



STATE OF SOUTH CAROLINA
DEPARTMENT OF REVENUE

300A Outlet Pointe Blvd., Columbia, South Carolina 29210
P.O. Box 12265, Columbia, South Carolina 29211

December 30, 2016

The Honorable James H. Harrison
Code Commissioner and Director
South Carolina Legislative Council
P.O. Box 11489
Columbia, South Carolina 29211

The Honorable Kenneth A. Breivik, 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

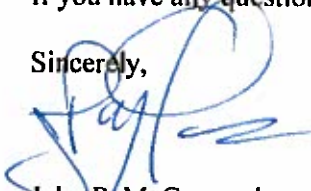
Dear Commissioner Harrison and Chairman Breivik:

Every five years, a state agency is required to conduct two reviews of the regulations under its authority – one review for the Code Commissioner (Code Section 1-23-120) and a second review for the Small Business Regulatory Review Committee (Code Section 1-23-270).

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 or any specific regulation proposal, please call me.

Sincerely,



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cc: Rick Reames, Director
Joe Dusenbury, General Counsel
Meredith Cleland, Deputy Director

South Carolina Department of Revenue Regulations **December, 2016**

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 2021.

Requirements for the 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:

Requirements for the 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.

Combined Report for 2016

Introduction:

The purpose of this report is to combine the report concerning regulations to the Code Commissioner and the report to the Small Business Regulatory Review Committee into one report.

The combined review was conducted to ensure that the Department’s regulations do not place an undue burden on small business and to determine if any regulation needed to be repealed or amended.

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 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 117
Sales and Use Tax Regulations	Article 11 of Chapter 117
Income Tax Regulations	Article 12 of Chapter 117
Withholding Tax Regulations	Article 18 of Chapter 117
Corp. License Fee/Annual Report Regulations	Article 20 of Chapter 117
Miscellaneous Tax Regulations	Article 24 of Chapter 117
Property Tax Regulations	Article 37 of Chapter 117
Alcoholic Beverage Licensing Regulations	Chapter 7

Current Regulation Proposals:

The Department is currently working on the following proposals to amend or add regulations:

117-338 – Local Transportation Sales and Use Tax – Eligible Costs:

The Department is considering adding SC Regulation 117-338 to provide guidance to counties that adopt the local transportation sales and use tax under Chapter 37, Title 4, to finance the costs of highways, roads, streets, bridges, and other transportation-related projects. The Department of Revenue administers and collects the local transportation sales and use tax and is authorized to promulgate regulations.

In order to ensure that the proceeds of the tax are used solely for transportation-related projects, the proposed regulation would require that a county imposing the tax adopt a reasonable standard to be applied in determining eligible costs that may be paid from the revenue derived from the

tax. The proposed regulation would approve a safe harbor standard that defines eligible costs as those costs that would be capitalized into a specific transportation-related project under the principles of Section 263A of the Internal Revenue Code. This safe harbor standard, however, is modified to allow certain reasonable costs incurred for the dissemination of information to the public, community outreach, and public relations, provided that such costs are related to a specific transportation-related project and are consistent with the purpose stated in the county's imposition ordinance and Chapter 37, Title 4. In lieu of the standard incorporating the principles of Section 263A, a county would be able to request the use of an alternative standard for Department approval.

Ineligible costs include, but are not limited to, costs incurred for training, establishment or support of programs to benefit constituents or persons that are not directly related to a specific transportation-related project, or excessive amounts not based on a competitive bidding arrangement.

Drafting Notice published July 22, 2016

Notice of Proposed Regulation published September 23, 2016

Public Hearing before the Administrative Law Court held on October 25, 2016

Report on Proposed Regulation issued by Administrative Law Court on November 29, 2016

Proposed Regulation and ALC Report submitted to the General Assembly for review during the 2017 session

117-307.1 - Examples of the Application of Tax to Various Charges Imposed by Hotels, Motels, and Other Facilities

The Department is considering amending SC Regulation 117-307.1, which provides examples of the application of the sales tax imposed on various charges by hotels, motels, and similar facilities to transient customers. Code Section 12-36-920(A) imposes a 7% sales tax on accommodations on the gross proceeds of rentals of rooms or lodgings provided by hotels, motels, and similar facilities; and Code Section 12-36-920(B) imposes a sales tax on certain "additional guest charges".

Effective July 1, 2014, Act 172 of 2014 amended Code Section 12-36-920(B) to limit additional guest charges to room service, laundering and dry cleaning services, in-room movies, telephone service, and rentals of meeting rooms; and amended Code Section 12-36-920(A) to provide that separately stated optional charges on a bill to a customer for amenities, entertainment, special items in promotional tourist packages, and other guest services are exempt from the 7% sales tax on accommodations.

The purpose of this regulation proposal is to revise the provisions of SC Regulation 117-307.1 to comply with Act 172 of 2014, which limited the sales tax on additional guest charges to room service, laundering and dry cleaning services, in-room movies, telephone service, and rentals of meeting rooms, and to inform the public of the impact of the new legislation. Additional questions were added to address room refreshment bars, safes, and other issues. The information in the regulation is consistent with the department's position, as expressed in SC Revenue Ruling #14-5. The amendment would be effective July 1, 2014, which is the effective date of Act No. 172 of 2014.

Drafting Notice published July 22, 2016
Notice of Proposed Regulation to be published September 23, 2016
Proposed Regulation submitted to the General Assembly for review during the 2017 session

117-307.7 – Hurricane Insurance

The Department is considering amending SC Regulation 117-307 to add a new subsection, 117-307.7, to address the application of the sales and use tax to hurricane rental insurance charges. The proposal addresses a change in policy due to the amendment of Code Section 12-36-920 by Act No. 172 of 2014. The proposal will summarize the treatment of both optional and mandatory hurricane rental insurance charges under Code Section 12-36-920. The treatment of hurricane rental insurance charges under Code Section 12-36-920 is presently set forth in an advisory opinion issued by the Department – SC Revenue Ruling #14-7.

Drafting Notice published July 22, 2016
Notice of Proposed Regulation to be published September 23, 2016
Proposed Regulation submitted to the General Assembly for review during the 2017 session

117-1600 – Cigarette Taxes

The Department is considering adding SC Regulation 117-1600 to implement the imposition of the cigarette tax via tax stamps as set out in Act No. 145 of 2016.

This regulation would contain provisions concerning reporting requirements under Chapters 47 and 48 of Title 11 along with provisions regarding affixing tax stamps, purchasing tax stamps, features of tax stamps, exemptions and refunds, display, storage, transfer, and transport of cigarettes. Tax stamps will be required as of January 1, 2019 in accordance with Act No. 145 of 2016.

Drafting Notice published August 26, 2016
Notice of Proposed Regulation to be published October 28, 2016
Proposed Regulation submitted to the General Assembly for review during the 2017 session

117-305.5 Exemption – Meals Sold to School Children

The South Carolina Department of Revenue is considering amending SC Regulation 117-305.5 to comply with Code Section 12-36-2120(10). Code Section 12-36-2120(10)(a) provides a sales tax exemption for sales of meals to school children and sales of foodstuffs to schools which are used in furnishing meals to school children, if the sales or use are within school buildings and are not for profit. SC Regulation 117-305.5 discusses sales of meals under Code Section 12-36-2120(10)(a), but it does not address sales of foodstuffs.

The department has always recognized both exemptions provided by Code Section 12-36-2120(10)(a) and is proposing to amend SC Regulation 117-305.5 to clarify that there is a sales tax exemption for sales of foodstuffs to schools which are used in furnishing meals to school children, if the sales or use are within school buildings and are not for profit.

*Drafting Notice published September September23, 2016
Notice of Proposed Regulation to be published November 25, 2016
Proposed Regulation submitted to the General Assembly for review during the 2017 session*

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.

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

Sales and Use Tax

- 117-309.2 Photographers, Photo Finishers, and Photo Copies
- 117-309.8 Undertakers
- 117-311.11 Meals Served by Railroads, Airlines, Etc.
- 117-313.4 Alteration Charges

Income Tax

- 117-740 Apportionment

Alcohol Beverage Licensing

- 7-500 Merchandise Other Than for Wines or Alcoholic Liquors Cannot be Advertised or Displayed
- 7-501 Open Containers of Wine as well as Alcoholic Liquors in Retail Liquor Stores

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 may amend or repeal other regulations as needed prior to the next combined report that will be due in 2021.

Conclusion:

The Department conducted this review of its regulation based on the following standard of review established in Code Section 1-23-270(F)(3):

- Continued Need
- Complexity
- Extent of Overlap
- Duplication
- Conflict with other Federal, State and Local Regulations
- Changes in Technology, the Economy and other Factors

Based on the above standard of review, and the Department's ongoing efforts to update and organize regulations, 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.