
State of South Carolina
Department of Revenue
301 Gervais Street, P.O. Box 125, Columbia, South Carolina 29214

SC REVENUE RULING # 98-18

SUBJECT: Catawba Indian Claims Settlement Act
(Sales and Use Taxes)

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

EXPIRATION DATE: November 28, 2092

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

REFERENCES: S. C. Code Ann. Section 27-16-130 (Supp. 1997)
S. C. Code Ann. Section 12-36-2610 (Supp. 1997)

AUTHORITY: S. C. Code Ann. Section 12-4-320 (Supp. 1997)
SC Revenue Procedure #97-8

SCOPE: A Revenue Ruling is the Department of Revenue's official advisory opinion of how laws administered by the Department are to be applied to a specific issue or a specific set of facts, and is provided as guidance for all persons or a particular group. It is valid and remains in effect until superseded or modified by a change in the statute or regulations or a subsequent court decision, Revenue Ruling or Revenue Procedure.

Introduction & Law:

Chapter 16, Title 27 of the South Carolina Code of Laws is known as “The Catawba Indian Claims Settlement Act” (“The Act”). The Act is based on the agreement in principle reached between the State of South Carolina and the Catawba Indian Tribe to settle differences between the two parties.

Section 27-16-130 reads, in pertinent part:

(H) The Tribe, its members, and the Tribal Trust Funds are liable for the payment of all state and local sales and use taxes to the same extent as any other person or entity in the State, except as specifically provided as follows:

- (1) Purchases made by the Tribe for tribal government functions during ninety-nine years from the effective date of this chapter are exempt from state and local sales and use taxes.

- (2) Catawba pottery and artifacts made by members of the Tribe and sold on or off the Reservation by the Tribe or members of the Tribe are exempt from state and local sales and use taxes.
- (3) During ninety-nine years from the effective date of this chapter, the sale on the Reservation of all other items, made on or off the Reservation, are exempt from state and local sales and use taxes but are subject to a special tribal sales tax levied by the Tribe equal to the state and local sales tax that would be levied in the jurisdiction encompassing the Reservation but for this exemption.
 - (a) The South Carolina sales and use tax laws, regulations, and rulings apply to the special tribal sales tax, and the special tribal sales tax must be administered and collected by the South Carolina Tax Commission.
 - (b) The South Carolina Tax Commission separately shall account for the special tribal sales tax, and the State Treasurer shall remit the special tribal sales tax revenues periodically to the Tribe at no cost to the Tribe.
 - (c) The tribal sales tax does not apply to retail sales occurring on the Reservation as a result of delivery from outside the Reservation when the gross proceeds of sale are one hundred dollars or less. If it does not apply, the state sales tax applies.
 - (d) The Tribe shall impose a tribal use tax on the storage, use, or other consumption on the Reservation of tangible personal property purchased at retail outside the State when the vendor does not collect the tax. However, use taxes collected by a vendor which is not located in the State are subject to state use taxes, and the use tax must be remitted to the State and not the Tribe. Use taxes not collected by the vendor and remitted to the State are subject to the tribal use tax and must be collected directly by the Tribe.

The purpose of this document is to address certain questions that have arisen concerning the above-quoted code section.

Questions & Answers:

1. Q. What is the implementation date of the Catawba Indian Settlement Act (“the Act”)?

A. 1993 Act No. 142, “The Catawba Indian Settlement Act,” contains the following provision:

SECTION 2. This act takes effect when the Governor certifies that the Counties of York and Lancaster have taken all actions required of them by the Settlement Agreement. However, the Governor may not make the certification until the Congress of the United

States has passed and the President of the United States has signed into law federal implementing legislation which he also certifies as consistent with the Settlement Agreement.

The Governor certified the above on November 29, 1993. Therefore, the act took effect on that date.

2. Q. Does Section 12-36-2610 (“Discount for timely payment of tax.”) apply to the tribal sales tax?

A. Section 27-16-130(H)(3)(a) reads:

The South Carolina sales and use tax laws, regulations, and rulings apply to the special tribal sales tax, and the special tribal sales tax must be administered and collected by the South Carolina Tax Commission.

Section 12-36-2610, which pertains to the state sales and use taxes, reads in pertinent part:

When a sales or use tax return required by Section 12-36-2570 and Chapter 10 of Title 4 is filed and the taxes due on it are paid in full on or before the final due date, the taxpayer is allowed a discount as follows:

- (1) on taxes shown to be due by the return of less than one hundred dollars, three percent;
- (2) on taxes shown to be due by the return on one hundred dollars or more, two percent.

In no case is a discount allowed if the return, or the tax on it is received after the due date, pursuant to Section 12-36-2570, or after the expiration of any extension granted by the commission. The discount permitted a taxpayer under this section may not exceed three thousand dollars during any one state fiscal year.

Based on the language in Section 27-16-130(H)(3)(a), the provisions of Section 12-36-2610 apply to the tribal sales tax.

3. Q. If York County, or any other county containing lands encompassing the Reservation, imposes the 1% local option sales and use tax, would the local option sales tax be due if a transaction takes place at a location on the Reservation that is within the local option tax county?

A. Section 27-16-130(H)(3) provides that sales on the Reservation are exempt from the state and local sales and use taxes. However, that same section provides that the special tribal sales tax applies and that it is “equal to the state and local tax that would be levied in the jurisdiction encompassing the Reservation but for this exemption.” (Emphasis added.)

As of this writing, York County has not approved the 1% local option tax as provided for in Article 1, Chapter 10, Title 4 of the South Carolina Code of Laws. However, York County did impose a 1% Capital Project Sales Tax as provided for in Article 3 of Chapter 10, Title 4. The 1% Capital Project Sales Tax goes into effect in York County on May 1, 1998. Therefore, sales that take place on the Reservation within York County before May 1, 1998 are subject to the tribal sales tax at a rate of 5%. Sales that take place on the Reservation within York County on or after May 1, 1998 are subject to the tribal sales tax at a rate of 6%.

Lancaster County imposed the 1% local option tax, as provided for in Article 1 of Chapter 10, Title 4, effective May 1, 1992; therefore, sales on the Reservation within Lancaster County are subject to the tribal sales tax at a rate of 6%.

NOTE: The tribal sales tax rates within the Reservation may increase dependent upon whether additional state or local sales taxes are imposed in the future.

4. Q. What does the phrase “artifacts made by members of the Tribe,” as used in Section 27-16-130(H)(2), mean?
 - A. Where "the terms of a statute are clear and unambiguous and leave no room for construction, they must be applied according to their literal meaning." Green v. Zimmerman, 269 S.C. 535, 238 S.E.2d 323, 325 (1977).

In South Carolina, it is an accepted practice 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 S.E.2d 837 (1979); Fennell v. South Carolina Tax Commission, 233 S.C. 43, 103 S.E.2d 424 (1958); Etiwan Fertilizer Co. v. South Carolina Tax Commission, 217 SC 484, 60 S.E.2d 682 (1950).

Because the term “artifact” is not defined in the statute and its meaning is not clear, we resort to the dictionary for a definition. The American Heritage Dictionary, Second College Edition, defines the term as: “An object produced or shaped by human workmanship, esp., a tool, weapon, or ornament of archaeological or historical interest.”

Based on the above-quoted definition, the phrase “artifacts made by members of the Tribe” means objects, including tools, weapons and ornaments, produced or shaped by the workmanship of one or more members of the Catawba Indian Tribe that are associated with the culture or history of the Tribe.

5. Q. When tangible personal property, other than pottery and artifacts made by members of the Tribe, is sold and delivered outside the reservation, which tax is due - the state tax or the tribal tax?

- A. Section 27-16-130(H)(3) provides that sales *on* the Reservation of items, other than Catawba pottery and artifacts made by members of the Tribe, are exempt from state and local sales taxes, but they are subject to the tribal sales tax. That section does not exempt sales of such items *off* the Reservation from state and local sales taxes. Therefore, sales of items, other than Catawba pottery and artifacts made by members of the Tribe, *off* the Reservation are subject to state and local sales taxes and are not subject to the tribal sales tax.
6. Q. How are charges for sleeping accommodations provided on the Reservation to be taxed?
- A. All sales on the Reservation are exempt from state and local sales taxes, but are subject to the tribal sales tax. Section 27-16-130(H)(3) provides that sales on the Reservation are subject to the tribal sales tax “equal to the state and local sales tax that would be levied in the jurisdiction encompassing the Reservation.” Therefore, if accommodations are furnished before May 1, 1998 in an area of the Reservation that is within York County, the tribal sales tax rate on such charges is 7%. Accommodations furnished on or after May 1, 1998 in an area of the Reservation within York County are taxed at 8%. Likewise, the tribal sales tax rate on additional guest charges imposed on the Reservation within York County is 5% before May 1, 1998 and 6% on or after May 1, 1998. (See Answer #3 concerning the 1% Capital Project Sales Tax imposed in York County.)
- Accommodations furnished on the Reservation within Lancaster County are subject to the tribal sales tax at a rate of 8%. Additional guest charges imposed on the Reservation within Lancaster County are subject to the tribal sales tax at a rate of 6%.
7. Q. In Section 27-16-130(H)(3)(d), what is meant by the last sentence in that section which reads: “Use taxes not collected by the vendor and remitted to the State are subject to the tribal use tax and must be collected directly by the Tribe”?
- A. The subject statutory phrase means that if a vendor does not collect the state use tax on a transaction that is subject to the use tax, then the Tribe is required to collect the tribal use tax on the storage, use or other consumption on the Reservation of tangible personal property that has been purchased at retail outside the State. The Department of Revenue is not responsible for administering the tribal use tax. The Department is only responsible for administering the tribal sales tax.

SOUTH CAROLINA DEPARTMENT OF REVENUE

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

August 18, 1998
Columbia, South Carolina