
State of South Carolina
Department of Revenue
301 Gervais Street, P.O. Box 125, Columbia, South Carolina 29214
Website Address: <http://www.sctax.org>

November 4, 2011

The Honorable Stephen T. Draffin
Legislative Council of the General Assembly
P.O. Box 11489
Columbia, South Carolina 29211

The Honorable Paul M. Felix, Chairman
South Carolina Small Business Regulatory Review Committee
1201 Main Street, Suite 1600
Columbia, South Carolina 29201

Re: Report to the Code Commissioner
Report to the Small Business Regulatory Review Committee

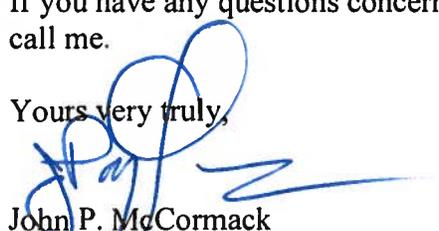
Dear Commissioner Draffin and Chairman Felix:

Code Section 1-23-120 and Code Section 1-23-270 requires each state agency to review the regulations under its authority – one review for the Code Commissioner and a second review for the Small Business Regulatory Review Committee.

The Department of Revenue has conducted both of these reviews and has combined the findings into the enclosed report.

If you have any questions concerning these reports and any specific regulation proposals, please call me.

Yours very truly,



John P. McCormack
Manager for Policy
(803) 898-5138

cc: James F. Etter, Director
Harry T. Cooper, Deputy Director
Meredith F. Cleland
Richard C. Handel

South Carolina Department of Revenue Regulations **November, 2011**

The General Assembly has enacted two review provisions concerning regulations promulgated by each state agency.

The first provision requires an agency to conduct a formal review of all its regulations every five years and to submit a report concerning this review to the Code Commissioner.

The second provision requires the agency to review its regulations with respect to their economic impact on small businesses. The Department must review all future regulations within five years of the publication of the final regulation with respect to a regulation's economic impact on small businesses.

This report will address both these requirements – the five year review for the Code Commissioner and the small business review of Department regulations. To comply with the requirement to review regulations and submit a report to the Code Commissioner every five years and to review all future regulations within five year of their publication, the Department first combined these reports in 2006 with the intent of combining these reports in the future as well.

It is now time for the Department to issue this combined report. The next combined report after this one will be issued in 2016.

Report to the Code Commissioner:

Code Section 1-23-120 states in part:

Each state agency which promulgates regulations or to which the responsibility for administering regulations has been transferred shall ... every five years ..., conduct a formal review of all regulations which it has promulgated or for which it has been transferred the responsibility of administering, Upon completion of the review, the agency shall submit to the Code Commissioner a report which identifies those regulations:

- (1) for which the agency intends to begin the process of repeal in accordance with this article;
- (2) for which the agency intends to begin the process of amendment in accordance with this article; and
- (3) which do not require repeal or amendment.”

The Department of Revenue has conducted this review and the following details the Department's plan with respect to the regulations under its authority:

Organization of Regulations: The Department has, through the regulation approval process established in Chapter 23, Title 1, organized all its regulations by subject matter. In addition,

each regulation now has several “subsections” numbered in a manner to allow future issues concerning the subject matter to be added on and still be in the same place in the regulation code as other similar issues. The regulations are further organized by tax type as follows:

Administrative Regulations	Article 10 of Chapter 177
Sales and Use Tax Regulations	Article 11 of Chapter 177
Income Tax Regulations	Article 12 of Chapter 177
Withholding Tax Regulations	Article 18 of Chapter 177
Corp. License Fee/Annual Report Regulations	Article 20 of Chapter 177
Miscellaneous Tax Regulations	Article 24 of Chapter 177
Property Tax Regulations	Article 37 of Chapter 177
Alcoholic Beverage Licensing Regulations	Chapter 7

Regulation Changes from 2007 through 2011: Since the last report issued in 2006, the Department has made the following changes with respect to its regulations:

SC Regulation 7-202: SC Regulation 7-202 was added in 2010 to revise the definition of “premises” for purposes of licenses for beer, wine, and liquor. Previously, “premises” was defined in SC Regulations 7-401.1 and 7-700, both of which have been repealed.

The purpose of the regulation is the determination of the extent of the physical place where a business or entity that has been approved to hold a license undertakes the privileges and responsibilities associated with that license. The term “premises” generally means all of the buildings and grounds that are both (1) subject to the direct control of the license holder, as shown by certain documents, and (2) used by the license holder to conduct its business.

A presumption arises that the buildings and grounds described with particularity in the license application are used by the license holder to conduct its business. The regulation provides that the premises may be subject to conditions or restrictions or both imposed under Code Section 61-2-80. In addition, there are provisions governing multiple tracts or buildings, separate locations of a business, the premises of nonprofit organizations and specific facilities licensed to serve alcoholic liquor by the drink, including golf courses, fishing piers and resort complexes.

This regulation became effective on July 23, 2010.

SC Regulation 117-314.11: Sales to, or purchases by, a construction contractor of tangible personal property for use in a federal government construction project in South Carolina for which the contractor has a written contract with the federal government are not subject to the sales and use tax under Code Section 12-36-2120(29). This exemption applies only if the contract necessitating the purchase provides that title and possession of the property is to transfer from the contractor to the federal government at the time of purchase or after the time of purchase and such property is actually transferred to the federal government in accordance with the contract or the property becomes part of real

or personal property owned by the federal government or that will be transferred to the federal government.

SC Regulation 117-314.11 addresses the application of this exemption to sales to, or purchases by, a construction subcontractor of tangible personal property for use in a federal government construction project in South Carolina for which the subcontractor has a written contract with a general contractor who in turn has a written contract for the project with the federal government.

This regulation became effective June 26, 2009.

SC Regulation 117-1350: South Carolina imposes a deed recording fee pursuant to Chapter 24 of Title 12. This fee is composed of a state fee and a county fee. The office of the clerk of court or register of deeds collects the fee and remits the state portion to the Department monthly.

SC Regulation 117-1350 provides a comprehensive discussion of the deed recording fee to a variety of real estate transactions.

This regulation became effective June 26, 2009.

SC Regulation 117-1720.1: SC Regulation 117-1720.1, concerning the responsibilities of the Department and the Comptroller General with respect to property taxation and Fees in lieu of property taxes, was repealed. This regulation was unnecessary since the responsibilities of the Comptroller General discussed in this regulation were moved to the Department pursuant to Act 386, Section 55, of 2006.

The repeal of this regulation became effective February 22, 2008.

SC Regulation 117-318.8: SC Regulation 117-318.8, concerning the application of the sales and use tax with respect to returned merchandise and restocking fees, has been promulgated. It provides that the sales price of property returned by a customer is not subject to the tax only if the "full sales price" is refunded in cash or by credit as set forth in Code Section 12-36-90(2)(b) and Code Section 12-36-130(2)(b).

This regulation became effective October 1, 2008.

SC Regulation 117-304.1: SC Regulation 117-304.1, concerning the application of the sales and use tax to transfers of tangible personal property from a State agency to another State agency, a county or a municipality, has been amended to make a technical correction. This regulation does not deem such transfers to be sales at retail provided the transferring agency is only reimbursed its costs and paid the tax on its initial purchase of the tangible personal property.

Code Section 12-36-910(B)(4) imposes the sales tax on the "fair market value of tangible personal property manufactured within this State, and used or consumed within this State

by the manufacturer.” For example, if a manufacturer of an industrial cleaning solution uses the cleaning solution instead of selling it, the manufacturer is liable for the sales tax on the fair market value of the cleaning solution it manufactured and used.

As amended, SC Regulation 117-304.1 now ensures that a State agency that manufactures tangible personal property receives the same treatment for property it manufactures and uses that it would if it manufactured the property and transferred it to another State agency, county or municipality at cost.

This regulation became effective June 27, 2008.

SC Regulation 117-307 and SC Regulation 117-307.1: SC Regulation 117-307 and SC Regulation 117-307.1, concerning the sales tax on accommodations and “additional guest charges,” have been amended to update references from the old 5% state tax rate to the new 6% state tax rate (effective June 1, 2007) with respect to additional guest charges at places providing sleeping accommodations under Code Section 12-36-920(B) and all other sales of tangible personal property at a place providing sleeping accommodations.

This regulation became effective June 1, 2007.

SC Regulation 117-307.3: SC Regulation 117-307.3 concerns the exception to the 7% sales tax on accommodations for the rental or charges for any rooms, lodgings or accommodations furnished to transients by facilities that consist of less than six sleeping rooms, contained on the same premises, which is used as the place of abode of the owner or operator of such facilities.

The purpose of this revision is to incorporate the longstanding position of the Department that in order for the exception to apply, the facility must serve as the owner’s or operator’s “place of abode” during the same times at which the remaining sleeping rooms are rented to transients and the rooms must not be rented to transients by a person other than the owner or operator using the facility as his or her “place of abode.” Examples to assist in understanding this exception are provided in the regulation.

This regulation became effective June 27, 2008.

SC Regulation 117-329: SC Regulation 117-329, concerning the application of the sales and use tax to communications services, has been amended to summarize the longstanding position of the Department concerning the taxability of various communications services and to list as many communications services as possible that the Department has held in the past as subject to the tax, including communications services such as telephone services, paging services, cable television services, satellite programming services (includes, but is not limited to, emergency communication services and television, radio, music or other programming services), fax transmission services, voice mail messaging services, e-mail services, and database access transmission services (on-line information services), such as legal research services, credit reporting/research services, and charges to access an individual website.

This regulation became effective June 27, 2008.

SC Regulation 117-337: SC Regulation 117-337 has been added to provide guidance as to the application of Code Section 12-36-2120(75) which exempts from the state sales and use tax the gross proceeds of sales or sales price of “unprepared food that lawfully may be purchased with United States Department of Agriculture food coupons.” This exemption does not apply to local sales and use taxes that are administered and collected by the Department on behalf of the counties and other jurisdictions, unless the local tax law specifically exempts the sales of such unprepared food.

Under the regulation, the determination as to whether a sale of unprepared food is exempt from the state sales and use tax is based on whether the food is of a type that is eligible to be purchased with USDA food stamps, the type of location selling the food, and whether the food is being sold for immediate consumption, business or institutional consumption, or home consumption.

In other words, a food must be of a type eligible to be purchased with USDA food stamps and must also be sold for home consumption (based on the type of food and the type of location selling the food) to qualify for the exemption from the state sales and use tax under Code Section 12-36-2120(75). For example, bottled soft drinks are eligible to be purchased with USDA food stamps, but if bottled soft drinks are sold at a concession stand at a festival, then the bottled soft drinks are sold for immediate consumption and not home consumption and the sale at the festival would be subject to the full state sales tax rate.

This regulation became effective July 25, 2008.

SC Regulation 117-300.6: SC Regulation 117-300.6, concerning retail licenses and partnerships, has been amended. The regulation was out of date since it referenced an annual license and the retail license is no longer issued on an annual basis. The regulation was amended to address this issue as well as other issues affecting the retail license when a partnership terminates or is converted to a limited liability partnership (“LLP”) or limited liability company (“LLC”).

Under the amended regulation, a partnership engaged in the business of selling tangible personal property at retail must obtain a new retail license, or retail licenses if the partnership has multiple retail locations, if (1) the partnership incorporates, (2) a single partner takes over the business and operates it as a sole proprietorship, (3) the partnership is terminated (no part of any business, financial operation, or venture of the partnership continues to be carried on by any of its partners in a partnership) and a new partnership is begun, or (4) the partnership is otherwise required to obtain a new Taxpayer Identification Number (“TIN”).

A new retail license, or retail licenses if the partnership has multiple retail locations, is not required if (1) the partnership merely changes its name or (2) the partnership has a change in ownership but is not required to obtain a new TIN.

The regulation also provides that:

1. the conversion of a partnership to a registered LLP pursuant to Article 13 of Chapter 41 of Title 33 is a partnership-to-partnership conversion and the organization is still considered to be the same entity for South Carolina tax purposes and is not required to obtain a new retail license; and,
2. the conversion of a partnership to an LLC taxed as a partnership pursuant to Code Section 33-44-902 is treated as a partnership-to-partnership conversion and the organization is still considered to be the same entity for South Carolina tax purposes and is not required to obtain a new retail license.

The provisions of this regulation apply to the retail licensing requirements under the sales and use tax law (Chapter 36 of Title 12) and do not apply to the alcoholic beverage licensing provisions of Title 61.

This regulation became effective February 23, 2007.

Current Regulation Proposals: The Department is currently working on the following proposal to amend a SC Regulation 117-329. The Notice of Drafting for this proposal was published in the State Register on September 23, 2011.

SC Regulation 117-329: The Department is considering amending SC Regulation 117-329 concerning the application of the sales and use tax to communication services. This regulation summarizes the taxability of various communications services and attempts to list examples of communication services that the Department has held in the past as subject to the tax. For example, under the provisions of Code Sections 12-36-910(B)(3) and 12-36-1310(B)(3) that impose the sales and use tax on “charges for the ways or means for the transmission of the voice or messages,” the Department has taxed communication services such as telephone services, paging services, cable television services, satellite programming services (including, but is not limited to, emergency communication services and television, radio, music or other programming services), fax transmission services, voice mail messaging services, e-mail services, and database access transmission services (on-line information services), such as legal research services, credit reporting/research services, and charges to access an individual website.

The purpose of this amendment to SC Regulation 117-329 is to clarify that a non-automated answering service is not subject to the sales and use tax under Code Sections 12-36-910(B)(3) and 12-36-1310(B)(3). Therefore, the Department is proposing to amend SC Regulation 117-329 to delete “answering services” and “voice mail messaging services” from the list of examples of taxable communications services in subsection 117-329.4 of the regulation and to add “non-automated voice mail messaging services,

including non-automated answering and messaging services” to the list of examples of non-taxable communications services in subsection 117-329.5 of the regulation.

Therefore, this amendment, if approved, will clarify that charges for “non-automated answering and messaging services” are not subject to the sales and use tax as “charges for the ways or means for the transmission of the voice or messages.”

Future Regulation Proposals: The Department is considering other proposals to amend or repeal regulations; however, no action has been taken on any such proposals at this time. When a Notice of Drafting is ready for publication in the State Register, the proposal will be posted on the Department’s “Proposed Regulation Calendar” that it maintains on its website (<http://www.sctax.org/Tax+Policy/Policy/Proposed+Regulation+Calendar.htm>).

Based on our review of Department regulations, the following regulation are under consideration for possible amendment or repeal:

Sales and Use Tax:

SC Regulation 117-300.6 - Partnerships

SC Regulation 117-321 – Ships and Sales of Fuel, Lubricants and Mechanical Supplies to Ships

SC Regulation 117-332 – Medicines, Prosthetic Devices and Hearing Aids

SC Regulation 117-335 – Manufactured Homes

Income Tax:

SC Regulation 117-620 – Legal Residency

SC Regulation 117-640 – Military Legal Residency, Military Pay

Alcohol Beverage Licensing:

SC Regulation 7-200.1 – Applications

SC Regulation 7-702.1 – Delivery and Removal of Beer and Wine During Restrictive Hours Prima Facie Evidence of Sale

Note: As stated above, the above regulations are under consideration for possible amendment or repeal. Further review will determine if the Department will proceed with either amending or repealing these regulations. In addition, the Department, as demonstrated from 2007 through 2011, will amend or repeal other regulations as needed prior to the next “Report to the Code Commissioner” due in 2016.

Small Business Regulatory Review Report:

In 2004 the General Assembly enacted the "South Carolina Small Business Regulatory Flexibility Act of 2004." The legislation outlines the importance of small businesses and the need for state agencies to develop regulations that meet the goals of the Act - which is essentially to avoid placing unnecessary burdens on small employers and to consider small businesses when promulgating regulations.

Code Section 1-23-270(F) states:

(F)(1) Within five years of the effective date of this article, each agency shall review all agency regulations existing at the time of the effective date to determine whether to continue the regulations without change or amend or rescind them to minimize economic impact of the regulations on small businesses in a manner consistent with the stated objective of applicable statutes. If the head of the agency determines that completion of the review of existing regulations is not feasible by the established date, the agency shall publish in the State Register a statement certifying that determination.

(2) Regulations that take effect on or after the effective date of this article must be reviewed within five years of the publication of the final regulation in the State Register and every five years after that to ensure that they minimize economic impact on small businesses in a manner consistent with the stated objectives of applicable statutes.

(3) In reviewing regulations to minimize their economic impact on small businesses, the agency shall consider the:

(a) continued need for the regulation;

(b) nature of complaints or comments received concerning the regulation from the public;

(c) complexity of the regulation;

(d) extent to which the regulation overlaps, duplicates, or conflicts with other federal, state, and local governmental regulations; and

(e) length of time since the regulation has been evaluated or the degree to which technology, economic conditions, or other factors have changed in the area affected by the regulation.

Under the above provision, the Department must review its present regulations within 5 years of the effective date of the Act (effective date - May 18, 2004) to determine whether to continue a regulation without change or to amend or rescind a regulation to minimize the economic impact

on small businesses. A similar review is required of all future regulations within five years of the publication of the final regulation in the State Register.

The Department has, through the regulation approval process established in Chapter 23, Title 1, has organized all its regulations by subject matter. In addition, each regulation now has several “subsections” numbered in a manner to allow future issues concerning the subject matter to be added on and still be in the same place in the regulation code as other similar issues. The regulations are further organized by tax type as follows:

Administrative Regulations	Article 10 of Chapter 177
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Alcoholic Beverage Licensing Regulations	Chapter 7

The Department believes this organization of its regulations has simplified our regulations for all taxpayers, but should be especially helpful to the small business community.

As part of its review under the South Carolina Small Business Regulatory Flexibility Act, the Department requested assistance in this “small business” review of our regulations from several business organizations that represent small businesses. In addition, the Department sought comments and suggestions directly from the small business community through website postings. Each e-mail, letter, and website posting requested that comments and suggestions be submitted to the Department by September 1, 2011.

During this process, the Department:

1. Sent e-mails on February 17, 2011 to the following business organizations requesting their assistance in identifying any regulations that may place an undue burden on small businesses:

South Carolina Small Business Chamber of Commerce
South Carolina Chamber of Commerce
South Carolina Hospitality Association
South Carolina Association of Convenience Stores
South Carolina Association of Certified Public Accountants
South Carolina Bar

Sent a letter on February 17, 2011 to the National Federation of Independent Businesses requesting their assistance in identifying any regulations that may place an undue burden on small businesses

2. Posted on February 17, 2011 a “Notice to Small Businesses” on the Department’s website (www.sctax.org). The notice requested the assistance of small businesses in identifying any regulations that may place an undue burden on small businesses. A link to this notice was posted in the “What’s New” section of our website, which is prominently displayed on the first page of the website. This notice remained on the website during the entire review period, except for a small period of time when it was accidentally removed from the “What’s New” section of the website.

3. The Department posted the “Notice to Small Businesses” on its “proposed Regulations Calendar” that it maintains on its website (www.sctax.org).

As a result of this public review and comment period, the Department did not receive any comments or suggestions stating that its regulations placed an undue burden of small businesses. The Department believes that it did not receive any negative comments concerning its regulations for the following reasons:

1. The Department’s organization of its regulations makes it much easier for taxpayers to find one regulation that deals with the subject matter that interests them and concerns their business.

2. The Department continues to amend regulations as needed to ensure they are up-to-date. This reduces any taxpayer confusion that may result from having a published regulation that is no longer needed. For more detailed information on the changes the Department has initiated with respect to regulations over the past five years, see the above “Report to the Code Commissioner” which lists regulations amended from 2007 through 2011 and current regulation proposals.

3. The Department maintains a “Proposed Regulation Calendar” on its website at <http://www.sctax.org/Tax+Policy/Policy/Proposed+Regulation+Calendar.htm>. This is in addition to the requirements established in Chapter 23 of Title 1. By visiting this “Proposed Regulation Calendar,” taxpayers may view regulation proposals, submit comments and suggestions, and determine the status of each proposal. Once the Department is ready to publish a “Notice of Drafting,” information concerning the proposal is posted on this calendar and remains on the calendar throughout the process. In fact, staff drafts of Notices of Drafting and Notices of Proposed Regulation (Public Hearing Notices) are posted on this calendar before they are published in the State Register giving taxpayers additional time to comment.

As stated above, the Department did not receive any comments or suggestions that dealt with regulations placing an undue burden on small businesses. The only comment received during the review process concerned a problem a taxpayer was having obtaining a copy of a sales tax return filed electronically online. This matter was referred to the Department’s E-Commerce Supervisor to provide assistance to the taxpayer.

Based on the above and the Department’s review of its regulation based on the standard of review established in Code Section 1-23-270(F)(3) (continued need, complexity, extent of

overlap, duplication, or conflict with other federal, state and local regulations, and changes in technology, the economy and other factors), and the Department's ongoing efforts to update regulations as described in the Report to the Code Commissioner, the Department believes its regulations, and the regulation it is presently proposing, are in compliance with the intent of the General Assembly and do not place an undue burden on small businesses.