

TRAC
(2)

South Carolina's Tax Realignment Commission



Sales Tax Caps Review

Sales Tax Caps:

(A) Sales Tax Caps:

South Carolina Code § 12-36-2110 provides:

“The Maximum tax on sale or lease of certain items; calculation of tax on manufactured homes; maximum tax on purchase of certain property by religious organizations; maximum tax on sale or use of machinery for research and development.

(A) The maximum tax imposed by this chapter is three hundred dollars for each sale made after June 30, 1984, or lease executed after August 31, 1985, of each:

- (1) aircraft, including unassembled aircraft which is to be assembled by the purchaser, but not items to be added to the unassembled aircraft;
- (2) motor vehicle;
- (3) motorcycle;
- (4) boat;
- (5) trailer or semitrailer, pulled by a truck tractor, as defined in Section 56-3-20, and horse trailers, but not including house trailers or campers as defined in Section 56-3-710 or a fire safety education trailer;
- (6) recreational vehicle, including tent campers, travel trailer, park model, park trailer, motor home, and fifth wheel; or
- (7) self-propelled light construction equipment with compatible attachments limited to a maximum of one hundred sixty net engine horsepower.

In the case of a lease, the total tax rate required by law applies on each payment until the total tax paid equals three hundred dollars. Nothing in this section prohibits a taxpayer from paying the total tax due at the time of execution of the lease, or with any payment under the lease. To qualify for the tax limitation provided by this section, a lease must be in writing and specifically state the term of, and remain in force for, a period in excess of ninety continuous days.”

Any transaction subject to the maximum tax of \$300 is taxed at a state rate of 6% and is not subject to any local tax administered and collected by the Department of Revenue on behalf of local jurisdictions. Any transaction not subject to the maximum tax of \$300 is taxed at a state rate of 6% and is subject to any local tax administered and collected by the Department of Revenue on behalf of local jurisdictions.

(B) Comparison to North Carolina and Georgia:

(i.) North Carolina:

North Carolina imposes its own particular set tax caps. The caps are defined in GS § 105-164.4.

The caps are as follows:

- 1) Boats and Aircraft: \$1,500, or alternatively 3% of the sales price if that would amount to less than \$1500
- 2) Manufactured Housing: A max tax of \$300 for a one sided home, or \$600 for the sale of a two sided home. If the tax would be less than \$300 or \$600 respectively, then a tax of 2% of the sales price applies.
- 3) Agricultural Equipment: Generally all sales of agricultural equipment would be exempt based on the current statute. For instance, sales of equipment used in harvesting, planting, or cultivating are exempt. This exemption has applied since 2006.

- 4) Manufacturing Machinery: Machinery used in manufacturing has a sales cap tax of \$80, or in the alternative a 1% tax applies if that amount would be less than \$80. North Carolina classifies this as a privilege tax.

- 5) Class A and B vehicles, and Recreational Vehicles (RV's): Class A and B vehicles which are generally used in trucking for the transport of goods have a \$1000 sales tax cap. RV's are treated similarly. All other vehicles are subject to standard state and local tax rates.

- 6) Small Equipment for construction or other similar infrastructure usage: Except as explicitly stated otherwise in GS § 105-164.4, no caps or exemptions apply. Very few items are subject to these caps and exemptions.

- 7) Leased equipment: This equipment is taxed according to state and local tax rates as indicated in the services table. The tax is classified as an "alternative gross receipts tax."

(ii) Georgia:

In 2006 Georgia repealed its specific sales tax caps and the current controlling statute is: O.C.G.A. § 48-3-3 (2010). Georgia offers *exemptions* only on particular goods if sold for educational, manufacturing, agricultural, or medical purposes. Furthermore, exemptions apply to most sales to the disabled.

The standard state and local sales tax rates apply to non-exempt purchases. For a complete list of exemptions reference: O.C.G.A. § 48-3-3 (2010).

Computer Software

Generally, computer hardware is taxable, with certain exceptions for computers used in manufacturing, production, and research. Similar exceptions may exist for software that would otherwise be taxable. "Canned" or prewritten software is also taxable; however, in some states the sale of any software that is digitally delivered is not taxable.

The methods by which the states apply their sales and use taxes to sales of computer software vary greatly. Most states impose their sales taxes on transfers of tangible personal property, but computer software is not easily classified as "tangible" or "intangible."

Many states distinguish between "canned" or "prewritten" software, which can be purchased off the shelf and used in a customer's computer without any modification, and "custom" software, which is generally a program created to meet a specific customer's needs. In some states, a canned program modified to meet a particular customer's needs qualifies as a nontaxable custom program. Definitions of "custom" programs vary widely among the states.

For purposes of this chart, "T" stands for taxable and "E" for exempt; but the designations are of a general nature, and exceptions unnoted in the chart may exist.

States that do not impose a sales and use tax are not included in this chart.

State	Custom Software	Modified Canned Software	Downloaded Software
Alabama	E	T ¹	T ^{2,3}
Arizona	E	T ⁴	T ²
Arkansas	T ³	T	E ⁵
California	E	T ¹	E ⁶
Colorado	E	E	E
Connecticut	T ⁷	T ⁸	T ⁹
District of Columbia	T	T	T
Florida	E	E	E
Georgia	E	T ¹⁰	E ¹¹
Hawaii	T	T	T
Idaho	E	T ^{4,5}	T ²
Illinois	E	E ¹²	T ²
Indiana	E	T ¹³	T ²
Iowa	E	T ¹⁴	E
Kansas	E ¹⁵	T ¹⁶	T ²
Kentucky	E	E ¹⁷	T ^{2,18}

State	Custom Software	Modified Canned Software	Downloaded Software
Louisiana	E ¹⁹	T ²⁰	T ²
Maine	E	T ¹	T ²
Maryland	E	E ²¹	E ²²
Massachusetts	E	E ²³	T ²⁴
Michigan	E	T ²⁵	T ²
Minnesota	E	T ¹	T ²
Mississippi	T	T	T
Missouri	E	T ²⁶	E
Nebraska	T	T ²⁷	T
Nevada	E	T ¹⁷	E
New Jersey	E	T ²⁸	E ^{29,44}
New Mexico	T	T	T
New York	E	T ^{30,31}	T ²
North Carolina	E	T ¹⁷	E
North Dakota	E	T ¹⁷	T ²
Ohio	T ³²	T ³⁰	T ²
Oklahoma	E	T ³⁰	E
Pennsylvania	E	T ³³	T ^{2,34}
Rhode Island	E	T	E ³⁵
South Carolina	E ³⁵	T ³⁶	E ³⁵
South Dakota	T	T	T
Tennessee	T ³⁷	T	T ³⁷
Texas	T ³⁸	T ³⁹	T
Utah	E	T ⁴⁰	T ²
Vermont	E	E	E
Virginia	E	T ⁴¹	E ³⁵
Washington	E	E	T ²
West Virginia	T ⁴²	T ⁴²	T ⁴²
Wisconsin	E ⁴³	T	T ²
Wyoming	E	T	T ²

¹ Separately stated charges for modifications to canned software prepared exclusively for a particular customer exempt only to extent of modification.

² Downloaded custom software is exempt.

- ³ Exempt if it is designed specifically for, and necessary for the operation of, machinery used in manufacturing.
- ⁴ Charges for modification of prewritten software for the specific use of an individual customer are exempt if separately stated on the sales invoice and records.
- ⁵ Downloading of software, transmitted electronically, is considered excluded from tax because there is no tangible personal property involved.
- ⁶ Prewritten program transferred by remote telecommunications exempt, provided that purchaser does not obtain possession of any tangible personal property (such as storage media) in the transaction.
- ⁷ Design, creation, or development of custom software taxable at reduced rate of 1% for computer and data processing services. Separately stated charges for mere use and possession of software (such as license fees) not taxable.
- ⁸ Taxable at reduced rate for computer and data processing services.
- ⁹ If no tangible personal property delivered to purchaser along with downloaded software, software is taxed at 1% rate applicable to computer and data processing services.
- ¹⁰ Prewritten computer software, even though modified or enhanced to the specifications of a purchaser, remains prewritten computer software. However, if there is a separately stated charge on the dealer's invoice for the modification or enhancement, the charge is not subject to sales and use tax.
- ¹¹ Software delivered electronically is not subject to sales and use tax because it is not a sale of tangible personal property. Documentation must indicate the method of delivery. If not, then delivery will be presumed to have been made through a tangible medium, and the burden will be on the taxpayer to establish the software was delivered electronically. If software is delivered both electronically and through a tangible medium, the transaction is treated as a taxable sale of tangible personal property unless the software qualifies as custom software.
- ¹² Modified software held for general or repeated sale/lease is taxable.
- ¹³ If modification or enhancement is designed and developed to the specifications of a specific purchaser, software remains prewritten computer software. Where there is a reasonable, separately stated charge for such a modification or enhancement, the modification or enhancement is not prewritten computer software and is exempt.
- ¹⁴ Separately stated charges for modifications to canned software prepared exclusively for a particular customer exempt only to extent of modification. If charges are not separately stated, then tax applies to entire charge unless modification is so significant that the new program qualifies as a custom program.
- ¹⁵ Effective January 1, 2005, custom software and the services of modifying, altering, updating, or maintaining custom software are exempt.
- ¹⁶ Separately stated charges for modifications to canned software prepared exclusively for a particular customer exempt.
- ¹⁷ Exempt if charges for modification are separately stated.
- ¹⁸ Downloaded "prewritten computer software" taxable.
- ¹⁹ Tax on custom software phased out (July 1, 2002-June 30, 2003: 75% of sales price taxed; July 1, 2003-June 30, 2004: 50% taxed; July 1, 2004-June 30, 2005: 25% taxed; exempt after June 30, 2005).
- ²⁰ All canned software incorporated into custom software that is sold after June 30, 2005, is fully taxable. (Prior to that date, due to the phase-out of tax on custom software, purchases of canned software for use in custom programs were treated as purchases for resale according to a certain percentage of custom software's sales price based on sales date of custom software.)
- ²¹ Exempt if the service aspect of the transaction predominates over sale of canned software.
- ²² Exempt as long as transaction does not include the transfer of any tangible personal property.
- ²³ Exempt if sales price of canned software is an inconsequential element of the cost of the transaction and is not separately stated. If separately stated, charges for modification are exempt and charges for canned software are taxable.
- ²⁴ Effective April 1, 2006, all transfers of canned software are considered taxable transfers of tangible personal property (including, but not limited to, electronic, telephonic, or similar transfers; downloaded software from the Internet; or transfers by "load and leave"). Sales of custom software are generally exempt as professional service transactions.
- ²⁵ Exempt if separately stated and identified.
- ²⁶ Exempt if true object of transaction is provision of technical professional service.
- ²⁷ Software that alters existing software is considered separate from the existing software and is taxable.
- ²⁸ A separately stated, commercially reasonable charge for the professional service of modifying canned software for a customer is exempt.
- ²⁹ If purchaser also receives tangible property in connection with sale (other than incidental property, such as training manuals or warranty card), then deemed to be a sale of tangible personal property and is taxable as if software were transferred solely through tangible media.
- ³⁰ Reasonable, separately stated charges for modifications to canned software prepared exclusively for a particular customer exempt only to extent of modification.
- ³¹ Modified software may be exempt if used directly and predominantly in production of property for sale or for research and development.

- 32 Ohio taxes purchases of "computer services" purchased for business use. "Computer services" includes custom programming of system software. Programming of custom application software is not a taxable sale.
- 33 Reasonable, separately stated charges for modifications to canned software prepared exclusively for a particular customer exempt.
- 34 Effective for invoices dated after October 2005, the sale or use of canned software is taxable, regardless of the method of delivery. See *Graham Packaging Co. v. Commonwealth of Pennsylvania*, Pennsylvania Commonwealth Court, No. 652 F.R. 2002, September 15, 2005. Downloaded custom software exempt as long as the transaction does not include the transfer of any tangible personal property.
- 35 Exempt as long as the transaction does not include the transfer of any tangible personal property.
- 36 Taxable if the canned software is modified and sold and delivered by tangible means.
- 37 Exemptions may apply for the use of software developed and fabricated by an affiliated company or for fabrication of software by a person for that person's own use or consumption.
- 38 Charges to create a computer program from scratch for a customer who is given all and exclusive rights to the program are exempt.
- 39 Taxable if performed by person who sold the canned software. Charges to customize canned software not sold by the person doing the customization are exempt.
- 40 Charges for modifications to canned software that are reasonable and separately stated and identified on the invoice are exempt.
- 41 Canned software that is modified to any degree does not become exempt custom software.
- 42 Exemptions may apply for high technology businesses, certain education software, software directly used in communications or incorporated into a manufactured product, or software used to provide data processing services.
- 43 There is a rebuttable presumption that any program with a cost of \$10,000 or less is not custom software. Custom software does not include basic operational programs.
- 44 Downloaded software is exempt only if used exclusively and directly in the purchaser's business, trade, or occupation.
- 45 Mandatory maintenance support contract for canned software upgrades is taxable. For optional maintenance contracts, only the fee representing canned software upgrades is taxable if separately stated. If fee for upgrades is not separately stated from fee for support services, then 50% of entire charge is deemed taxable. If only canned software upgrades is provided, without support services, the entire fee is taxable.