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

SC REVENUE RULING # 98-8

SUBJECT: Drop Shipments
(Sales and Use Tax)

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

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

REFERENCES: S. C. Code Ann. Section 12-36-910 (Supp. 1997)
S. C. Code Ann. Section 12-36-1310 (Supp. 1997)
S. C. Code Ann. Section 12-36-1330 (Supp. 1997)
S. C. Code Ann. Section 12-36-110 (Supp. 1997)
S. C. Code Ann. Section 12-37-120 (Supp. 1997)
SC Regulation 117-170

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 It is valid and remains in effect until superseded or modified by a change in the statute or regulations or a subsequent court decision, Revenue Ruling or Revenue Procedure.

Question:

Who is liable for the tax when tangible personal property is drop shipped, at the request of the retailer, to the retailer's South Carolina customer by a manufacturer or distributor?

Conclusion:

When tangible personal property is drop shipped, at the request of the retailer, to the retailer's South Carolina customer by a manufacturer or distributor, the liability for the tax is as follows:

- (1) If the retailer is "engaged in business in this State," then the retailer is liable for the sales tax with respect to the sale of property drop shipped to his customer in this state.
- (2) If the retailer is **not** "engaged in business in this State" but has voluntarily obtained a retail license from the department, then the retailer must collect and remit the use tax to the State. Please note that while the retailer must collect and remit the use tax to the

State, the purchaser remains liable for the use tax until the tax is paid. However, a receipt from the retailer showing the use tax was paid to the retailer by the purchaser is sufficient to relieve the purchaser from liability for the use tax.

- (3) If the retailer is **not** “engaged in business in this State” and has **not** voluntarily obtained a retail license from the department, then the liability for the use tax rests with the retailer’s customer (the purchaser).

See SC Regulation 117-170 on page 3 of this document for a definition of what constitutes being “engaged in business in this State.”

Note: Based on the above, the manufacturer or distributor shipping a product directly to the retailer’s South Carolina customer via the drop shipment method described in this document is **not** responsible for the sales and use tax. In addition, the drop shipment by the manufacturer or distributor does **not** create nexus for the retailer if such retailer is **not** “engaged in business in this State” as that term is defined in SC Regulation 117-170 and has **not** voluntarily obtained a retail license from the department.

Facts:

A retailer may contract with a manufacturer (or distributor) to ship product directly to the retailer’s South Carolina customer. The manufacturer (or distributor) will bill the retailer for the product and the retailer will in turn bill its customer. Such an arrangement is commonly referred to as a “drop shipment.”

Discussion:

Code Section 12-36-910 imposes "a sales tax, equal to five percent of gross proceeds of sales, upon every person engaged ... within this State in the business of selling tangible personal property at retail." (Emphasis added.)

Code Section 12-36-1310 imposes “a 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, at the rate of five percent of the sales price of the property.”

The liability for the use tax rests with the user or consumer of the tangible personal property (the purchaser); however, a retailer engaged in business in South Carolina has a duty to collect and remit the use tax to the State. In addition, a receipt from the retailer showing the use tax was paid to the retailer by the purchaser is sufficient to relieve the purchaser from liability for the use tax. See Code Section 12-36-1330.

Therefore, in order for either the sales tax or the use tax to apply, there must be a retail sale.

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

all sales of tangible personal property except those defined as wholesale sales.

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

(1) 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.

Finally, with respect to goods shipped into this state, SC Regulation 117-170 states in part:

(1) Goods coming into this State. When tangible personal property is purchased for use or consumption in this State and (1) the seller is engaged in the business of selling such tangible personal property in this State for use or consumption and (2) delivery is made in this State, such sale is subject to the sales tax. Such sale is taxable regardless of the fact that the purchaser’s order may specify that the goods are to be manufactured or procured by the seller at a specified point outside this State and shipped directly to the purchaser from the point of origin.

If the conditions above are met it is immaterial (1) that the contract of sale is closed by acceptance outside the State or (2) that the contract is made before the property is brought into this State. Delivery is held to have taken place in this State (1) when physical possession of the tangible personal property is actually transferred to the buyer within this State or (2) when the tangible personal property is placed in the mails at a point outside this State directed to the buyer in this State or placed on board a carrier at a point outside this State (FOB or otherwise) and directed to the buyer in this State.

Engaging in business in this State shall include any of the following methods of transacting business: maintaining directly, indirectly, or through a subsidiary, an office, distribution house, sales house, warehouse or other place of business or by having an agent, salesman or solicitor operating within the State under the authority of the seller or its subsidiary.

As such, when a manufacturer or distributor, at the request of a retailer, drop ships its product in South Carolina and the manufacturer or distributor bills the retailer for the product and the retailer then bills its customer for the product that was drop shipped, the manufacturer or distributor is making a wholesale sale and the retailer is making a retail sale. Therefore, the manufacturer or distributor is not liable for the sales tax or use tax.

If the retailer is “engaged in business in this State,” then the retailer is liable for the sales tax with respect to the sale of property drop shipped to his customer in this state.

If the retailer is **not** “engaged in business in this State” but has voluntarily obtained a retail license from the department, then the retailer must collect and remit the use tax to the State. Please note that while the retailer must collect and remit the use tax to the State, the purchaser remains liable for the use tax until such tax is paid. However, a receipt from the retailer showing the use tax was paid to the retailer by the purchaser is sufficient to relieve the purchaser from liability for the use tax.

If the retailer is **not** “engaged in business in this State” and has **not** voluntarily obtained a retail license from the department, then the liability for the use tax rests with the retailer’s customer (the purchaser).

Finally, the manufacturer or distributor shipping a product directly to the retailer’s South Carolina customer via the drop shipment method described in this document is **not** responsible for the sales and use tax. In addition, the drop shipment by the manufacturer or distributor does **not** create nexus for the retailer if such retailer is **not** “engaged in business in this State” as that term is defined in SC Regulation 117-170 and has **not** voluntarily obtained a retail license from the department.

SOUTH CAROLINA DEPARTMENT OF REVENUE

s/Burnet R. Maybank III

Burnet R. Maybank, III

March 24, 1998
Columbia, South Carolina