



SC REVENUE RULING #89-11

**SUBJECT:** Construction Equipment Brought Into South Carolina  
(Use Tax)

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

**REFERENCE:** S.C. Code Ann. Section 12-35-810 (1976)  
S.C. Code Ann. Section 12-35-130 (1976)  
S.C. Code Ann. Section 12-35-140 (1976)  
S.C. Code Ann. Section 12-35-160 (1976)  
S.C. Code Ann. Section 12-35-70 (1976)  
S.C. Code Ann. Section 12-35-110 (Supp. 1988)  
S.C. Code Ann. Section 12-35-815 (Supp. 1988)  
S.C. Code Ann. Section 12-35-930 (1976)

**AUTHORITY:** S.C. Code Ann. Section 12-3-170 (1976)  
SC Revenue Procedure #87-3

**SCOPE:** A Revenue Ruling is the Commission's official interpretation of how tax law is to be applied to a specific set of facts. A Revenue Ruling is public information and remains a permanent document until superseded by a Regulation or is rescinded by a subsequent Revenue Ruling.

Question:

1. To what extent is construction equipment subject to the use tax, pursuant to Code Section 12-35-810?
2. What does the phrase "substantial use" mean, as used in Code Section 12-35-810?

Facts:

An out-of-state contractor is hired to build an office complex somewhere in South Carolina. The contractor will purchase various machinery, tools and equipment from out-of-state vendors for use at the South Carolina job site. In addition, the contractor will import or bring into this State other machinery, tools and equipment, owned by the contractor and previously used on other jobs outside of South Carolina.

Discussion:

1. South Carolina Code Section 12-35-810 imposes the use tax "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,.... This section also outlines various provisions with respect to construction equipment, tools and machinery.

In order to best understand Code Section 12-35-810, we will review the section a portion at a time. The first paragraph of the section reads:

An excise 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 [five] percent of the sales price of such property, regardless of whether the retailer is or is not engaged in business in this State (emphasis added).

The key terms or phrases in this paragraph are: "storage", "use", "tangible personal property" and "purchased at retail".

Code Section 12-35-130, defines "storage", and reads:

The term "storage" includes any keeping or retention in this State, for any purpose except sale in the regular course of business or subsequent use solely outside this State, of tangible personal property purchased at retail.

Code Section 12-35-160, defines "use", and reads:

The term "use" includes the exercise of any right or power over tangible personal property incident to the ownership of that property or by any transaction in which possession is given, except that it shall not include the sale of that property in the regular course of business.

Code Section 12-35-140, defines "tangible personal property", and reads, in part:

The term "tangible personal property" means personal property which may be seen, weighed, measured, felt or touched or which is in any other manner perceptible to the senses, except notes, bonds, mortgages or other evidences of debt and stocks and shall include rooms, lodgings or accommodations furnished to transients for a consideration.

Code Section 12-35-70, defines "purchase" and reads:

The term "purchase" means acquired for a consideration, whether (a) such acquisition was effected by a transfer of title or of possession, or of both, or a license to use or consume, (b) such transfer shall have been absolute or conditional and by whatever means it shall have been effected and (c) such consideration be a price or rental in money or by way of exchange or barter.

Code Section 12-35-110, defines "sale at retail" or "retail sale", in part, to "mean all sales of tangible personal property except those defined in this article as wholesale sales." Code Section 12-35-170, defines "wholesale sale" or "sale at wholesale", to mean, in part, "a sale of tangible personal property by wholesalers to licensed retail merchants, jobbers, dealers, or other wholesalers for resale, and do not include a sale by wholesalers to users or consumers, not for resale."

In summary, the first paragraph of Code Section 12-35-810 imposes the use tax on the keeping or retaining of, or the exercise of any right or power over, tangible personal property in South Carolina, which was purchased (not for resale) for storage, use or consumption in South Carolina.

We must now review a portion of the second paragraph of Code Section 12-35-810, which reads, in part:

Notwithstanding any other provision of law, a use tax at the rate of [five] percent of the value hereinafter prescribed is hereby levied upon the storage or use in this State of any motor vehicles, machines, machinery, tools, or other equipment, or other tangible personal property, brought, imported, or caused to be brought into this State for use in constructing, building, or repairing any building, highway, street, sidewalk, bridge, culvert, sewer or water system, drainage or dredging system, railway system, reservoir or dam, power plant, pipeline, transmission line, tower, dock, wharf, excavation, grading or other improvement or structure, or any part thereof. The owner, or if the property is leased, the lessee of any such motor vehicles, machines, machinery, tools or other equipment, or other tangible personal property, shall be liable to the tax provided herein, to be computed as prescribed below. (emphasis added)

The above begins with the phrase: "Notwithstanding any other provision of law,..." The statute does not define this phrase or the word "notwithstanding"; however, it is an accepted practice in South Carolina to resort to the dictionary to determine the literal meaning of words used in statutes. For cases where this has been done, see Hay v. South Carolina Tax Commission, 273 SC 269, 255 SE2d 837 (1979); Fennell v. South Carolina Tax Commission, 233 S.C. 43, 103 SE2d 424 (1958); Etiwan Fertilizer Co. v. South Carolina Tax Commission, 217 SC 484, 60 SE2d 682 (1950).

The Second College Edition of the American Heritage Dictionary defines the word "notwithstanding" to mean "in spite of".

Applying the above definition to the second paragraph of Code Section 12-35-810, it is read as meaning, "in spite of" any other provisions of law, including the first paragraph of Code Section 12-35-810, the use tax applies to machinery, tools, equipment and other tangible personal property brought into, or imported into South Carolina for use in various construction projects. Notice that this portion of the section does not require these items to be "purchased at retail" for use in South Carolina. Such items may, therefore, be first used in another state, prior to coming to South Carolina, and still be subject to the use tax.

The next several portions of this section prescribe how the use tax, on such construction equipment and tools, shall be computed.

The second paragraph reads further:

The useful life of such motor vehicles, machines, machinery, tools, or other equipment, or other tangible personal property shall be determined by the Commission in accordance with the experience and practices of the building and construction trade. The use tax provided for herein shall be computed on the basis of such proportion of the original purchase price of such property as the duration of time of use in this State bears to the total useful life thereof. The tax herein provided shall become due immediately upon such property being brought into this State, and in the absence of satisfactory evidence as to the period of use intended in this State, it shall be presumed that the property will remain in this State for the remainder of its useful life.

In summary, the use tax imposed on the use of construction equipment brought into this State, is computed as follows:

Duration of Time Used in S.C.

$[\text{Original Purchase Price} \times 5\%] \times \underline{\hspace{2cm}} = \text{Use Tax Due}$

Total Useful Life

If the period of intended use in this State is unknown, it is presumed it will remain in South Carolina for the remainder of its useful life.

The next portion of the second paragraph reads:

But the use in this State of any motor vehicles, machines, or machinery previously purchased at retail for use in another state and actually placed into substantial use in another state before being brought, imported or caused to be brought into this State by the owner thereof for use in constructing or repairing its own buildings, structures or other property, shall not be subject to the tax provided in this section.

In summary, equipment purchased and substantially used in another state will not be subject to the South Carolina use tax, if the owner of such equipment uses it to construct or repair his own buildings, structures or other property located in this State.

The next portion of the second paragraph reads:

Provided, however, that should any other state levy a sale or use tax against the property of a person or company of this State engaged in the construction business without an allowance for the period of use of such property in such other state or without an allowance for the reasonable depreciation in value of the property so used in such other state, then the Commission, in its discretion, shall be authorized to levy the tax prescribed in this section against the property of a person or

company of such other state engaged in the construction business when such property is brought into this State for use, storage or consumption. The tax shall be measured by the original purchase price of such property without regard to any proration for period of use, storage or consumption of such property in this State or for any depreciation in value of such property when brought into this State.

In summary, the full 5% use tax will apply if the state in which the equipment was previously used does not prorate its use tax on, or depreciate the value for use tax purposes of, construction equipment used by South Carolina contractors operating in such state.

The next portion of the second paragraph reads:

Provided, however, that a sales or use tax legally due and paid to another state on such motor vehicles, machines, machinery, tools or other equipment brought, imported, or caused to be brought into this State for use in constructing, building, or repairing any building, highway, street, sidewalk, bridge, culvert, sewer or water system, drainage or dredging system, railway system, reservoir or dam, power plant, pipeline, transmission line, tower, dock, wharf, excavation, grading or other improvement or structure, or any part thereof shall be allowed as a credit in an amount not to exceed the tax due this State, but only if such other state grants substantially similar tax credits on tangible personal property purchased in South Carolina. If the amount of tax paid in another state is not equal to or greater than the amount of tax imposed by this article, the purchaser shall pay to the Tax Commission an amount sufficient to make the tax paid in the other state and this State equal to the amount imposed by this article.

In summary, if other states allow a credit against their use tax for South Carolina sales tax on such construction equipment, South Carolina will allow similar credits (prorated to reflect the equipment's duration of use in South Carolina). Therefore, the out-of-state contractor would only pay the difference, if any, of the South Carolina use tax, minus the other state's sales tax.

The final paragraph of Code Section 12-35-810, reads:

All provisions of this chapter not directly in conflict with the provisions of this section shall be applicable with respect to the matters herein set forth. The use, storage, or consumption of such property when purchased for use in this State shall be subject to the full amount of use tax provided in this section regardless of the period of intended use in this State.

In summary, if the construction equipment was purchased for first use in South Carolina, the full use tax amount applies.

However, Code Section 12-35-815, effective January 1, 1988, permits a credit, against the South Carolina use tax, for sales tax paid in another state on the sale of tangible personal property, including construction equipment, purchased for first use in this State. Code Section 12-35-815, reads:

When a taxpayer is liable for the use tax imposed by this article on tangible personal property purchased in another state upon which a sales tax was paid in the other state, the amount of the sales tax is allowed as a credit against the use tax due this State, upon proof of payment of the sales tax, if the state in which the property was purchased allows substantially similar tax credits on tangible personal property purchased in this State. If the amount of the sales tax paid in the other state is less than the amount of use tax imposed by this article, the user shall pay the difference to the Commission.

2. As previously discussed, equipment purchased and placed into "substantial use" in another state will not be subject to the use tax, if imported and used in this State to construct or repair the buildings or other property of the owner of the equipment. However, it must be determined what is meant by the phrase "substantial use" in Code Section 12-35-810.

It has been long-standing policy that the facts and circumstances of each transaction must be examined on a case-by-case basis. The Commission has traditionally considered such factors as: 1) Was the equipment depreciated on the other state's income tax return; 2) Did the owner of the equipment pay property taxes, on such equipment, in the other state; and, 3) How long was the equipment used in the other state?

Administrative interpretations of statutes by the agency charged with their administration and not expressly changed by the legislative body are entitled to great weight. Marchant v. Hamilton 309 S.E. 2d 781 (1983). When as in this case, the construction or administrative interpretation of a statute has been applied for a number of years and has not been changed by the legislature, there is created a strong presumption that such interpretation or construction is correct. Ryder Truck Lines, Inc. v. South Carolina Tax Commission, 248 S.C. 148, 149 S.E. 2d 435 (1966); Etiwan Fertilizer Company v. South Carolina Tax Commission, 217 S.C. 354, 60 SE 2d 682 (1950).

Furthermore, Code Section 12-35-930 reads:

It shall be presumed that tangible personal property sold by any person for delivery in this State is sold for storage, use or other consumption in this State unless the person selling such property shall have taken from the purchaser a certificate signed by and bearing the name and address of the purchaser to the effect that the property was purchased for resale, and it shall be further presumed that tangible personal property shipped to this state by the purchaser thereof was purchased from a retailer for storage, use or other consumption in this State (emphasis added).

In summary, the facts and circumstances must be reviewed on a case-by-case basis to determine if equipment was substantially used in another state. However, all tangible personal property imported into South Carolina by the purchaser thereof is presumed subject to the tax. Therefore, the burden of proof that the equipment was "substantially used" in the other state rests with the purchaser.

Conclusions:

1. Construction machinery, tools, equipment, etc., as described in Code Section 12-35-810, are subject to the use tax imposed by that section when used, consumed or stored in this State. The tax due is computed as follows:
  - A. Equipment purchased for first use in South Carolina is subject to the full amount of use tax provided for in Code Section 12-35-810 (paragraphs one and three); however, such purchases qualify for the credit authorized by Code Section 12-35-815, effective January 1, 1988.
  - B. Equipment purchased and previously used in another state is subject to the South Carolina use tax (prorated to reflect the equipment's duration of use in South Carolina, if the other state's statute has similar provisions for proration of the tax or depreciation of the tax base) when imported or brought into this State for use, storage or consumption in this State.

South Carolina will also allow a credit (prorated to reflect the equipment's duration of use in South Carolina) for sales tax paid another state, against the use tax, on equipment previously used in another state if the out-of-state contractor's state will allow a similar credit.

2. The phrase "substantial use", as used in Code Section 12-35-810, only applies to equipment purchased and used in another state, but brought into South Carolina for use by the owner thereof in constructing or repairing his own buildings or property. As discussed above, the Commission considers, on a case-by-case basis, several factors in determining whether such equipment was "substantially used" in another state. However, the burden of proof that the equipment was "substantially used" in another state rests with the taxpayer.

SOUTH CAROLINA TAX COMMISSION

s/S. Hunter Howard Jr.  
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S. Hunter Howard, Jr., Chairman

s/A. Crawford Clarkson Jr.  
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A. Crawford Clarkson, Jr., Commissioner

s/T. R. McConnell  
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T. R. McConnell, Commissioner

Columbia, South Carolina  
May 3, 1989