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117-311 Railroads.

The following addresses the application of the sales and use tax to the transactions of railroads. The list of transactions discussed is not all inclusive.

117-311.1. Railroad Companies, Sales to.

Some railroads maintain storehouses, in South Carolina for the temporary storage of materials and supplies. Some of these materials and supplies are for use in South Carolina and some are for use in other states. Frequently, when materials are shipped to such storehouses, the railroad does not know what materials are for use in South Carolina, and what are for use in other states. Because of the impracticability of determining what proportion of such materials and supplies is subject to the tax at the time of their purchase, and because of the inequity of imposing the tax on the total purchase of such materials and supplies, the railroad may apply for a certificate under the provisions of Section 12-36-2510, which allows such railroad to purchase materials and supplies at wholesale, and to remit the use tax on the materials and supplies withdrawn for use or consumption within this state.

117-311.2. Railroad Companies - Crossties and Timbers.

Crossties and timbers sold to or used by railroad companies are subject to the sales or use tax, whichever may apply, on the following basis:

(a) Where a railroad buys in this state untreated ties or timber paying the South Carolina sales tax due thereon, and thereafter has such ties or timber creosoted or otherwise treated either within or without South Carolina, it becomes liable upon use of such property in South Carolina for the tax based upon the sales price of the creosote or other material used in the treatment thereof.

(b) Where a railroad buys in South Carolina untreated ties and timber for shipment in interstate commerce, without paying the South Carolina sales tax thereon, and such ties and

timber are shipped and creosoted without the state, and subsequently shipped into and used within the state, such railroad will be required to pay a use tax thereon measured by the full price of the finished product brought into the state.

(c) Where a railroad buys without the state untreated ties and timber, and thereafter brings said ties and timber inside the state and has them creosoted within the state and uses them within the state, such railroad would owe a use tax based upon the cost of untreated ties and timber, plus the sales price of the creosote or other material used in the treatment thereof.

(d) Where a railroad buys without the state untreated ties and timber, and has the same creosoted outside the state, and subsequently brings and uses the same within the state, such railroad would be required to pay a use tax thereon based upon the cost of untreated ties and timber, plus the cost of processing.

117-311.3. Railroad Companies - Sales to of Crossties and Timbers by Producer.

The gross proceeds of the sale of timber when sold in the original state of production or preparation for sale and when sold by the producer thereof or by members of his immediate family are exempted from payment of sales or use tax, whichever would otherwise be considered to apply. Nothing contained herein, however, shall be construed to exclude from the measure of the tax the gross proceeds of the sale or sales of timber or timber products treated with wood preservatives.

117-311.4. Railroad Companies - Machines.

Machines and machinery when sold to or used by railroad companies in maintaining, repairing, or reconditioning their equipment are subject to the sales or use tax, whichever may apply. The machine exemption is not construed as applying to machines or machinery purchased for use by railroad companies in maintenance operations.

117-311.5. Railroad Rails.

Railroad rails, crossties, frogs, spikes, etc., do not in themselves constitute machines or machinery when used in the construction of a railway or railroad either on or above ground or in a mine or quarry. This material is rather in the nature of building material and should be considered as such for taxing purposes.

117-311.6. Railroads, Lumber Used for Repairing Railroad Cars.

Lumber especially fabricated for use in repairing railroad cars is entitled to be purchased free of the tax under Section 12-36-2120(20), which exempts, among other things, from payment of sales or use taxes, railroad cars or locomotives and the parts thereof.

117-311.7. Railroads, Motor Oil Used in Diesel Engines.

Motor oil of the type used in the operation of a diesel engine for lubricating purposes does not qualify for fuel exemption even though it may be entirely consumed in such operation.

117-311.8. Ties and Timbers.

Ties and timbers, treated or untreated, are subject to sales or use tax when delivered by the seller to railroads in South Carolina. The seller must report and remit tax on these sales.

117-311.9. Ties and Timbers in Interstate Commerce.

Ties and timbers sold FOB South Carolina shipping point on a purchase order requiring the seller to ship to out-of-state destination in interstate commerce are not subject to sales tax regardless of whether or not shipment is made by the use of the purchaser's transportation facilities when the purchaser is a common carrier.

117-311.10. Ties and Timbers, Constructive Delivery of.

Ties and timbers are taxable when sold under bulk contract, with the purchaser inspecting and approving the material at the plant or yard of the seller and the seller segregating and allotting the approved material to the purchaser for future shipment according to subsequently issued shipping instructions. This material is to be reported by the seller as subject to the tax in the month in which it is shown as sold on his books.

117-311.11. Meals Served by Railroads, Airlines, Etc.

Sales of meals, drinks, etc., by railroads within this state are subject to the sales tax.

Meals, etc., served by railroads as a part of the transportation service, for which no separate charge is made, are not required to be reported as retail sales by the companies. In such instances the companies are considered to be the consumers of the foods, etc., served and will be required to pay tax thereon to the suppliers.

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