
State of South Carolina
Department of Revenue
300A Outlet Pointe Blvd., Columbia, South Carolina 29210
P.O. Box 125, Columbia, South Carolina 29214

SC REVENUE RULING #15-1

SUBJECT: Kayaks and Paddle Boards – Rentals and Tours
(Sales and Use Tax)

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

SUPERSEDES: All previous advisory opinions and any oral directives in conflict herewith.

REFERENCES: S. C. Code Ann. Section 12-36-910(A) (2014)
S. C. Code Ann. Section 12-36-1310 (A)(2014)
S. C. Code Ann. Section 12-36-1110 (2014)
S. C. Code Ann. Section 12-36-60 (2014)
S. C. Code Ann. Section 12-36-100 (2014)
S. C. Code Ann. Section 12-36-110 (2014)
S. C. Code Ann. Section 12-36-120 (2014)
S. C. Code Ann. Section 12-36-90 (2014)
SC Regulation 117-318.4

AUTHORITY: S. C. Code Ann. Section 12-4-320 (2014)
S. C. Code Ann. Section 1-23-10(4) (2005)
SC Revenue Procedure #09-3

SCOPE: The purpose of a Revenue Ruling is to provide guidance to the public. 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 It is the Department's position until superseded or modified by a change in statute, regulation, court decision, or another Departmental advisory opinion.

Question:

What is the application of the South Carolina sales and use tax to the following kayak and paddle board businesses:

1. A business that only rents kayaks and paddle boards and does not conduct tours.
2. A business that only conducts tours of rivers and lakes using kayaks and paddle boards and does not rent kayaks and paddle boards.

3. A business that rents kayaks and paddle boards and also conducts tours using the same kayaks and paddle boards.

Conclusion:

The South Carolina sales and use tax applies to the kayak and paddle board rental and tour industry as follows:

1. If the business only rents kayaks and paddle boards and does not conduct tours, then rentals of the kayaks and paddle boards by the business to customers are subject to the State sales and use tax, plus any applicable local sales and use tax.

The purchases by the business of the kayaks and paddle boards that it will rent to customers are wholesale purchases and are not subject to the tax. The business may purchase the kayaks and paddle boards at wholesale (not subject to the tax) by providing the seller of the kayaks and paddle boards a resale certificate.

For additional information on resale certificates, see SC Revenue Procedure #08-2.

2. If the business only conducts tours of rivers and lakes using kayaks and paddle boards and does not rent kayaks and paddle boards, then the charge for the tour is a charge for a service that is not subject to State and local sales and use taxes.

The purchases by the business of the kayaks and paddle boards that it will use in conducting the tours of rivers and lakes are purchases at retail by the business and are subject to the State sales and use tax, plus any applicable local sales and use tax.

Note: Since the business is purchasing the kayaks and paddle boards at retail, the business will either pay the tax to the supplier at the time of purchase or remit the use tax directly to the Department on its purchase of the kayaks and paddle boards.

3. If the business rents kayaks and paddle boards and also conducts tours using the same kayaks and paddle boards, then:
 - a. The rentals of the kayaks and paddle boards by the business to customers are subject to the State sales and use tax, plus any applicable local sales and use tax.
 - b. The use of the same kayaks and paddle boards in providing tours is a “withdrawal for use” subject to the State sales tax, plus any applicable local sales tax. The business may elect one of two methods to pay the tax on its withdrawals for use: (i) the business may purchase all its kayaks and paddle boards at retail by paying the tax to the seller at the time of purchase or remitting the use tax directly to the Department on its purchase of the kayaks and paddle boards and no further tax is due on any future withdrawal for use of the kayaks and paddle boards when used in providing a tour; or (ii) the business may purchase all its kayaks and paddle boards at wholesale (not subject to the tax) and remit the tax on the fair market rental value of a kayak or paddle board each time it is used in providing a tour.

For example, if a business rents kayaks for \$20 per hour, then all such rentals are subject to the State sales and use tax, plus any applicable local sales and use tax. When the same kayak is also used in providing a tour that costs \$100 per hour, then the sales tax is due on \$20 of each \$100 as a “withdrawal for use” of the kayak for the tour. However, if the business had elected to remit the tax to the seller or directly to the Department at the time of its purchase of the kayaks and paddle boards, then no tax would be due on the subsequent “withdrawal for use” of the kayak for each tour.

Note: If a business is selling or renting kayaks, paddle boards or any other tangible personal property (*e.g.*, souvenirs, clothing, food, etc.), then it will need a retail license since it will be engaged in the business of selling tangible personal property at retail.

Facts:

Kayaking and paddle boarding are popular in South Carolina. Throughout the state, there are businesses that rent kayaks and paddle boards and others that conduct tours of South Carolina’s scenic waterways using kayaks and paddle boards. In some cases, these businesses do both – rent kayaks and paddle boards and conduct tours using the same kayaks and paddle boards.

The purpose of this advisory opinion is to provide guidance as to the application of the sales and use tax to the kayak and paddle board rental and tour industry.

Discussion:

Code Section 12-36-910(A) imposes the sales tax and states:

A sales tax, equal to [six]¹ percent of the gross proceeds of sales, is imposed upon every person engaged or continuing within this State in the business of selling tangible personal property at retail.

Code Section 12-36-1310(A) imposes the use tax and states:

A use tax is imposed on the storage, use, or other consumption in this State of tangible personal property purchased at retail for storage, use, or other consumption in this State, at the rate of [six]² percent of the sales price of the property, regardless of whether the retailer is or is not engaged in business in this State.

Code Section 12-36-60 defines the term “tangible personal property” and states:

“Tangible personal property” means personal property which may be seen, weighed, measured, felt, touched, or which is in any other manner perceptible to the senses. It also includes services and intangibles, including communications, laundry and related services, furnishing of accommodations and sales of

¹ Code Section 12-36-1110 increased the sales and use tax rate by 1% beginning June 1, 2007.

² See footnote #1.

electricity, the sale or use of which is subject to tax under this chapter and does not include stocks, notes, bonds, mortgages, or other evidences of debt. Tangible personal property does not include the transmission of computer database information by a cooperative service when the database information has been assembled by and for the exclusive use of the members of the cooperative service.

Code Section 12-36-100 defines the term “sale” to include leases and rentals of tangible personal property.

Based on the above, in order for the sales or use tax to apply, there must be a retail sale of tangible personal property. A retail sale includes leases and rentals.

Code Section 12-36-110 defines the terms “retail sale” and “sale at retail” to mean, in part:

Sale at retail and retail sale mean all sales of tangible personal property except those defined as wholesale sales. The quantity or sales price of goods sold is immaterial in determining if a sale is at retail.

(1) The terms include:

* * * *

(c) the withdrawal, use, or consumption of tangible personal property by anyone who purchases it at wholesale, except:³

(emphasis added).

Code Section 12-36-120 defines the terms “wholesale sale” and “sale at wholesale” to mean, in part, a sale of:

... tangible personal property to licensed retail merchants, jobbers, dealers, or wholesalers for resale, and do not include sales to users or consumers not for resale.

Based on the above, a “retail sale” includes:

(1) the withdrawal of tangible personal property by anyone who purchased it at wholesale;

(2) the use of tangible personal property by anyone who purchased it at wholesale; or,

³ The exceptions listed in this provision are not relevant to businesses renting kayaks and paddle boards and using the same kayaks and paddle boards in conducting tours. Therefore, for purposes of simplifying the discussion, these exceptions are not cited or discussed in this document.

(3) the consumption of tangible personal property by anyone who purchased it at wholesale.

Code Section 12-36-90 defines the term “gross proceeds of sales,” which is the basis for calculating the sales tax, in part as:

... the value proceeding or accruing from the sale, lease, or rental of tangible personal property.

(1) The term includes:

* * * *

(c) the fair market value of tangible personal property previously purchased at wholesale which is withdrawn from the business or stock and used or consumed in connection with the business or used or consumed by any person withdrawing it, except for:⁴

(emphasis added).

Based on the above, 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.

SC Regulation 117-318.4 specifically addresses retailers that rent tangible personal property and also withdraw, use or consume the same tangible personal property, and states:

Where a person customarily rents tangible personal property and customarily withdraws the same for his own use, storage or consumption, a tax is due by such person on each withdrawal for use, the tax to be measured by the amount he would customarily receive as rental had the property been leased or rented for a like period of time. In the alternative the tax may be paid on the full purchase price of the property and no further liability incurred on withdrawals for use. Having once elected either method of reporting on withdrawals for use, the taxpayer must so continue unless and until permission has been received from the department in writing to make a change. Regardless of the method selected for accounting for the tax on withdrawals for use, the tax is due on all amounts proceeding or accruing from the rental, lease or sale of the property.

Therefore, a business that rents kayaks and paddle boards is liable for the sales tax on all such rentals.

⁴ The exceptions listed in this provision are not relevant to businesses renting kayaks and paddle boards and using the same kayaks and paddle boards in conducting tours. Therefore, for purposes of simplifying the discussion, these exceptions are not cited or discussed in this document.

If the business also uses the same kayaks and paddle boards it rents in providing a tour, the withdrawals for use of the kayaks and paddle boards used in providing the tour are subject to the tax based on the fair market rental value of the kayaks and paddle boards. However, as an alternative to remitting the tax on each withdrawal for use of a kayak and paddle board used in providing a tour, the “tax may be paid on the full purchase price of the property and no further liability incurred on withdrawals for use.”

For example, if a business rents kayaks for \$20 per hour, then all such rentals are subject to the State sales and use tax, plus any applicable local sales and use tax. When the same kayak is also used in providing a tour that costs \$100 per hour, then the State sales tax, and any applicable local sales tax, is due on \$20 of each \$100 as a “withdrawal for use” of the kayak for the tour. However, if the business had previously elected to remit the tax to the seller, or directly to the Department, at the time of its purchase of the kayaks and paddle boards, then no tax would be due on the subsequent “withdrawal for use” of the kayak when used for a tour.

SOUTH CAROLINA DEPARTMENT OF REVENUE

s/Rick Reames III

Rick Reames III, Director

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Columbia, South Carolina