



SALES AND USE TAX GUIDE FOR AUTOMOBILE AND TRUCK DEALERS

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SOUTH CAROLINA DEPARTMENT OF REVENUE

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The purpose of this guide is to provide information specific to automobile and truck dealers, including motor vehicle transactions involving sales of motor vehicles to nonresidents, leases, short-term rentals, maximum tax provisions, loaner cars, repairs and other issues.

It is written in general terms for widest possible use and may not contain all the specific requirements or provisions of authority. It is intended as a guide only, and the application of its contents to specific situations will depend on the particular circumstances involved. This publication does not constitute tax, legal, or other advice and may not be relied on as a substitute for obtaining professional advice or for researching up to date original sources of authority. Nothing in this publication supersedes, alters, or otherwise changes provisions of the South Carolina code, regulations, or Department advisory opinions. This publication does not represent official Department policy.

This guide is divided into the following sections:

- Responsibility of the Dealer
- Sales, Leases, and Rentals of Motor Vehicles, Trailers and Semitrailers
- Repairs of Motor Vehicles, Trailers and Semitrailers
- Gross Proceeds of Sales – The Measure of the Tax

For more information concerning the sales and use tax, such as information on impositions, retail sales, the measure or basis for the tax, exclusions, and exemptions, see the Department's *Sales and Use Tax Manual* at www.dor.sc.gov in the "Law and Policy" section under "Resources."

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SPECIFIC TRANSACTION CONCERNING AUTOMOBILE AND TRUCK DEALERS

A. RESPONSIBILITY OF A DEALER TO REMIT THE SALES TAX

Automobile and truck dealers, as retailers, must remit the sales tax on all retail sales, leases and rentals of motor vehicles as well as all retail sales of other tangible personal property (e.g., repair parts), unless the retail sale, rental or lease is otherwise exempt or excluded.

With respect to the retail sale or lease of a motor vehicle, the dealer remains responsible for remitting the sales tax (unless the sale is otherwise exempt or excluded) even if the dealer is not the party that will register or title the motor vehicle (on behalf of the purchaser or lessee) with the Department of Motor Vehicles.

B. SALES, LEASES AND RENTALS OF MOTOR VEHICLES, TRAILERS AND SEMITRAILERS

◆ *Sales to Residents of Other States – Delivery by the Dealer within South Carolina*

The sales tax due on a sale to a nonresident¹ of a motor vehicle that is to be registered and licensed in the nonresident purchaser's state of residence is as follows:

1. The lesser of:
 - (a) the sales tax which would be imposed on the sale in the purchaser's state of residence; or
 - (b) the tax that would be imposed under Chapter 36 of the South Carolina Code of Laws (the lesser of 5% of the gross proceeds of sale or \$300).
2. No sales tax is due in South Carolina if a nonresident purchaser cannot receive a credit in his resident state for sales tax paid to South Carolina.

¹ South Carolina Code Section 12-36-2120(25) exempts sales of motor vehicles (excluding trucks) or motorcycles, which are required to be licensed to be used on the highways, sold to a resident of another state, but who is located in South Carolina by reason of orders of the United States Armed Forces. This exemption is allowed only if within 10 days of the sale (10 days prior or 10 days after) the vendor is furnished a statement from a commissioned officer of the Armed Forces of a higher rank than the purchaser certifying that the buyer is a member of the Armed Forces on active duty and a resident of another state or if the buyer furnishes a leave and earnings statement from the appropriate department of the armed services which designates the state of residence of the buyer.

Note: Even though a credit will be allowed in the purchaser's state of residence for sales tax paid in South Carolina under this provision, a state or local tax may still be due in the purchaser's state of residence. This may be a result of a higher state tax due in the purchaser's state, a local tax due in the purchaser's state, or other provisions of the state tax law in the purchaser's state of residence (*e.g.*, credit provisions concerning state vs. local taxes).

At the time of the sale, the seller must obtain from the purchaser a notarized statement of the purchaser's intent to license the vehicle in the purchaser's state of residence within 10 days.² South Carolina Form ST-385, "Affidavit for Intent to License Motor Vehicle, Trailer, Semitrailer, or Pole Trailer Purchased in South Carolina in Purchaser's State of Residence" may be used. The seller should retain a completed and notarized copy of Form ST-385. The purchaser should give a copy to the appropriate agency (*e.g.*, revenue department, department of motor vehicles) of the purchaser's state of residence.

Nonresident – For purposes of sales of motor vehicles, trailers, semitrailers and pole trailers to nonresidents for use outside of South Carolina, a "nonresident" is any individual, firm, co-partnership, association, receiver, trustee or any other group or combination acting as a unit (not including, however, corporations) whose primary residence or place of business is in a state other than South Carolina, and foreign corporations doing no business in this State. Foreign corporations operating business establishments in South Carolina or otherwise doing business in this State, and corporations organized and existing under the laws of this state are residents for purposes of this exemption.

◆ ***Sales to Residents of Other Countries – Delivery by the Dealer within South Carolina***

Sales of motor vehicles, trailers, semitrailers and pole trailers to residents of possessions of the United States or other countries are subject to South Carolina sales tax at the rate that a South Carolina resident would pay on the purchase. (Form ST-385 is not required for sales to residents of possessions of the United States or other countries.)

◆ ***Sales to Residents of Other States or Other Countries – Delivery by the Dealer Outside of South Carolina***

Sales of motor vehicles, trailers, semitrailers and pole trailers to residents of other states or possessions of the United States or other countries are not subject to South Carolina sales tax if

² If the purchaser does not plan to license the vehicle in his state of residence or does not complete the notarized statement, then the provisions of South Carolina Code Section 12-36-930 are not applicable and the sale is taxed as if the purchaser were a resident of South Carolina.

the dealer is obligated to deliver the vehicle to the buyer or donee of the buyer at a point outside of South Carolina or is obligated to deliver to a common carrier or a private carrier for delivery to the buyer or donee of the buyer at a point outside of South Carolina.

For example, if a person from outside of South Carolina purchases a vehicle from a South Carolina dealer via the Internet and the dealer is required under the agreement to deliver the vehicle to either a common carrier or a private carrier who will deliver it to the buyer at a point outside of South Carolina, then the sale is not subject to the South Carolina sales tax. See Code Section 12-36-2120(36). (The dealer should maintain proper records to support proof of delivery for purposes of the exemption.)

◆ *Leases of Motor Vehicles*

If a motor vehicle is leased or rented from a dealer located within South Carolina and delivery of the vehicle is made to the lessee in this State, then all payments are subject to the South Carolina sales tax. If a motor vehicle lease contract exceeds 90 continuous days,³ the lease is subject to the sales and use tax based on the lesser of 5% of the total lease payments plus other charges or \$300. If a motor vehicle lease contract does not exceed 90 continuous days, the \$300 maximum tax does not apply and the lease is subject to the sales and use tax at a rate of 6% plus the applicable local sales tax rate.

The lease is subject to the tax even if the motor vehicle is subsequently taken out of state⁴, unless the sale is to a nonresident purchaser who is a resident of one of the “nontaxable” states that do not impose a sales and use tax on motor vehicles or that do not allow a credit for sales tax paid on the vehicle in South Carolina. See SC Information Letter #14-2.

If a motor vehicle is leased or rented from a dealer located within South Carolina and the dealer delivers the vehicle to the buyer or an agent or donee of the buyer at a point outside this State in accordance with Code Section 12-36-2120(36), then the lease payments are not subject to the South Carolina sales tax. See also the sections of this guide entitled “Motor Vehicle Lease with an Option to Buy” and “Motor Vehicle Lease with an Option to Extend the Lease.”

◆ *Short Term Rentals of Motor Vehicles (31 Days or Less)*

If motor vehicles are purchased from the manufacturer specifically for rentals to customers by the dealer, then the purchase from the manufacturer is a wholesale purchase (tax free). The rentals by the dealer to customers are retail sales subject to the sales tax at a rate of 6% plus

³ To qualify for the maximum tax, the lease must be in writing and state a term of, and remain in force for, a period in excess of 90 continuous days.

⁴ See SC Revenue Ruling #91-9.

the applicable local sales tax rate (unless otherwise exempt) and the rental surcharge.⁵ See SC Revenue Ruling #93-1 for examples of charges associated with the rental of a motor vehicle that are includable in “gross proceeds of sales” and subject to the sales tax.

When a motor vehicle is moved from the rental inventory to the dealer’s used car inventory (typically after one year as a rental vehicle), the subsequent sale of it as a used car is subject to the sales tax (unless otherwise exempt) at the lesser of 5% of the gross proceeds from the sale of the motor vehicle or \$300.

◆ ***Motor Vehicles and Trailers Subject to the Maximum Tax***⁶

The South Carolina sales and use tax imposed may not exceed \$300 on sales of the following vehicles and trailers:

1. Motor vehicles;
2. Recreational vehicles, including tent campers, travel trailers, park trailers, motor homes and fifth wheels;
3. Trailers and semitrailers capable of being pulled only by a truck tractor;
4. Self-propelled light construction equipment, with compatible attachments, limited to a maximum of 160 net engine horsepower. Equipment that is used for maintenance, and not construction, does not qualify for the \$300 maximum tax⁷; and
5. Horse trailers.

Motor vehicles and trailers, that are entitled to the \$300 cap if sold, are entitled to the \$300 cap when leased provided the lease specifically states a term of, and remains in force for, a period in excess of 90 continuous days. The sales tax may be paid with each payment under a qualifying lease until the full \$300 is paid⁸, or the full \$300 sales tax may be paid at the execution of the lease. If a motor vehicle lease contract does not exceed 90 continuous days, the \$300 maximum tax does not apply and the lease is subject to the sales and use tax at a rate of 6% plus the applicable local sales tax rate.

⁵ See South Carolina Code Section 56-31-50.

⁶ See South Carolina Code Section 12-36-2110.

⁷ See SC Technical Advice Memorandum #89-13, SC Information Letter #98-14, and Form ST-405.

⁸ If the tax is being paid with each lease payment, nothing prohibits the payment of the balance of the sales tax due with any payment under the lease.

◆ **Motor Vehicles and Trailers Not Subject to the Maximum Tax**

The South Carolina sales and use tax imposed may exceed \$300 on sales of:

1. Trailers and semitrailers capable of being pulled by vehicles other than a truck tractor;
2. Pole trailers; and
3. Boat trailers. See South Carolina Revenue Ruling #08-7.

◆ **Sales Not Subject to Sales and Use Tax**

1. Sales of motor vehicles, trailers, semitrailers and pole trailers that are delivered out-of-state by the dealer at the purchaser's direction.
2. Sales of motor vehicles, trailers, semitrailers and pole trailers to dealers for resale. The liability for the sales tax will shift from the seller to the purchaser if the seller receives a properly completed Form ST-8A, "Resale Certificate," from the purchaser.
3. Sales of motor vehicles to military personnel stationed in this State by reason of orders of the U.S. Armed Forces who are not residents of South Carolina are exempt from South Carolina sales and use tax, provided the dealer is furnished within 10 days of the sale: (1) a copy of Form ST-178, "Nonresident Military Tax Exemption Certificate," completed by a commissioned officer of the Armed Forces of a higher rank than the purchaser, or (2) a leave and earnings statement from the appropriate department of the armed services designating the state of residence of the buyer. This exemption applies only to the sale of motor vehicles that are primarily designed to carry passengers, such as cars, passenger vans, and sports utility vehicles (*e.g.*, Broncos, Explorers, Troopers). It does not apply to sales of motor vehicles designed primarily to carry cargo, such as cargo vans and trucks. (Sales of motor vehicles to military personnel who are residents of South Carolina are subject to the South Carolina sales and use tax.)
4. Sales of motor vehicles to the federal government.
5. Sales of motor vehicles, trailers, semitrailers and pole trailers to nonresidents within South Carolina that are to be registered and licensed in the nonresident purchaser's state of residence are not subject to the South Carolina sales tax if the nonresident purchaser will not receive a credit in his resident state for sales tax paid in South Carolina or if the purchaser's state does not impose a sales or use tax on the sale motor vehicles, trailers, semitrailers and pole trailers (*e.g.*, the purchaser's resident state does not impose a sales and use tax on sales of motor vehicles, but imposes a motor vehicle usage tax upon registration).

6. Sales of motor vehicle extended service contracts and motor vehicle extended warranty contracts.
7. Sales otherwise exempt under Code Section 12-36-2120 (e.g., sales to a charitable hospital, exempt from property taxation under Code Section 12-37-220, that predominately serves children and care is provided without charge to the patient).

◆ ***Motor Vehicle Lease with an Option to Buy***

Lease: If a motor vehicle lease contract that exceeds 90 continuous days⁹ allows the lessee the option to purchase the motor vehicle at the end of the lease, the purchase of the motor vehicle is a separate transaction from the lease. Therefore, the lease is a transaction subject to the sales and use tax based on the lesser of 5% of the total lease payments plus other charges or \$300. If the purchase option is exercised by the lessee, the purchase is a separate transaction subject to the sales and use tax based on the lesser of 5% of the purchase price or \$300.¹⁰

Sale: If a maximum tax item lease contract is not a true lease but a sale (e.g., a financing arrangement), then the contract is one transaction. The sales contract is subject to the sales and use tax based on the lesser of 5% of the gross proceeds of the sale of the motor vehicle under the contract or \$300.

◆ ***Motor Vehicle Lease with an Option to Extend the Lease***

If a motor vehicle lease contract that exceeds 90 continuous days¹¹ allows the lessee the option to extend the lease at the end of the original lease term, the extension of the lease of the motor vehicle, if exercised, is a separate transaction.

Therefore, the original motor vehicle lease is a transaction subject to the sales and use tax based on the lesser of 5% of the total lease payments plus other charges for the original term of the lease or \$300. The extended lease period, as a separate transaction when exercised, is subject to the sales and use tax based on the lesser of 5% of the total lease payments plus other charges for the extended term of the lease or \$300, provided the extension is in writing and states a term of, and remains in force for, a period in excess of 90 continuous days. If the extension does not meet these requirements, the extension is subject to the sales and use tax at a rate of 6% plus any applicable local sales and use taxes.

⁹ To qualify for the maximum tax, the lease must be in writing and state a term of, and remain in force for, a period in excess of 90 continuous days.

¹⁰ Attorney General Opinion dated 2/6/1998.

¹¹ To qualify for the maximum tax, the lease must be in writing and state a term of, and remain in force for, a period in excess of 90 continuous days.

◆ **Motor Vehicle and Specialized Attached Equipment**

Since the sales tax and use tax are “transaction taxes,” each sale must be reviewed to determine the application of the tax and the maximum tax provisions. For example:

One Transaction: If a truck and a garbage compactor are sold in one transaction as a single unit at the time of the sale (i.e., delivery), the tax due is the lesser of 5% of the gross proceeds of sale or \$300.¹² Local sales and use taxes are not applicable to this maximum tax transaction.

Multiple Transactions: If the truck and garbage compactor are sold in two separate transactions (i.e., two separate sales transactions or a sales transaction in which the compactor is not connected to the truck at the time of the delivery), then the tax due on the truck is the lesser of 5% of the gross proceeds of sale or \$300 (local sales and use taxes are not applicable to this maximum tax transaction) and the tax due on the garbage compactor is 6% of the gross proceeds of sale, plus any applicable local sales and use taxes., since the garbage compactor in this transaction is not a part of a motor vehicle.¹³

◆ **Truck and Firefighting Equipment**

Fire trucks are motor vehicles that qualify for the \$300 maximum tax. In addition, a specific provision of the law allows equipment provided, supplied, or installed on a firefighting vehicle to be included with the vehicle for purposes of calculating the maximum tax due.¹⁴ This does not include individual firefighter’s protective clothing.¹⁵

The following outlines the proper sales or use tax to be imposed upon sales of trucks and firefighting equipment:

1. The sale of a fire truck alone is subject to tax in the amount of 5% of the truck’s sales price or \$300, whichever is less.
2. Sales of firefighting equipment such as ladders, hoses, fire extinguishers, oxygen tanks, and axes (except for protective clothing) are part of the sale of the truck (i.e. the same transaction) if the equipment is installed, provided, or supplied with the vehicle and included in the purchase price at the time of the sale of the vehicle.

¹² South Carolina Technical Advice Memorandum #87-13.

¹³ See also *Anonymous Company v. South Carolina Department of Revenue*, 03-ALJ-17-0435-CC (2004).

¹⁴ South Carolina Code Section 12-36-2120(E). See also South Carolina Revenue Ruling #08-10 and the “General Information” section of this chapter for a definition of the term “motor vehicle.”

¹⁵ See South Carolina Revenue Ruling #08-10.

If the equipment (except for protective clothing) is installed, provided, or supplied with the vehicle and included in the purchase price at the time of the sale of the vehicle, the sale of the truck and the equipment (except for protective clothing) is taxed as one transaction. The tax due is 5% of the combined sales price of the truck and firefighting equipment or \$300, whichever is less. The sale of protective clothing, whether or not installed, provided, or supplied with the vehicle and included in the purchase price at the time of the sale of the vehicle, is subject to the tax at the rate of 6%, plus any applicable local sales and use tax administered and collected by the Department of Revenue on behalf of a local jurisdiction.

If the equipment is not installed, provided, or supplied with the vehicle and included in the purchase price at the time of the sale of the vehicle, the sale of the truck and firefighting equipment are separate and distinct transactions. The tax due on the sale of the truck is 5% of the sales price of the truck or \$300, whichever is less. The tax due on the sale of the firefighting equipment (including protective clothing) is 6% of the sales price of the equipment, plus any applicable local sales and use tax administered and collected by the Department of Revenue on behalf of a local jurisdiction.

◆ **Loaner Cars**

For purposes of this discussion, a loaner is a motor vehicle provided by a dealer to a customer for typically no more than seven days while the customer's motor vehicle is being serviced.

Motor Vehicle Purchased as a Loaner from the Manufacturer: The motor vehicle is purchased by the dealer from the manufacturer as a loaner car. The dealer pays the finance company a monthly payment which includes a monthly curtailment of principal on the current liability, insurance and interest. The dealer will title the loaner car in its name and obtain a regular motor vehicle license tax for it (sometimes referred to as a "hard" tag by dealers). The dealer will not use a dealer tag on the loaner car. The dealer provides the motor vehicle to customers as courtesy transportation for no consideration.

Since the dealer does not charge the customer for use of the loaner vehicle, the sale by the manufacturer to the dealer is the retail sale and is subject to the sales and use tax based on the lesser of 5% of the full sales price ("gross proceeds" or "sales price" as defined in the law) or \$300.¹⁶

¹⁶ If the dealer provided a resale certificate for these purchases, the dealer is liable for the tax. If the dealer did not provide a resale certificate for these purchases, see SC Regulation 117-334 for information on determining who is liable for the tax due on these purchases.

At some later date, the motor vehicle will be moved out of loaner status and sold by the dealer. This subsequent sale is subject to the sales tax (unless otherwise exempt) at the lesser of 5% of the gross proceeds from the sale of the motor vehicle or \$300.

Motor Vehicle Purchased as a Loaner from the Manufacturer with Reimbursement from the Manufacturer: Manufacturer sells the motor vehicle to the dealer specifically as a loaner car. The motor vehicle is purchased by the dealer from the manufacturer as a loaner car. The dealer pays the finance company a monthly payment which includes a monthly curtailment of principal on the current liability, insurance and interest. The dealer will title the loaner car in its name and obtain a regular motor vehicle license tax for it (sometimes referred to as a “hard” tag by dealers). The dealer will not use a dealer tag on the loaner car. The dealer in turn provides the motor vehicle to customers as courtesy transportation, but in this circumstance the manufacturer on occasion will reimburse the dealer for providing the loaner. This is typically done when there is a manufacturing problem with the customer’s motor vehicle and it is a problem affecting many customers.

In considering the tax consequences of this situation, it must be understood that three sales tax transactions are involved.

First, the dealer purchased the motor vehicle as a loaner car with the intent of providing the motor vehicle free of charge to customers as courtesy transportation. Since the dealer originally purchased the vehicle as a loaner where the intent is not to charge the customer for use of the vehicle, the sale by the manufacturer to the dealer is a retail sale transaction and is subject to the sales and use tax based on the lesser of 5% of the full sales price (“gross proceeds” or “sales price” as defined in the law) or \$300.¹⁷

Second, from time to time, the dealer may be reimbursed by the manufacturer for providing the same motor vehicle to another customer when the problem with the car is a manufacturing problem. Therefore, when the dealer is reimbursed for the customer’s use of the vehicle as described above, that reimbursement is a retail rental transaction subject to the sales tax at a rate of 6% plus the applicable local sales tax rate.¹⁸ This type of rental transaction (for sales tax purposes) is not subject to the rental surcharge.

¹⁷ If the dealer provided a resale certificate for these purchases, the dealer is liable for the tax. If the dealer did not provide a resale certificate for these purchases, see SC Regulation 117-334 for information on determining who is liable for the tax due on these purchases.

¹⁸ Since the dealer originally purchased the motor vehicle as a loaner car to be provided free of charge as a courtesy transportation for its customers, the original purchase is a purchase at retail subject to the tax. When the dealer is subsequently paid by the manufacturer to provide this same vehicle to another customer, the dealer has now rented the vehicle. This transaction is another retail transaction (the transfer of the motor vehicle for a consideration – the rental payment by the manufacturer) and is subject to the tax. Both transactions are subject to the tax because they are both retail transactions (a retail purchase of the motor vehicle by the dealer and a subsequent retail sale (rental) of the same motor vehicle by the dealer).

Third, at some later date, the motor vehicle will be moved out of loaner status and sold by the dealer. This subsequent sale transaction is subject to the sales tax (unless otherwise exempt) at the lesser of 5% of the gross proceeds from the sale of the motor vehicle or \$300.

Motor Vehicle Purchased from the Manufacturer as Inventory but placed in Loaner Status: The dealer purchases from the manufacturer its regular inventory of motor vehicles for resale with a resale certificate, but places some in a loaner status (similar to demo status). The motor vehicle may be loaned to the customer under a “demo slip,”¹⁹ a “drive out form,” or a rental agreement, but in all cases there is no consideration charged or paid for the use by the customer of the motor vehicle. These vehicles are available for sale during the time used as a loaner.

The purchase of these vehicles from the manufacturer is a wholesale purchase not subject to the tax.

Since the motor vehicles were purchased at wholesale, the withdrawal, use or consumption of any such motor vehicle as a loaner would be subject to the sales tax as a “withdrawal for use”²⁰ at the lesser of the motor vehicle’s fair market value, allowing for all customary discounts in accordance with SC Regulation 117-309.17, or \$300, unless the “motor vehicle [is] operated with a dealer ... license plate and [is] used in accordance with the provisions of Section 56-3-2320 ...”. If the “motor vehicle [is] operated with a dealer ... license plate and [is] used in accordance with the provisions of Section 56-3-2320,” then no sales tax is due on the “withdrawal for use.”

However, where the dealer is trading a used loaner for a new loaner, then the dealer may deduct the value of the used loaner from the value of the new loaner in arriving at the measure of the tax. In no event can the value placed on the used loaner for trade-in purposes exceed the amount realized on the sale of the used loaner. When the dealer’s books and records of account are not sufficiently adequate to establish the actual amount realized on the sale of the used loaner, the trade-in allowance shall not exceed the value of the used loaner as listed in the N.A.D.A. Official Used Car Guide for this region of the country in use during the taxable period in which the exchange is made.

¹⁹ Since the motor vehicle is being withdrawn as a “loaner,” the exemption from the withdrawals for use provisions under South Carolina Code Section 12-36-90(1)(c)(v) does not apply.

²⁰ For more information on the application of the sales tax on “withdrawals for use,” see Chapter 6, Section E, of the Department of Revenue’s Sales and Use Tax Manual. This manual can be found on the Department of Revenue’s website (www.dor.sc.gov) under the “Law and Policy” section under “Resources.”

Note: If the motor vehicles were purchased at wholesale for rental, the withdrawal, use or consumption of any such motor vehicle as a loaner would be subject to the sales tax based on the motor vehicle's fair market rental value in accordance with SC Regulation 117-318.4.

C. REPAIRS OF MOTOR VEHICLES, TRAILERS AND SEMITRAILERS²¹

■ Sales at Retail:

Materials which:

- pass to the repair shop's customer,
- do not lose their identity when used by the repairman, and
- are a substantial part of the repair job

are sold at retail by the repair shop to the customer. Examples of such sales include:

- automobile parts,
- tires,
- batteries,
- hoses, and
- fan belts.

■ Purchases at Retail:

Materials which:

- pass to the repair shop's customer, and
- either lose their identity or are inconsequential in amount

are considered to have been used or consumed by the repair shop and are taxable when sold to the repair shop. Examples of such taxable purchases are:

- paint,²²
- window tinting film,

²¹ See SC Regulations 117-306 and 117-306.2.

²² See the section of this guide entitled "Sales for Resale of Parts and Other Materials to Auto Auctions, Repair Shops and Other Auto or Truck Dealers."

- solder,
- upholstery tacks,
- disposable protective seat covers,
- disposable protective paper floor mats,
- paper key tags,
- stickers or labels indicating when the next service is due, and
- dispatch number tags (tags that hang from the rear view mirror).

Materials which:

- are used and consumed by the repair shop, and
- and do not pass on to the repair shop's customer

are taxable when sold to the repair shop. Examples of such taxable purchases are:

- tools,
- rags,
- equipment,
- office supplies, and
- cleaners.

Materials which are otherwise used and consumed by the repair shop are taxable when sold to the repair shop. Examples of such taxable purchases are:

- work order quote forms,
- repair order invoices,
- business cards, and
- thank you cards and after-service postcards.

■ Repairs Made Under Warranty²³

Parts used to repair a motor vehicle under warranty are considered withdrawn for use by the business and subject to the sales tax based upon the part's fair market value.

²³ See South Carolina Code Section 12-36-90(1)(c)(iii).

However, the tax will not apply if:

1. the written warranty contract was given without charge at the time of purchase of the defective part;
2. the tax was paid at the time of purchase; and
3. the warrantee is not charged for any labor or materials.

Note: If the customer is charged a deductible, the tax will apply to the withdrawal for use based on the fair market value of the replacement part.

■ Sales for Resale of Parts and Other Materials to Auto Auctions, Repair Shops and Other Auto or Truck Dealers

Sales of identifiable parts by an automobile dealer to an auto auction, a repair shop, another automobile dealer, or a body shop in order to repair an automobile for their customer are wholesale sales not subject to the tax.

Sales of materials and parts by an automobile dealer to an auto auction, a repair shop, another automobile dealer, a rental car company, or a body shop to be incorporated into an automobile in order to sell or rent the automobile are wholesale sales not subject to the tax.²⁴ For example:

1. the sale of a fabric protectant to an auto dealer that will be used by that auto dealer on the seats of an automobile that is being prepared or reconditioned for sale is a wholesale not subject to the tax; and
2. the sale of paint to an auto dealer that will be used by that auto dealer to paint an automobile that is being prepared or reconditioned for sale is a wholesale not subject to the tax.²⁵

D. GROSS PROCEEDS OF SALES – THE MEASURE OF THE TAX

“Gross proceeds of sales” is the measure or basis for the sales tax. Essentially, it is the total amount for which tangible personal property is sold, leased or rented. The following are examples of various issues involving automobile dealers and gross proceeds of sales.

²⁴ See SC Regulation 117-309.16.

²⁵ If paint is purchased by an auto dealer to both repair automobiles for customers and to recondition automobiles for sale, then the auto dealer should purchase the paint tax free and keep and maintain proper records to account for the amount of paint used for both purposes. The dealer would remit the tax on paint used to repair the customer’s automobile. The dealer would not remit the tax on paint used to recondition an automobile for sale, but would remit tax on the automobile when it is sold based on 5% of the gross proceeds of the automobile, or \$300, whichever is less.

◆ **Shop Fees Charged to Customers**

Shop fees charged by automobile and truck dealers and repair shops typically cover items used or consumed by a dealer or repair shop in repairing a motor vehicle, such as rags, a squirt of oil or grease, cleaning supplies, invoicing paper, disposable protective seat covers, disposable paper floor mats, dispatch number tags (tags that hang from the rear view mirror), charges for disposing of used oil, thank you cards, after-service postcards, work order quote forms, repair order invoices, and paper key tags. Therefore, shop fees charged to a customer are only subject to the tax if the shop fees are charged as part of the retail sale of tangible personal property. If shop fees are charged as part of a service where no tangible personal property is sold to the customer, the shop fees are not subject to the tax. For example:

- ❖ If shop fees are charged by the dealer or repair shop as part of the sale of tangible personal property, such as a new alternator, windshield, or other identifiable part, then the shop fees are a part of the “gross proceeds of sales” and subject to the tax. In addition, these items (*e.g.*, rags, a squirt of oil or grease, cleaning supplies, etc.) are expenses of the dealers or repair shop and cannot be deducted from the gross proceeds of sales of the tangible personal property sold to the customer. For example, if a dealer or repair shop replaces a customer’s alternator and charges \$125 for the new alternator, \$75 for installation (separately stated on the bill to the customer), and \$25 for shop fees, the shop fees are a part of the “gross proceeds of sales” of the new alternator and the tax is based on \$150 ($\$125 + \$25 = \150). The installation charge, since it is separately stated on the bill to the customer and it is reasonable based on the dealer’s or repair shop’s books and records, is not subject to the tax.²⁶
- ❖ If shop fees are charged by the dealer or repair shop as part of a repair or a service that does not involve the sale of an identifiable part to the customer, such as the painting of a part of an automobile, the repair or service is not subject to the tax since tangible personal property has not been sold to the customer. As such, the gross proceeds of sales of such a repair or service, including any associated shop fees, are not subject to the tax. For example, if a dealer or repair shop performs “detailing” work and charges a customer \$125 to clean and detail the customer’s car and \$25 for shop fees, the shop fees are a part of the “gross proceeds of sales” of a nontaxable service (cleaning and detailing a car is a service and is not the sale of tangible personal property). Therefore, since the dealer or repair shop is only providing a nontaxable service, the \$150 ($\$125 + \$25 = \150) is not subject to the sales tax.

Note: See above section on “Repairs of Motor Vehicles” for information on the taxability of shop supplies at the time of purchase.

²⁶ See SC Regulation 117-313.3 concerning “Installation Charges.”

◆ **Extended Warranties**

Charges for extended warranties (whether optional or mandatory) sold in conjunction with the sale of tangible personal property are includable in the measure of the sales or use tax and therefore subject to the tax, except for motor vehicle extended service contracts and motor vehicle extended warranty contracts. Motor vehicle extended service contracts and motor vehicle extended warranty contracts are exempt under Code Section 12-36-2120(52).

Charges for extended warranties that are not sold in conjunction with the sale of tangible personal property (*e.g.*, contracts sold at a later date) are not subject to the sales or use tax.

For example:

Extended Warranty or Service Contract Sold in Conjunction with the Sale of a Motor Vehicle: If a retailer sells a motor vehicle for \$20,000 and, as part of the sale, sells an extended warranty contract for the motor vehicle for an additional \$1,000, the \$1,000 charge for the extended warranty contract is not subject to the tax under Code Section 12-36-2120(53). In addition, since sales of motor vehicles are subject to a maximum tax, the total tax due on the sale of the motor vehicle would be \$300.

Extended Warranty or Service Contract Not Sold in Conjunction with the Sale of a Motor Vehicle: If a retailer sells a motor vehicle for \$20,000, the total tax due on the sale of the motor vehicle would be \$300 since sales of motor vehicles are subject to the \$300 maximum tax. If the customer returned to the dealer at a later date to purchase an extended warranty contract for the previously purchased motor vehicle for \$1,000, the \$1,000 charge for the extended warranty contract would not be subject to the tax since it was not sold in conjunction with the sale of the motor vehicle.

The exemption for motor vehicle extended service contracts and motor vehicle extended warranty contracts under Code Section 12-36-2120(53) only applies to contracts that cover the entire motor vehicle or that cover a major part or component that is integral and necessary to the functioning of the motor vehicle as a motor vehicle and where such contract was originally sold in conjunction with the sale of the motor vehicle.

For example:

Extended Warranty or Service Contract for a Major Part or Component Integral and Necessary to the Functioning of the Motor Vehicle as a Motor Vehicle: The engine of a motor vehicle is a major part or component integral and necessary to the functioning of the motor vehicle as a motor vehicle; therefore, the sale of a warranty or extended service contract that only covers the engine of the motor vehicle is exempt from the sales and use tax if the contract was originally sold in conjunction with the sale of the motor vehicle. If the warranty or extended service contract that covers the engine was

not sold in conjunction with the sale of the motor vehicle (e.g., the owner of the motor vehicle purchases a replacement engine for the motor vehicle), then contract is not a motor vehicle warranty or motor vehicle extended service contract and is not exempt from the tax when sold in conjunction with the sale of the motor.

Extended Warranty or Service Contract for a Part or Component Not Integral and Necessary to the Functioning of the Motor Vehicle as a Motor Vehicle: The radio in a motor vehicle is not a major part or component integral and necessary to the functioning of the motor vehicle as a motor vehicle; therefore, the sale of a warranty or extended service contract that only covers the radio in the motor vehicle is not exempt from the sales and use tax when sold in conjunction with the sale of the radio.

◆ ***Guaranteed Asset Protection Waivers***

A Guaranteed Asset Protection waiver, or GAP waiver, is defined in Code Section 37-30-110(5), as “a contractual agreement in which a creditor agrees for a separate charge to cancel or waive all or part of amounts due on a borrower’s finance agreement in the event of a total physical damage loss or unrecovered theft of the motor vehicle, which agreement must be part of, or a separate addendum to, the finance agreement.”

Under Title 37, Chapter 30 (Act No. 31, 2015 SC Acts) the GAP waiver charge is a part of the financing agreement and is therefore only available to the buyer of the motor vehicle if the buyer obtains financing through the auto dealer.

SC Regulation 117-318.2, concerning "Carrying and Finance Charges," states:

When the seller has an established price for the goods he sells, that price is the amount to be included in gross proceeds of sales even though the established price may include an amount to cover a carrying charge. Where they [sic] seller has an established cash price and when selling on an extended payment basis, adds a separate charge for financing, the additional charge is not to be included in gross proceeds of sales.

In no event may finance or carrying charges be deducted from gross proceeds of sales when not shown as a separate item in the seller’s billing to his customer.

Based on the provisions of Title 37, Chapter 30, and SC Regulation 117-318.2, a GAP waiver charge by an auto dealer is not subject to the sales tax as long as it is only provided as part of a financing agreement and the finance charge (including the GAP charge associated with the finance charge) is separately stated from the sales price ("gross proceeds") of the motor vehicle.

◆ *Withdrawals for Use*

Tangible personal property purchased at wholesale is subject to the sales tax based upon its fair market value when it is (1) withdrawn from the business or stock and (2) used or consumed in connection with the business or used or consumed by the person withdrawing it.

For example, when a customer is not satisfied with the service, the dealer may provide the customer a free oil change to ensure he retains that person as a customer. Since the oil and oil filter, were purchased at wholesale, but withdrawn for use to provide the free oil change, the withdrawal of the oil and oil filter from inventory is subject to the sales tax based on their fair market value.²⁷

²⁷ SC Regulation 117-309.17, concerning withdrawals from stock by merchants, states:

To be included in gross proceeds of sales is the money value of property purchased at wholesale for resale purposes and subsequently withdrawn from stock for use or consumption by the purchaser.

The value to be placed upon such goods is the price at which these goods are offered for sale by the person withdrawing them. All cash or other customary discounts which he would allow to his customers may be deducted; however, in no event can the amount used as gross proceeds of sales be less than the amount paid for the goods by the person making the withdrawal.