, as those terms are defined by the South Carolina Public Service Commission. The COCOT providers that purchase these services in order to provide payphone services to their customers are considered to be the users and consumers of the services, and are not subject to sales tax for their subsequent sale of local telecommunications services to their COCOT customers.²⁸

(9) Withdrawals for Use

the withdrawal, use, or consumption of tangible personal property by anyone who purchases it at wholesale,²⁹ except:

- (i) withdrawal of tangible personal property previously withdrawn and taxed by such business or person;

²⁴ SC Regulation 117-308.10.

²⁵ SC Regulation 117-308.14.

²⁶ SC Regulation 117-308.15.

²⁷ SC Regulation 117-333. See also South Carolina Revenue Ruling #03-3.

²⁸ South Carolina Code §12-36-110(1)(k).

²⁹ South Carolina Code §12-36-110(1)(c). See also South Carolina Revenue Ruling #08-11.

- (ii) tangible personal property which becomes an ingredient or component part of tangible personal property manufactured or compounded for sale;
- (iii) tangible personal property used directly in manufacturing, compounding, or processing tangible personal property for sale;
- (iv) materials, containers, cores, labels, sacks, or bags used incident to the sale and delivery of tangible personal property;
- (v) a motor vehicle operated with a dealer, transporter, manufacturer or education license plate and used in accordance with the provisions of South Carolina Code §§56-3-2320 or 56-3-2330;

The law establishes certain other sales as “wholesale sales.” As such, these sales are not retail sales and are therefore not taxable. These additional “wholesale sales” are sales of:

- (1) tangible personal property to a manufacturer or compounder as an ingredient or component part of the tangible personal property or products manufactured or compounded for sale.³⁰
- (2) tangible personal property used directly in manufacturing, compounding, or processing tangible personal property into products for sale.³¹
- (3) 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.³²
- (4) food or drink products to licensed retail merchants for use as ingredients in preparing ready-to-eat food or drink sold at retail. These products include cooking oil used as an ingredient. However, items used or consumed by licensed retail merchants to prepare ready-to-eat food or drink, such as hickory chips, barbecue briquettes, gas, or electricity are subject to tax.³³
- (5) tangible personal property to a manufacturer or construction contractor when the tangible personal property is subsequently processed, partially or completely fabricated, or manufactured in this State by the manufacturer or contractor, for use in the performance of a construction contract if the property is transported to, assembled, installed, or erected at a job site outside the State and thereafter used solely outside the State.³⁴

³⁰ South Carolina Code §12-36-120(2).

³¹ South Carolina Code §12-36-120(3).

³² South Carolina Code §12-36-120(4).

³³ South Carolina Code §12-36-120(5).

³⁴ South Carolina Code §12-36-110(2).

Finally, operators of businesses who are both making retail sales and withdrawing for use from the same stock of goods are to purchase at wholesale all of the goods so sold or used and report both retail sales and withdrawals for use under the sales tax law. This applies only to those who actually carry on a retail business having a substantial number of retail sales and does not apply to contractors, plumbers, repairmen, and others who make isolated or accommodation sales and who have not set themselves up as being engaged in selling. Where only isolated sales are made, tax should be paid on all of the taxable property purchased with no sales tax return being required of the seller making such isolated or “accommodation” sales.³⁵

³⁵ SC Regulation 117-324.