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

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SC REVENUE PROCEDURE #08-2

- SUBJECT:** Resale Certificates  
(Sales and Use Tax)
- EFFECTIVE DATE:** Applies to all periods open under the statute.
- SUPERSEDES:** SC Revenue Procedure #98-2 and all previous advisory opinions and any oral directives in conflict herewith.
- REFERENCES:** S. C. Code Ann. Section 12-36-950 (2000)  
S. C. Code Ann. Section 12-36-2510 (Supp. 2007)  
S. C. Code Ann. Section 12-54-43(M) (Supp. 2007)
- AUTHORITY:** S. C. Code Ann. Section 12-4-320 (2000)  
S. C. Code Ann. Section 1-23-10(4) (2005)  
SC Revenue Procedure #05-2
- SCOPE:** The purpose of a Revenue Procedure is to provide procedural guidance to the public and Department personnel. It is an advisory opinion issued to assist in the administration of laws and regulations by providing guidance that may be followed in order to comply with the law. It is effective until superseded or modified by a change in statute, regulation, court decision, or another Departmental advisory opinion.

Law:

S.C. Code Section 12-36-910 imposes a sales tax "upon every person engaged or continuing within this State in the business of selling tangible personal property at retail". Code Section 12-36-950 provides:

It is presumed that all gross proceeds are subject to the tax until the contrary is established. The burden of proof that the sale of tangible personal property is not a sale at retail is on the seller.

However, if the seller receives a resale certificate signed by the purchaser stating that the property is purchased for resale, the liability for the sales tax shifts from the seller to the purchaser.

The resale certificate must include the purchaser's name, address, retail sales tax license number, and any other provisions or information considered necessary by the department.

The department may require the seller to provide information it considers necessary for the administration of this section.

However, Code Section 12-36-2510, which concerns the issuance or authorization of certificates allowing a taxpayer to purchase tangible personal property tax free and be liable for taxes, states:

(A)(1) Notwithstanding other provisions of this chapter, the department, at its discretion, may issue or authorize for the efficient administration of the sales and use tax law any type of certificate allowing a taxpayer to purchase tangible personal property tax free and be liable for any taxes.

(2) In addition to any other type of certificate the department considers necessary to issue, the department may issue at its discretion:

(a) Direct Pay Certificate: a direct pay certificate allows its holder to make all purchases tax free and to report and pay directly to the department any taxes due. The holder of a direct pay certificate is liable for any taxes due. If an exemption or exclusion is not applicable, the tax is due upon the withdrawal, use, or consumption of the tangible personal property purchased with the certificate.

(b) Exemption Certificate: an exemption certificate, as opposed to allowing its holder to make all purchases tax free, allows its holder to make only certain purchases tax free such as machinery, electricity, or raw materials. The holder of an exemption certificate is liable for any taxes due. If an exemption or exclusion is not applicable, the tax is due upon purchase, or upon the withdrawal, use, or consumption of the tangible personal property purchased with the certificate if the application of the exemption or exclusion cannot be determined at the time of purchase.

(B) To reduce the complexity and administrative burden of transactions exempt from sales or use tax, the following provisions must be followed when a purchaser claims an exemption by use of an exemption certificate:

(1) the seller shall obtain at the time of the purchase any information determined necessary by the department, including the reason the purchaser is claiming a tax exemption or exclusion;

(2) the department, at its discretion, may utilize a system where the purchaser exempt from the payment of the tax is issued an identification number which must be presented to the seller at the time of the sale;

(3) the seller shall maintain proper records of exempt or excluded transactions and provide them to the department when requested and in the form requested by the department.

(C) A seller that complies with the provisions of this section is relieved from any tax otherwise applicable if it is determined that the purchaser improperly claimed an exemption or exclusion by use of a certificate, provided the seller did not fraudulently fail to collect or remit the tax, or both, or solicit a purchaser to participate in an unlawful claim of an exemption. The liability for tax shifts to the purchaser who improperly claimed the exemption or exclusion by use of the certificate.

The issue has arisen whether the seller is required to question a resale certificate when presented by a purchaser or if the seller may accept the resale certificate upon its presentation.

Discussion:

Generally, as stated in Code Section 12-36-950, if a seller receives a resale certificate signed by the purchaser stating that the property purchased is for resale, the seller is not required to collect the sales tax, and the liability for the tax shifts from the seller to the purchaser.

To be valid, a resale certificate must contain the following information<sup>1</sup>:

1. The seller's name;
2. The seller address (street, city, and zip code);
3. The purchaser's name;
4. The purchaser's address (street, city, and zip code);
5. The purchaser's South Carolina retail license number or, if the purchaser operates a retail business in another state, the state and retail license number of the state in which the purchaser operates the retail business;
6. A statement as to the kind of business engaged in by the purchaser;

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<sup>1</sup> Code Section 12-36-950 requires the resale certificate to contain "the purchaser's name, address, retail sales tax license number, and any other provisions or information considered necessary by the department." The Department, through longstanding policy in its publication of Form ST-8A (Resale Certificate), has required the resale certificate to contain the remaining information set forth in this document. Under Code Section 12-36-950, the Department also has the authority to amend its resale certificate (Form ST-8A) to require additional information if it considers it necessary for the proper administration of the sales and use tax.

7. A general list or description of the types of tangible personal property sold, leased or rented to others by the purchaser;
8. The signature of the purchaser (individual owner, partner, member, or corporate officer); and,
9. The date the certificate was completed.

However, Code Section 12-36-2510(C) states that a seller that accepts a resale certificate “is relieved from any tax otherwise applicable if it is determined that the purchaser improperly claimed an exemption or exclusion by use of a certificate, provided the seller did not fraudulently fail to collect or remit the tax, or both, or solicit a purchaser to participate in an unlawful claim of an exemption.” (Emphasis added.)

Finally, in addition to all other applicable penalties, Code Section 12-54-43(M) provides a penalty for the misuse of a resale, wholesale, or exemption certificate, and states:

If a purchaser uses a resale, wholesale, or an exemption certificate issued or authorized by the department to purchase tangible personal property tax free which the purchaser knows is not excluded or exempt from the tax under the provisions of Chapter 36 of this title, then the purchaser, in addition to any other penalties due under this title, is liable for a penalty of five percent of the amount of the tax if the failure is for not more than one month, with an additional five percent for each additional month or fraction of the month during which the failure continues, not exceeding fifty percent in the aggregate. The provisions of this section do not apply to direct pay certificates.

Procedure:

The presentation of a resale certificate by a purchaser will relieve the seller of liability for the sales tax and switch the liability to the purchaser, provided all of the following conditions are met:

1. The resale certificate presented to the seller by the purchaser contains all the information required by the Department and has been fully and properly completed.
2. The seller did not fraudulently fail to collect or remit the tax, or both.
3. The seller did not solicit a purchaser to participate in an unlawful claim that a sale was for resale.

A copy of Form ST-8A, Resale Certificate, can be found at the Department’s website ([www.sctax.org](http://www.sctax.org)). It is not required that Form ST-8A be used, but the information requested on the form is required on any resale certificate accepted by the seller.

Therefore, a letter from the purchaser to the seller or a resale certificate from another state is acceptable provided the letter or certificate contains the same information requested on Form ST-8A. In addition, the “Uniform Sales & Use Tax Certificate” published by the MultiState Tax Commission (“MTC”) may be used by a purchaser (since it contains the same information requested on Form ST-8A) for the purpose of purchasing tangible personal property that will be resold, leased or rented in the normal course of the purchaser’s retail business. The MTC certificate may also be used by a purchaser of services that are subject to the sales and use tax, such as communications, accommodations, laundry services, and electricity, that will be resold, leased or rented in the normal course of the purchaser’s retail business.

If a purchaser uses a resale certificate to purchase tangible personal property tax free which the purchaser knows is not excluded or exempt from the tax, then the purchaser is liable for a penalty of 5% of the amount of the tax for each month, or fraction of a month, during which the failure to pay the tax continues, not exceeding 50% in the aggregate. This penalty is in addition to all other applicable penalties authorized under the law.

Note: It is not necessary that a resale certificate be obtained for each purchase. Only one resale certificate must be maintained on file per customer.

SOUTH CAROLINA DEPARTMENT OF REVENUE

s/Ray N. Stevens  
Ray N. Stevens, Director

May 5, 2008  
Columbia, South Carolina