
State of South Carolina
Department of Revenue
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SC REVENUE PROCEDURE #03-6

SUBJECT: Exemption Certificates - Sales by Certain Nonprofit Organizations
(Sales and Use Tax)

EFFECTIVE DATE: Applies to all open periods under the statute.

SUPERSEDES: SC Revenue Procedure #89-5, SC Revenue Procedural Bulletin #01-7,
SC Revenue Procedure #03-3, and all previous advisory opinions and
any oral directives in conflict herewith

REFERENCES: S. C. Code Ann. Section 12-36-2120(41) (2000)

AUTHORITY: S. C. Code Ann. Section 12-4-320 (2000)
S. C. Code Ann. Section 1-23-10(4) (2000)
SC Revenue Procedure #03-1

SCOPE: The purpose of a Revenue Procedure is to provide procedural guidance
to the public and Department personnel. It is a written statement issued
to assist in the administration of laws and regulations by providing
guidance that may be followed in order to comply with the law. **A
Revenue Procedure is an advisory opinion; it does not have the force
or effect of law, and is not binding on the public.** It is, however,
binding on agency personnel until superseded or modified by a change in
statute, regulation, court decision, or advisory opinion.

PURPOSE:

The purpose of this advisory opinion is to provide guidelines for determining whether an organization qualifies for an exemption certificate issued pursuant to Code Section 12-36-2120(41); and, the use of such certificate.

LAW AND DISCUSSION:

Code Section 12-36-2120(41) exempts from the sales and use tax:

items sold by organizations exempt under Section 12-37-220A(3) and (4) and B(5), (6), (7), (8), (12), (16), (19), (22), and (24), if the net proceeds are used exclusively for exempt purposes and no benefit inures to any individual.

Organizations coming within the exemption are:

- (1) public libraries and churches (Code Section 12-37-220(A)(3));
- (2) charitable trusts and foundations used exclusively for charitable and public purposes (Code Section 12-37-220(A)(4));
- (3) The American Legion, the Veterans of Foreign Wars, the Spanish American War Veterans, the Disabled American Veterans, and Fleet Reserve Association or any similar Veterans Organization chartered by the Congress of the United States (Code Section 12-37-220(B)(5));
- (4) The Young Women's Christian Association, Young Men's Christian Association and the Salvation Army (Code Section 12-37-220(B)(6));
- (5) The Boy's and Girl's Scouts of America (Code Section 12-37-220(B)(7));
- (6) The Palmetto Junior Homemakers Association, the New Homemakers of South Carolina, the South Carolina Association of Future Farmers of America and the New Farmers of South Carolina (Code Section 12-37-220(B)(8));
- (7) Any fraternal society, corporation or association (Code Section 12-37-220(B)(12))
- (8) Any religious, charitable, eleemosynary, educational, or literary society, corporation, or other association (Code Section 12-37-220(B)(16));
- (9) Volunteer Fire Departments and Rescue Squads (Code Section 12-37-220(B)(19));
- (10) All community owned recreation facilities opened to the general public and operated on a nonprofit basis (Code Section 12-37-220(B)(22)); and,
- (11) nonprofit or eleemosynary community theatre companies, symphony orchestras, county and community arts councils and commissions and other such companies, which is used exclusively for the promotion of the arts (Code Section 12-37-220(B)(24)).

An organization whose sales or purchases are exempted by this item is also exempt from the retail license tax provided in Article 5 of this chapter.

In summary, the exemption only applies to sales by organizations which meet three requirements:

- (1) The organization must be eligible for exemption from the property tax under one of the enumerated property tax code sections.¹

¹ In the Department's opinion, an organization is considered exempt under one of the stated property tax exemptions if it is eligible for the property tax exemption. It need not actually own property in order to qualify for the sales and

(2) The net proceeds from the organization's sales must be used for exempt purposes.

(3) No benefit from the sales may inure to any individual.

It is important to note that issuance of an exemption certificate under Code Section 12-36-2120(41) does not allow the organization to purchase property tax-free, which is not for resale. Items purchased for an organization's use are subject to the sales and use tax. For example, a computer and office supplies purchased to keep track of sales are subject to the tax.

HOW TO DETERMINE IF AN ORGANIZATION QUALIFIES FOR THE EXEMPTION:

IMPORTANT: To simplify the administration of the exemption (Code Section 12-36-2120(41)), organizations should complete and file Form ST-387– Application for Sales Tax Exemption under Code Section 12-36-2120(41), "Exempt Organizations" (copy attached).

The statute does not require an organization to obtain an exemption certificate in order to purchase items exempt under this exemption. However, the department recommends that organizations apply for the exemption certificate. If an organization is issued a certificate, this will simplify for the organization the purchase from suppliers of items tax-free for resale. Otherwise, suppliers may be reluctant to sell items tax-free (for resale) to an organization that does not have a retail license or does not have some other documentation showing that it qualifies for the exemption. The exemption certificate assures the supplier that the SC Department of Revenue has reviewed the matter and determined that the organization qualifies for the exemption and that the supplier may sell items tax-free for resale to the organization.

I. An organization is considered to be "automatically" qualified for an exemption certificate if it is:

A. Selling tangible personal property;

B. Exempt from property tax under one of the property tax code sections listed in Code Section 12-36-2120(41); and,

C. Exempt from Federal income tax under Internal Revenue Code Section 501(c)(3) or (19). The statute does not require that an organization be exempt from Federal income tax under Internal Revenue Code Section 501(c)(3) or (19); however, the purpose of this provision is to meet the requirement that the organization's net proceeds must be used for an exempt purpose and to insure that no benefit inures to any individual.

NOTE: To be considered as "automatically" qualified, an organization must meet all of the above requirements and file Form ST-387. **However, it should be noted that this "automatic"**

use tax exemption. This interpretation is for purposes of sales and use tax only and has no effect on the determination of whether to grant or deny a property tax exemption or the determination of what code section to grant or deny a property tax exemption under.

qualification has been established to simplify the issuance of a certificate. If it is determined that an organization does not meet the requirements of the statute or is not otherwise operating in an exempt manner, then the certificate will not be issued or will be revoked if previously issued.

II. An organization is not qualified for an exemption certificate if it is:

A. Only purchasing tangible personal property for its own use or consumption, and not for resale; or,

B. Exempt from property tax, but under a code section not listed in Code Section 12-36-2120(41).

Note: Code Section 12-37-220 provides specific property tax exemptions for the State of South Carolina, its counties, municipalities, school districts, and other political authorities or subdivisions; private schools, colleges and other institutions of learning; nonprofit hospitals and nonprofit institutions which care for the infirmed, the handicapped, the aged, children or indigent persons; and nonprofit museums. The property tax exemptions for these organizations are not specifically listed in Code Section 12-36-2120(41).

However, some of these organizations may also qualify for a property tax exemption listed in Code Section 12-36-2120(41). For example, a private school may qualify for the property tax exemption under Code Section 12-37-220(B)(16)(a) established for certain religious, charitable, eleemosynary or educational organizations.²

III. Organizations, other than those in categories I and II (above), may qualify for an exemption certificate, if the following criteria are met:

A. The organization must be selling, or will sell, tangible personal property;

B. The organization must be a type referred to in Code Section 12-36-2120 (41) [i.e, a church, veterans' organization, YMCA, Scouts, etc.]; and,

C. Documents provided by the organization must conclusively demonstrate that the net proceeds of the organization are used, or will be used, exclusively for exempt purposes; and, that no benefit inures, or will inure, to any individual.

ISSUANCE AND USE OF THE EXEMPTION CERTIFICATE:

The exemption certificate will have imprinted upon its face the following statement:

² Code Section 12-37-220(B)(16)(a) exempts “[t]he property of any religious, charitable, eleemosynary, educational, or literary society, corporation, or other association, when the property is used by it primarily for the holding of its meetings and the conduct of the business of the society, corporation, or association and no profit or benefit therefrom inures to the benefit of any private stockholder or individual.”

- ***CERTIFICATE VALID ONLY IF ALL APPLY*****
(1) PURCHASES WILL BE RESOLD
(2) PROCEEDS ARE USED FOR AN EXEMPT PURPOSE
(3) NO PROFIT WILL INURE TO ANY INDIVIDUAL

Upon issuance of the certificate, a letter is to be forwarded to the organization explaining how the certificate may and may not be used.

Also, the letter will instruct the organization to keep the department informed of any events which may have a bearing upon its status under Code Section 12-36-2120(41) [for example - the organization discontinues making sales of tangible personal property]. The department may, when deemed necessary, reissue information concerning this exemption.

An exemption certificate issued pursuant to this advisory opinion may not be used to purchase tangible personal property which will be used by the organization, and is not for resale.

IMPROPER USE OF AN EXEMPTION CERTIFICATE:

Organizations, or individuals, using an exemption certificate improperly will be subject to all applicable taxes, interest and civil or criminal penalties.

For example, if a church is issued an exemption certificate and uses it to purchase a computer for word processing or maintaining its books and records, then the church has improperly used the exemption certificate since the computer was not purchased for resale. As such, the church is liable for the tax due (including penalties and interest) with respect to the purchase of the computer.

SOUTH CAROLINA DEPARTMENT OF REVENUE

s/Burnet R. Maybank
Burnet R. Maybank, Director

November 20, 2003
Columbia, South Carolina