
State of South Carolina
Department of Revenue
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SC REVENUE RULING #09-14

SUBJECT: Second Amendment Sales Tax Holiday for 2009
(Sales and Use Tax)

EFFECTIVE DATE: Beginning 12:01 a.m. on the Friday after Thanksgiving 2009 and ending at twelve midnight the following Saturday.

SUPERSEDES: SC Revenue Ruling #08-13 and all previous advisory opinions and any oral directives in conflict herewith.

REFERENCES: Act 23 of 2009, Part 1B, Section 89, Proviso 89.135 (Enacted June 2009)

AUTHORITY: S. C. Code Ann. Section 12-4-320 (2000)
S. C. Code Ann. Section 1-23-10(4) (Supp. 2008)
SC Revenue Procedure #09-3

SCOPE: The purpose of a Revenue Ruling is to provide guidance to the public and to Department personnel. It is an advisory opinion issued to apply principles of tax law to a set of facts or general category of taxpayers. It is the Department's position until superseded or modified by a change in statute, regulation, court decision, or another Departmental advisory opinion.

LAW:

The General Assembly enacted a Second Amendment Sales Tax Holiday for 2009 in the 2009-2010 State Appropriations Act, Act 23 of 2009, Part 1B, Section 89, Proviso 89.135, which states:

The gross proceeds of sales or sales price of handguns as defined pursuant to Section 16-23-10(1) of the 1976 Code, rifles, and shot guns is exempt from the taxes imposed pursuant to Chapter 36, Title 12 of the 1976 Code and Chapter 10, Title 4 of the 1976 Code for sales occurring from 12:01 a.m., Friday, November 27, 2009, through twelve midnight, Saturday, November 28, 2009.

Note: This Second Amendment Sales Tax Holiday is uncodified and will only take place in 2009, unless the General Assembly re-enacts the temporary proviso or codifies this sales tax holiday exemption.¹

In addition, while the above provision only addresses local sales and use taxes imposed under Chapter 10, Title 4 of the 1976 Code, the Second Amendment Sales Tax Holiday for 2009 will apply to all local sales and use taxes administered and collected by the SC Department of Revenue since all laws enacting local sales and use taxes require that such local taxes be administered and collected in the same manner as the state sales and use tax.

EXAMPLES OF EXEMPT AND NON-EXEMPT ITEMS

Pursuant to the temporary proviso cited above, the Department publishes the following list as examples of items it believes to be exempt and non-exempt during the “Second Amendment Sales Tax Holiday.”

Please note that the items listed below as “Exempt” are the only items listed in the law as exempt during the “Second Amendment Sales Tax Holiday.”

However, the items listed below as “Non-exempt” are examples and the list is not all-inclusive. Any item that is not a handgun (as defined in Code Section 16-23-10(1)), rifle or shotgun is subject to the tax.

Exempt items include:

- handguns as defined pursuant to Code Section 16-23-10(1)²
- rifles
- shotguns

¹ The General Assembly initially authorized a Second Amendment Sales Tax Holiday for 2008 and subsequent years by an amendment to Code Section 12-36-2120. However, on May 4, 2009, the South Carolina Supreme Court ruled that the underlying legislation was unconstitutional. *American Petroleum Institute v. South Carolina Department of Revenue*, 382 S.C. 572, 677 S.E.2d 16 (2009). Therefore, the portion of Code Section 12-36-2120 authorizing the Second Amendment Sales Tax Holiday was eliminated. The General Assembly subsequently enacted this temporary proviso that established a Second Amendment Sales Tax Holiday for 2009 only.

² Code Section 16-23-10(1) defines a “handgun” as “any firearm designed to expel a projectile and designed to be fired from the hand, but shall not include any firearm generally recognized or classified as an antique, curiosity, or collector's item, or any that does not fire fixed cartridges.”

Non-exempt items include:³

ammunition
archery supplies
black powder
books
carrying cases
cleaning supplies
gun barrels
gun safes
handguns generally recognized or classified as antique, curiosity, or collector's items
handguns that do not fire fixed cartridges
holsters
hunting clothes
knives
lasers
lights
locks
magazines
range gear
reloading supplies
safety vests
sights
sporting clays
stocks
targets
toy handguns
toy rifles
toy shotguns
videos

³ Some of the items in this non-exempt list are parts and attachments to handguns, rifles or shotguns (e.g., gun barrels, magazines, sights, stocks) and others are not (e.g., ammunition, black powder, carrying cases, holsters, locks, clothing). Since sales tax is a "transaction tax," and since the law did not exempt parts or attachments (e.g., gun barrels, magazines, sights, stocks) or supplies and accessories (e.g., ammunition, black powder, carrying cases, holsters, locks, clothes), then the sale of a part or attachment by itself, or the sale of a supply or accessory, would not be exempt during the "Second Amendment Sales Tax Holiday." However, if a part or attachment to a handgun, rifle or shotgun (e.g., sight) is pre-packaged with a handgun, rifle or shotgun, then that is one transaction to purchase a handgun, rifle or shotgun and the sale of the pre-packaged unit would be exempt, provided the transaction meets all the requirements of the exemption as set forth in the law.

QUESTIONS AND ANSWERS:

The following answers represent the department's opinion with respect to various issues concerning the "Second Amendment Sales Tax Holiday:"

(1) When is the "Second Amendment Sales Tax Holiday?"

The two-day "Second Amendment Sales Tax Holiday" for 2009 will be held beginning at 12:01 a.m., Friday, November 27, 2009, through twelve midnight, Saturday, November 28, 2009.

(2) Must the eligible item being sold be delivered to the customer during the two-day "Second Amendment Sales Tax Holiday" in order for the exemption to apply?

An item qualifying for the "Second Amendment Sales Tax Holiday" will be exempt if:

(a) the eligible item is both delivered to and paid for by the customer during the two days of the "Second Amendment Sales Tax Holiday"; or

(b) the eligible item is ordered and paid for by the customer and the order is accepted by the retailer during the "Second Amendment Sales Tax Holiday" for immediate shipment or delivery, even if delivery is made after the "Second Amendment Sales Tax Holiday." An order is accepted by the retailer when it has taken an action to fill the order for immediate shipment or delivery.

Actions to fill an order include placing an "in date" stamp on a mail order or assigning an order number to a telephone order. An order is for immediate shipment or delivery when delayed shipment or delivery is not requested by the customer and is for immediate shipment or delivery, notwithstanding that the shipment or delivery may be delayed because of a backlog of orders or because stock is currently unavailable to, or on back order by, the retailer.

(3) Does the "Second Amendment Sales Tax Holiday" apply to sales made by mail order, Internet or similar retailers?

Yes, provided the item sold is one qualifying for the exemption and the sale occurs during the two days of the "Second Amendment Sales Tax Holiday" as discussed in Question #2.

(4) Does the "Second Amendment Sales Tax Holiday" apply to custom or special orders?

Yes, provided the item sold is one qualifying for the exemption and the sale occurs during the two days of the "Second Amendment Sales Tax Holiday" as discussed in Question #2.

(5) Does the “Second Amendment Sales Tax Holiday” apply to sales made to a trade or business (e.g., security firm, etc.) or to a government agency (e.g., police department, sheriff’s office, etc.)?

Yes, provided the item sold is one qualifying for the exemption and the sale occurs during the two days of the “Second Amendment Sales Tax Holiday” as discussed in Question #2.

(6) Does the “Second Amendment Sales Tax Holiday” apply to rentals?

Yes, provided the item rented is one qualifying for the exemption, the rental agreement is signed during the two days of the “Second Amendment Sales Tax Holiday” whereby the customer is bound by the rental agreement (creating an obligation to pay the periodic rental payments), and the rental transaction meets all the requirements discussed in Question #2.

Note: If the rental agreement is later renewed, then the renewal, and all periodic payments under the renewal, are subject to the sales and use tax.

(7) Are delivery charges subject to the tax during the “Second Amendment Sales Tax Holiday?”

Most delivery charges are included in the tax base for the sales tax and the use tax. If an item qualifies for the exemption under the “Second Amendment Sales Tax Holiday,” then all delivery charges associated with that sale are exempt. For example, if a retailer sells a rifle during the sales tax holiday for \$2,000 and also charges \$55 to deliver the rifle, then the entire charge of \$2,055 is exempt from the sales or use tax.

(8) Are engraving charges for handguns, rifles, and shotguns sold during the “Second Amendment Sales Tax Holiday” subject to the tax?

If an item qualifies for the exemption under the “Second Amendment Sales Tax Holiday,” then all engraving charges associated with that sale are exempt. For example, if a retailer sells a rifle during the “Second Amendment Sales Tax Holiday” for \$2,000 and also charges \$50 to engrave a name on the stock, then the entire charge of \$2,050 is exempt from the sales or use tax.

(9) How are exchanges of items purchased during the "sales tax holiday" handled when returned after the “Second Amendment Sales Tax Holiday?”

If a customer purchases an exempt item during the “Second Amendment Sales Tax Holiday” and later exchanges the item for the same item (different caliber, different brand, etc.) with no additional payment due as a result of the exchange, then no additional tax will be due even if the exchange is made after the “Second Amendment Sales Tax Holiday.”

For example: If the customer purchased a \$500 handgun during the “Second Amendment Sales Tax Holiday” and later exchanges it for another handgun (\$500 or less) but one of a different caliber, then no additional tax will be due even if the exchange is made after the “Second Amendment Sales Tax Holiday.”

However, if the customer returns the item after the “Second Amendment Sales Tax Holiday” and is allowed a credit for the sales price of the item that can be used to purchase of a different item, the sales or use tax will apply to the sale of the newly purchased item.

For example: If the customer purchased a \$500 handgun during the “Second Amendment Sales Tax Holiday” and later returns it after the “Second Amendment Sales Tax Holiday” and receives a credit for \$500 that is used to purchase a rifle, shotgun or other item, then the sales or use tax will apply to the sale of the newly purchased rifle, shotgun or other item.

(10) How are exchanges of items purchased before the “Second Amendment Sales Tax Holiday” handled when returned during the “Second Amendment Sales Tax Holiday?”

If a customer purchases an item before the “Second Amendment Sales Tax Holiday” and later exchanges the item during the “Second Amendment Sales Tax Holiday” for the handgun, rifle or shotgun that qualifies for the exemption, no additional tax will be due since the item received in the exchange is one that qualifies for the exemption.

(11) How will the “Second Amendment Sales Tax Holiday” apply to rain checks?

The issuance of a rain check during the “Second Amendment Sales Tax Holiday” will not qualify an item for the exemption if the item is actually purchased after the “Second Amendment Sales Tax Holiday.”

Items that qualify for the exemption which are purchased during the “Second Amendment Sales Tax Holiday” using a rain check will be exempt from sales or use tax regardless of when the rain check was issued.

(12) Does an item placed on lay-away during the “Second Amendment Sales Tax Holiday” qualify for the exemption?

Yes, provided the item sold is one qualifying for the exemption, the sale occurs during the two days of the “Second Amendment Sales Tax Holiday,” the terms of the lay away agreement create an absolute obligation to pay for the customer, and the sale meets the requirements discussed in Question #2.

Note: If the terms of the lay away agreement do not create an absolute obligation to pay for the customer, then the sale is subject to the sales and use tax even if it occurs during the “Second Amendment Sales Tax Holiday” since the sale has not met the requirements of the exemption as discussed in Question #2.

(13) Does the “Second Amendment Sales Tax Holiday” apply to local sales and use taxes collected by the department on behalf of counties that have imposed such local sales and use taxes?

Yes, provided the item sold is one qualifying for the exemption and the sale occurs during the two days of the “Second Amendment Sales Tax Holiday” as discussed in Question #2.⁴

(14) How should retailers report sales exempt during the “Second Amendment Sales Tax Holiday?”

With respect to the return filed for November, all sales, whether or not exempt from the tax, should be reported on Line 1 of the Worksheet on the back of the sales and use tax return. Sales of items exempt from the tax during the “Second Amendment Sales Tax Holiday” should be listed as one of the deductions in the space provided on Line 4 of the Worksheet on the sales and use tax return and listed as “Second Amendment Sales Tax Holiday Exemption.”

(15) Can retailers elect not to participate in the “Second Amendment Sales Tax Holiday” and collect the sales tax from their customers on eligible items during the two days of the “Second Amendment Sales Tax Holiday?”

No. Retailers may only "pass on" to their customers sales taxes that are legally due.

The department may revoke any and all licenses issued by the department and held by a retailer, and impose any applicable penalties, if the retailer passes on sales taxes that are not legally due.

(16) Is the sale of an exempt item on a "90 days same as cash" basis exempt from tax if purchased during the “Second Amendment Sales Tax Holiday?”

Yes, provided the contract obligating the buyer to pay is signed during the “Second Amendment Sales Tax Holiday” and delivery of the item is made during the “Second Amendment Sales Tax Holiday” or the retailer accepts the order during the “Second Amendment Sales Tax Holiday” for immediate shipment, even if delivery is made after “Second Amendment Sales Tax Holiday.” See Question #2 for what is meant by "immediate shipment or delivery."

⁴ While the temporary proviso for the “Second Amendment Sales Tax Holiday” only addresses local sales and use taxes imposed under Chapter 10, Title 4 of the 1976 Code, the Second Amendment Sales Tax Holiday for 2009 will apply to all local sales and use taxes administered and collected by the SC Department of Revenue since all laws enacting local sales and use taxes require that such local taxes be administered and collected in the same manner as the state sales and use tax.

If you have any questions, you may call the Department of Revenue at (803) 898-5788 or e-mail the Department at salestax@sctax.org.

Note: The advisory opinion only concerns the application of the “Second Amendment Sales Tax Holiday” exemption for certain handguns, rifles and shotguns and does not concern the laws and regulations for the sale, delivery or shipment of such handguns, rifles, or shotguns by retailers. Retailers or other persons with non-tax questions concerning federal, state or local laws or regulations regarding the sale, or method of shipment or delivery, of a handgun, rifle or shotgun should research such laws or regulations, contact the applicable federal, state or local authorities or obtain professional advice concerning such non-tax matters.

SOUTH CAROLINA DEPARTMENT OF REVENUE

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

October 14, 2009
Columbia, South Carolina